

Hazing and Harassment in the Fire Service—Will We Ever Learn?

Jonathan McMahan

Rural/Metro Fire Department, Tucson, Arizona

CERTIFICATION STATEMENT

I hereby certify that this paper constitutes my own product, that where the language of others is set forth, quotation marks so indicate, and that appropriate credit is given where I have used the language, ideas, expressions, or writings of another.

Signed: 

Abstract

Litigation related to hazing and harassment in the fire service is on the rise. The problem is that field level fire personnel do not appreciate or understand the legal ramifications of their behavior which can result in liability for their employers. The purpose of this research is to identify and describe the legal landscape of fire service hazing and harassment and seek methods to prevent litigation and injuries. The descriptive research method was utilized in this study. The research questions are: a) What are the legal ramifications of hazing and harassment in the fire service? b) What policies do fire entities in the greater Tucson area have in place to prevent hazing and harassment in the fire service? c) What do other entities have in place to prevent hazing and harassment in the workplace? Procedures utilized in the study include a review of case law and statutes, a review of local fire entities' harassment and hazing policies, a review of other entities' harassment and hazing policies, and an interview with a local attorney. The study shows that fire entities can be held legally liable for hazing and harassing behavior under some circumstances and more should be done to limit such behavior in the fire service. Legal claims related to hazing and harassment have a negative impact on trust and cohesion in the department, cause damage to the public image of the fire service, and result in increased litigation costs. The paper recommends adoption of separate hazing and harassment policies that meet EEOC recommendations for all fire entities, enforcement of such policies, mandatory interactive training, adoption of a hotline to report inappropriate behavior, and a change in organizational culture.

Table of Contents

Abstract.....	3
Table of Contents.....	4
Introduction.....	5
Background and Significance.....	5
Literature Review.....	7
Procedures.....	24
Results.....	25
Discussion/Implications.....	30
Recommendations.....	34
References.....	36
Appendix A.....	41
Appendix B.....	44
Appendix C.....	45

Hazing and Harassment in the Fire Service—Will We Ever Learn?

Despite what seems to be never-ending training and policies, litigation caused by hazing and harassment in the fire service is on the rise. The problem is that field level personnel do not appreciate or understand the legal ramifications of their behavior which can result in liability for their employers. Moreover, this failure to appreciate the legal landscape leads to increased costs, personnel turnover, negative publicity, and decreased respect in the community.

The qualitative descriptive research method will be used to provide the current status of the law and fire service hazing and harassment incidents, as well as the potential legal ramifications of such behavior. Additionally, policies in the greater Tucson area were reviewed along with those of other entities. The research approach includes of an interview with an attorney who handles hazing litigation and a thorough review of case law and hazing incidents.

The purpose of this research is to identify and describe the legal landscape of fire service hazing and harassment and seek methods to prevent litigation and injuries.

The research questions are: a) What are the legal ramifications of hazing and harassment in the fire service? b) What policies do fire entities in the greater Tucson area have in place to prevent hazing and harassment in the fire service? c) What do other entities have in place to prevent hazing and harassment in the workplace?

Background and Significance

It is all fun and games until someone gets hurt or sued (Murphy & Murphy, 2010). As many try to move the fire service into a respected, educated profession, the public perception of the fire service is set back many years when hazing and harassment becomes public. The public is ultimately who the fire service serves and hazing and harassment does not instill confidence in the general public. Hazing and harassment create a hostile work environment which detracts

from our mission of protecting the public. Moreover, it isolates and excludes crew members who must rely on and trust each other during emergency situations.

The reality is that hazing and harassment is unacceptable behavior that is not tolerated in other professions such as medicine, law, or accounting. The majority of American workers would not anticipate going into their office and being groped, assaulted, or initiated in any manner. In fact, such behavior would likely have serious civil and criminal consequences. For some reason, similar behavior in the fire service is not only accepted but sadly at times encouraged.

