

Failure to Train: The Hidden Liability Inside Fire and EMS Agencies

Fire and EMS agencies routinely invest significant time and resources into apparatus, equipment, technology, and staffing. Yet one of the greatest areas of legal exposure often involves something far less visible: training.

In many fire and EMS cases, the issue is not whether personnel intended to do harm or whether they cared about the outcome. The question frequently becomes much simpler:

Were they properly trained for the task they were expected to perform?

Training deficiencies may not become obvious during routine daily operations, but they often surface immediately after a serious incident, injury, delayed treatment, vehicle collision, fireground accident, or line-of-duty event. What may initially appear to be an isolated employee error can, upon closer review, reveal a broader organizational problem.

The Difference Between Individual Error and System Failure

Firefighters and EMS personnel work in complex and unpredictable environments where decisions frequently must be made quickly and under stress. Human errors will always exist. However, legal scrutiny often extends beyond the individual and examines the system in which that individual was operating.

Questions that are commonly raised include:

Did the agency provide adequate initial training?

Were personnel trained in updated policies and procedures?

Was competency verified or merely assumed?

Was remedial training provided after previous issues were identified?

Are required certifications maintained?

Did documentation exist proving training occurred?

A mistake made by one employee may be viewed very differently if evidence suggests the organization failed to prepare that employee adequately. There is a notable difference in employees that train on a task monthly versus quarterly, semi-annual, or annual basis.

Common Failure-to-Train Areas in Fire and EMS

There are certain areas that repeatedly emerge during investigations and litigation:

Emergency Vehicle Operations

Emergency response driving continues to create substantial exposure for agencies.

Questions which often arise regarding:

- Intersection practices
- Speed management
- Due regard considerations
- Use of lights and sirens
- Driver certification and competency

A vehicle collision may initially appear to involve driver judgment alone, but attorneys frequently examine whether the agency had proper training programs and whether those programs were documented and enforced. This is an area where the frequency and diversity of training can arguably impact vehicle collisions the most either for the good or bad. Many Fire and EMS agencies only conduct driver training (actual conducting road or training evolution work) and rarely train road conditions relating to weather impacts. Questions could potentially be raised as to the frequency of training in wet, freezing, icing, and sleeting conditions. This is especially important for agencies which work in these types of climates.

EMS Patient Assessment and Decision-Making

EMS providers regularly make decisions that directly affect patient outcomes. Potential issues may involve:

- Failure to recognize critical findings
- Delayed interventions
- Incomplete assessments
- Inadequate documentation
- Improper patient refusals

The issue often becomes whether personnel had sufficient training and competency validation in these areas. Particularly in EMS training where skills may only be evaluated annually, which in some life-saving interventions (such as intubation) may arguably not be adequate.

Incident Command and Fireground Operations

Fireground incidents involve rapidly changing conditions and coordinated decision-making. Problems may include:

Accountability failures (failure to conduct periodic accountability assessments)

Communication breakdowns (wrong tactical or operations channel, failure in a down or missing firefighter to switch other units to a separate tactical channel to focus on rescue of the lost or missing firefighter)

Freelancing (lack of accountability)

Risk versus benefit decision-making (risk a lot to save a lot, risk a little to save a little, risk nothing to save nothing)

Tactical decision errors (failure to address critical fireground factors, failure to assign units and personnel to proper areas and tasks)

When incidents result in injuries or fatalities, the focus may shift from the event itself to whether command principles and operational procedures were appropriately taught and reinforced. The area of incident command and fireground operations is highlighted in the following two cases:

The Supreme Judicial Court of Massachusetts recently upheld a jury verdict of \$850,000 against the City of Lowell in which the city fire department was found negligent for using improper firefighting techniques. In doing so, the Court rejected the argument that firefighting tactics were protected by the state's "discretionary function" immunity for civil liability. (<https://www.fireengineering.com/firefighting/discretionary-function-immunity-and-fireground-liability/?utm>)

And a recent fire in Shreveport, LA, which resulted in three fatalities, and there are allegations of negligence and failure to adhere to department fireground protocols. (<https://www.firefighterclosecalls.com/wrongful-death-lawsuit-filed-in-triple-fatal-shreveport-fire-louisiana/>)

Documentation: If It Wasn't Documented, It May Not Exist

One of the most damaging findings during litigation can be the absence of training records.

Departments may honestly believe training occurred. Supervisors may recall discussing a topic or conducting drills. Personnel may remember attending sessions. However, memories do not replace documentation. Without records demonstrating attendance,

curriculum, competencies, evaluations, and remediation efforts, agencies may struggle to prove that adequate training occurred. Documentation frequently becomes the difference between:

"We trained our people."

and

"We can prove we trained our people."

Those are not always viewed as the same thing in legal proceedings. This area is paramount in EMS as many times EMT's/Paramedics neglect information such as interventions performed but not documented, not notating a patient past medical history or weight as these two pieces of information are vital in calculating drug choices and dosages when treating patients (and possibly not providing enough of a dose or overdosing). This area is also an immense liability from the fire side as well. I have provided QA/QC for thousands of (National Fire Incident Record) NFIRS and EMS Patient Care Reports (now NEMSIS) and omissions and lack of vital details were by far the most notable issues.

Prevention Is Often Less Expensive Than Litigation

Most fire and EMS agencies are not intentionally neglecting training responsibilities. Staffing shortages, budget constraints, call volume, mandatory overtime, and administrative demands can all create challenges. However, operational pressures do not necessarily eliminate liability exposure.

Training should not simply satisfy a minimum requirement or annual checkbox exercise. Effective programs should involve:

- Clear policies and procedures
- Initial and continuing education
- Competency validation
- Remedial processes
- Ongoing performance review
- Thorough documentation

Training is not simply an operational function. It is also a risk management strategy.

Final Thoughts

Many significant cases involving fire and EMS agencies do not begin with allegations of intentional misconduct. They often begin with a single question:

"Should this person have been better prepared?"

When a serious event occurs, investigations frequently move beyond the actions of one responder and begin examining the agency itself. Sometimes the greatest liability exposure is not what happened on the scene. It is what happened—or failed to happen—long before the incident ever occurred.

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