In the past ten years there have been several hazing and harassment claims addressed by several local fire entities. Rural/Metro Fire Department, Pima County Operations has not had to address legal claims related to hazing or harassment but that does not mean the threat is not there. While hazing and harassment is an issue at the local level, the reality is that this type of behavior happens globally and must be addressed by all fire entities.

Understanding the legal ramifications of fire service hazing and harassment has a direct correlation with the topics outlined during the Executive Leadership course at the National Fire Academy (United States Fire Administration, 2014). The leadership sections covered decision making and public policy (United States Fire Administration, 2014). These leadership objectives are directly linked to legal policy, legal spending, and appropriate fire entity actions to protect the entity from legal exposure, maintain a positive public image, and appropriately utilize and protect public funds (United States Fire Administration, 2014). This applied research project links with the United States Fire Academy's (USFA) first goal—to reduce risk at the local level through prevention and mitigation (United States Fire Administration, 2010). Reducing risk caused by legal exposure is an important part of leading a local fire entity and maintaining public trust and confidence.

Literature Review

Each state has its own statutes and case law which provide remedies to individuals subjected to hazing and harassing behavior. It is impossible to cover each of the 50 states in this paper and all potential claims in detail; however, federal jurisprudence and a narrow scope of state law will be reviewed. Individuals often bring a mix of both state and federal claims related to hazing and harassment in their lawsuits (A. Hernandez, personal communication, December 4, 2014). Potential civil state claims include but are not limited to assault, harassment, false imprisonment, battery, discrimination, retaliation, unlawful detention, and intentional infliction of emotional distress. Many states also have specific criminal laws that prohibit hazing.

Title VII of the Civil Rights Act of 1964 prohibits harassment in the workplace based on race, color, religion, sex, age, disability, or national origin (Employment Opportunity Commission, 2014). Freedom from job discrimination based on race, sex, age, and other factors is a civil right (*Burlington Industries, Inc. v. Ellerth*, 1998). Harassment is an unfair employment practice and violates public policy, as does retaliating against an employee who files a complaint (Title VII of the Civil Rights Act of 1964). The Act applies to employers that have 15 or more employees (Title VII of the Civil Rights Act of 1964). This includes governments, governmental agencies, political subdivisions, and labor unions (Title VII of the Civil Rights Act of 1964). An employer is legally responsible for harassment by a supervisor that results in a “negative employment action such as termination, failure to promote or hire, and loss of wages” (*Burlington Industries, Inc. v. Ellerth*, 1998; United States Equal Employment Opportunity Commission, 2014, p. 1).

Harassment becomes unlawful if it creates a hostile work environment (*Meritor Savings Bank v. Vinson*, 1986). The employer is also liable if it knew or should have known of the

harassment and failed to take prompt corrective action (United States Equal Employment Opportunity Commission, 2014, p. 1). An employer can avoid liability for a hostile work environment only if it can prove that “it reasonably tried to prevent and promptly correct the harassing behavior” and “the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer” (United States Equal Employment Opportunity Commission, 2014, p. 1). It is also unlawful to retaliate against an individual who filed a charge of discrimination or harassment (*Oncale v. Sundowner Offshore Services, Inc.*, 1998).

Anti-discrimination statutes, however, do not create a code of civility for all to follow; harassment does not violate federal law unless it is based on race, color, religion, sex, age, disability, or national origin (*Oncale v. Sundowner Offshore Services, Inc.*, 1998). The harassment must be objectively offensive and alter the conditions of the individual’s employment (*Oncale v. Sundowner Offshore Services, Inc.*, 1998). Simple teasing, offhand comments, or isolated incidents that are not extremely serious are not protected by federal law (*Faragher v. City of Boca Raton*, 1998). The United States Supreme Court held that “conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment . . . is beyond Title VII’s purview” (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998, p. 1003). It can be a fine line between conduct that is considered harassment and that which is not (A. Hernandez, personal communication, December 4, 2014).

The United States Supreme Court has stated that the anti-discrimination statutes were designed to “encourage the creation of anti-harassment policies and effective grievance mechanisms” (*Burlington Industries, Inc. v. Ellerth*, 1998, p. 2270). Without such policies, certain employer defenses are more difficult to make (A. Hernandez, personal communication,

December 4, 2014; *Burlington Industries, Inc. v. Ellerth*, 1998). The policy and complaint procedure should be provided to every employee (United States Equal Employment Opportunity Commission, 1999). The policy should contain an explanation of prohibited conduct, the complaint process, the assurance of confidentiality for complaints, and an anti-retaliation clause (United States Equal Employment Opportunity Commission, 1999).

The United States Supreme Court held in *Oncale v. Sundowner Offshore Services, Incorporated* (1998) that sexual hazing by co-workers of the same gender is actionable under Title VII. Joseph Oncale worked on an oil platform in the Gulf of Mexico as a roustabout on an eight-man crew (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998). On several occasions, Oncale was forcibly subjected to sex-related, humiliating actions by members of the crew (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998). He was also physically assaulted in a sexual manner and threatened with rape (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998). Oncale sued for sex discrimination but the federal trial court determined he had no recourse because Title VII provides no cause of action for same-sex sexual harassment (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998).

On appeal, the Fifth Circuit Court of Appeals affirmed the dismissal of Oncale's claim and Oncale appealed to the United States Supreme Court (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998). The United States Supreme Court clarified the status of the law, holding that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII, and the case was remanded back to the trial court for further proceedings (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998).

In *Skinner v. City of Miami, Florida* (1995), firefighter Skinner was wrestled to the firestation floor by several firefighters. Skinner was handcuffed and a naked firefighter straddled

Skinner and rubbed his scrotum over his head (*Skinner v. City of Miami, Florida*, 1995). Skinner subsequently sued the City of Miami, the Chief of the Fire Department, and numerous firefighters, claiming his Fourth, Fifth, Fourteenth, and Fifteenth Amendments were violated under Section 1983 and state law (*Skinner v. City of Miami, Florida*, 1995). Skinner settled with the individual firefighters prior to trial (*Skinner v. City of Miami, Florida*, 1995). A five day jury trial was conducted; the jury returned a verdict against the City of Miami for \$1.3 million (*Skinner v. City of Miami*, 1995).

The City of Miami appealed the jury verdict to the Eleventh Circuit (*Skinner v. City of Miami, Florida*, 1995). The Eleventh Circuit Court of Appeals held that Skinner had failed to establish a claim for violation of his substantive due process rights because he did not show he suffered constitutional deprivation as opposed to a state law claim of assault (*Skinner v. City of Miami, Florida*, 1995). The Court determined that Skinner's claim should have been brought in state court instead of federal court based on state law (*Skinner v. City of Miami, Florida*, 1995). In other words, venue was inappropriate in federal court and they had no jurisdiction to hear the case; thus, it was dismissed (*Skinner v. City of Miami, Florida*, 1995).

In 2011, Mark Bernstein sued the Village of Piermont on behalf of his 17 year old son, claiming false imprisonment, unlawful detention, assault, battery, and intentional infliction of emotional distress following an alleged hazing event at the fire station (*Bernstein v. The Village of Piermont*, 2013). Bernstein's son was a volunteer firefighter and it was alleged that he was forced to engage in acts of sodomy as a prerequisite to joining the department (*Bernstein v. The Village of Piermont*, 2013). This lawsuit did not result in a published legal opinion so presumably it was settled or a verdict was received but not appealed (A. Hernandez, personal communication, December 4, 2014).

In August 2014, Fire Department New York fire fighter Baraka Smith sued the City of New York, claiming racial discrimination, sexual harassment, failure to train, negligent supervision, negligent infliction of emotional distress, false imprisonment, malicious prosecution, false arrest, and failure to follow the hazing policy (*Smith v. The City of New York*, 2014). Smith alleged he was sexually harassed and assaulted when two other fire fighters simulated sexual intercourse with him and digitally touching his anus, penis, and testicles (*Smith v. The City of New York*, 2014). Smith was charged criminally for choking one of his alleged assailants (*Smith v. The City of New York*, 2014). Both the civil and criminal cases are still pending.

In 1996, three women firefighters settled their sexual harassment lawsuit against the Reedy Creek Improvement District and Walt Disney World (Decker, 1996). The women had alleged that male firefighters had posted naked photographs of women throughout the fire station, made vulgar comments about their genitals, and prevented them from getting proper training and equipment (Decker, 1996). A second lawsuit was filed in that same time period against the Reedy Creek Improvement District and Walt Disney World by firefighter Jay Phillips, who alleged that sexual harassment was condoned by high-ranking fire officials (Decker, 1996).

The Los Angeles Fire Department had a rash of lawsuits filed in the 2000s. In 2005, firefighter Brenda Lee sued for harassment, discrimination, and retaliation and a jury awarded her \$6,214,927.00 in 2007 (*Lee v. City of Los Angeles*, 2010). In 2010, that judgment was reversed on appeal after the court determined that Lee had not exhausted her administrative remedies (*Lee v. City of Los Angeles*, 2010). The case was remanded for a new trial related to the issues the trial court had proper jurisdiction over (*Lee v. City of Los Angeles*, 2010).

In 2007, a jury awarded Lewis Bressler \$1,730,848.00 for his retaliation claims against the Los Angeles Fire Department (*Bressler v. City of Los Angeles*, 2009). Bressler claimed the city and several employees retaliated against him when he reported sexually inappropriate comments made by a captain and he made verbal and written reports about discrimination and harassment directed at firefighter Brenda Lee (*Bressler v. City of Los Angeles*, 2009). The city appealed the verdict but it was upheld on appeal (*Bressler v. City of Los Angeles*, 2009).

The Los Angeles Fire Department avoided a trial by settling a case with black firefighter Tennie Pierce (Zahniser, 2007). Pierce claimed he had been secretly served a spaghetti dinner by fellow fire personnel containing, unbeknownst to him, dog food (Zahniser, 2007). Pierce filed a lawsuit claiming racial discrimination (Zahniser, 2007). The parties settled for \$1,500,000.00 (Zahniser, 2007). According to City Attorney Rocky Delgadillo, the legal costs for the city had already reached \$1,300,000 in defending the claim (Zahniser, 2007). Delgadillo's spokesman stated that legal payouts for the past fiscal year of 2007 on behalf of the fire department were \$13,500,000.00 (Zahniser, 2007).

Firefighter Marlenis Smart sued the City of Miami Beach for sexual harassment at the fire department (Bryan, 2012; *Smart v. City of Miami Beach, Florida*, 2013). Smart alleged her bathing suit was splattered by semen, her bra hung from the firehouse bay, and called offensive names (Bryan, 2012). A jury found in Smart's favor and awarded her \$700,000.00 (Bryan, 2012); however, the trial court threw out the verdict and determined that the conduct did not rise to the level of sexual harassment (Miller, 2013).

In 2013, Sharon Grant filed a lawsuit against Baltimore County Fire Department claiming hazing, sexual harassment, and gender and age discrimination at the fire academy (Varone, 2013). The case is still pending. Scott Cleere, a former recruit with the Chili Fire Department,

filed a lawsuit against the department alleging he was injured during a hazing incident (Lamothe, Jr., 2006). Cleere claims he was strapped to a backboard and propped against a wall (Lamothe, Jr., 2006). The backboard allegedly tilted and he fell face first to the ground, causing injury (Lamothe, Jr., 2006).

Locally, the Tucson Fire Department has several reported incidents of hazing and harassment. In 2005, eight Tucson firefighters were disciplined over hazing of recruits (Becker, 2005). One recruit was strapped to a spine board and left while firefighters responded to a bogus call (Becker, 2005). Another recruit was made to massage the knee covered in cooking oil of a nearly naked firefighter (Becker, 2005). Several other incidents involving partially dressed firefighters were reported (Becker, 2005). In July 2008, the City of Tucson settled a claim with Adam Neal for \$60,000 (Brosseau, 2008). Neal had been bound with duct tape, placed in the station shower, and showered with cold water (Brosseau, 2008). Neal received treatment at a mental health facility for depression that he claimed was related to the treatment at the station (Brosseau, 2008). Neal also claimed harassment, assaults, and name calling (Brosseau, 2008).

In 2013, the City of Tucson settled with former firefighter Cody Jenkins for \$125,000 after he claimed he was physically assaulted and harassed (DaRonco, 2013). Jenkins claimed a captain humped and ground into him, swatted his buttocks, and rubbed his groin against Jenkins head (DaRonco, 2013). The captain was demoted to a paramedic; he appealed his demotion and was later restored to captain by the civil service commission (DaRonco, 2013).

A review was performed of state hazing laws. Numerous states have civil laws which prohibit hazing against students. For example, Arizona has a hazing statute which requires every public educational institution to adopt, post, and enforce a hazing prevention policy (A.R.S. § 15-2301, 2001). Arizona defines hazing as an act committed by a student against another student

that was committed in connection with membership in an organization affiliated with an educational institution and contributes to a substantial risk of potential physical or mental injury or degradation (A.R.S. § 15-2301, 2001). These statutes provide no protection from hazing in any other capacity to any other type of individuals under state law.

Other states have criminal statutes that prohibit hazing against students. For example, New Jersey, Nevada, and North Carolina have statutes that make hazing related to students at schools or school organizations a crime of either a misdemeanor or assault depending on the severity of the injuries caused (N.J.S.A. 2C:40-3, 1980; N.R.S. 200.605, 1999). These criminal statutes also only apply to students affiliated with educational institutions and not the general public. Thus, these statutes do not provide protections to hazing incidents involving fire service personnel. Numerous searches found no hazing statutes in any jurisdiction that provided protection to individuals other than students.

An interview conducted was conducted with Amy Hernandez, a partner at Piccarreta Davis PC in Tucson, Arizona, on December 4, 2014. She has an interest in the fire service and hazing and harassment specifically (A. Hernandez, personal communication, December 4, 2014). Ms. Hernandez is of the opinion that the biggest challenge related to hazing is overcoming the disconnect between the field and administration/chief fire officers (personal communication, December 4, 2014). She explains that chief fire officers and administrators attend formal trainings and professional conferences where hazing and harassment is often discussed (A. Hernandez, personal communication, December 4, 2014). They may also be more involved or aware of legal issues related to hazing and harassment (A. Hernandez, personal communication, December 4, 2014). Ms. Hernandez explains that it is difficult to get the field to care about

hazing and harassment and to change behavior to avoid legal ramifications (personal communication, December 4, 2014).

Ms. Hernandez feels training is paramount to legal defenses in court and raising awareness to the field about behavior they may not even realize is offense or harassing (personal communication, December 4, 2014). Role playing and hypothetical scenarios are more effective than simple lectures (A. Hernandez, personal communication, December 4, 2014). Senior leadership must also be trained separately and additionally on how to address this behavior in the fire station and once reported (A. Hernandez, personal communication, December 4, 2014). All must fight against the “good old boy” and status quo mentality (A. Hernandez, personal communication, December 4, 2014). Moreover, each fire department would be well served to ensure they have a policy on hazing and harassment that complies with state and federal law (A. Hernandez, personal communication, December 4, 2014).

Swift discipline of those involved with hazing and harassment sends a strong message to the field as well that such behavior will not be tolerated and engaging in such behavior will put your career and ability to promote at risk (A. Hernandez, personal communication, December 4, 2014). Excuses for such behavior abound—one often hears from the field that others “just don’t get it” and that they spend 24 hours together and are like a family; therefore, they feel their behavior is justified (A. Hernandez, personal communication, December 4, 2014). The reality is that they are employees who are paid to do a job—the modern fire service has no place for hazing and harassment (A. Hernandez, personal communication, December 4, 2014). Fire service personnel with the mentality that hazing is acceptable and not harmful hurt all fire service personnel (A. Hernandez, personal communication, December 4, 2014). Hazing and harassment claims cost cities, fire districts, and private fire service companies’ time and money and tarnish

public perception of the fire service (A. Hernandez, personal communication, December 4, 2014).

Ms. Hernandez is also of the opinion that generally fire entities do not take a proactive approach to preventing hazing and harassment (personal communication, December 4, 2014). This is evidenced by the uptick in litigation related to such claims (A. Hernandez, personal communication, December 4, 2014). Moreover, the United States Equal Employment Opportunity Commission (EEOC) statistics also show the rise of harassment and retaliation claims made with the agency, which is a administrative requirement prior to filing a lawsuit (A. Hernandez, personal communications, December 4, 2014; Appendix B; Appendix C).

Ms. Hernandez also commented on the role of unions during investigation and handling of these claims (personal communication, December 4, 2014). The role of the union, in part, is to protect the jobs and benefits of fire service personnel (A. Hernandez, personal communication, December 4, 2014). When hazing and harassing behavior is covered up or not dealt with swiftly, public opinion is affected and the fire service is viewed negatively (A. Hernandez, personal communication, December 4, 2014). The taxpayers must pay out claims on behalf of fire service personnel who either condone such behavior or fail to directly oppose it—thus, Ms. Hernandez believes the unions are better served unambiguously opposing such behavior because taxpayers, quite frankly, will not have much sympathy for fire personnel acting in a manner that the taxpayers themselves would certainly face severe consequences for doing at their place of employment (personal communications, December 4, 2014). The taxpayers pay salaries and vote on benefits (A. Hernandez, personal communications, December 4, 2014).

Multiple hazing and harassment policies were reviewed from local fire entities. Northwest Fire District is an accredited entity by the Commission on Fire Accreditation

International (CFAI) (Northwest Fire District, 2011). Northwest has ten fire stations and 193 uniformed personnel (Northwest Fire District, 2011).

Northwest has a policy related to harassment and sexual harassment but does not have one specifically addressing hazing (Northwest Fire District, 2013). Northwest's policy states that "unauthorized actions that are offensive to another employee will not be tolerated" which arguably includes hazing (Northwest Fire District, 2013, p. 1). Additionally, the policy states that foul and vulgar language is unacceptable and employees should avoid creating situations that could cause another employee to feel threatened or uncomfortable (Northwest Fire District, 2013). Again, that broad language may encompass hazing activity. The policy also requires immediate reporting of harassing behavior and has a non-retaliation clause propounding that anyone who reports such behavior will not be retaliated against (Northwest Fire District, 2013). Interestingly, the policy also states that if an employee makes a "false or misleading" complaint of harassment, he or she will be subject to disciplinary action up to and including termination (Northwest Fire District, 2013, p. 2).

Golder Ranch Fire District is a local fire district that operates on the northwest side of Tucson, Arizona. Golder Ranch has 8 fire stations and 168 line personnel (R. Karrer, personal communication, January 8, 2015). Golder Ranch has several policies which address inappropriate behavior in the workplace and cover the umbrella of hazing and harassment (Golder Ranch Fire District, 2013a-d). Golder Ranch's policy on harassment and sexual harassment clearly prohibits harassing conduct and sets forth the complaint handling procedures (Golder Ranch Fire District, 2013b). Golder Ranch's harassment policy makes a point to state that harassment is "contrary to basic standards of conduct between individuals and is prohibited by the EEOC (Equal Employment Opportunity Commission) regulations" (Golder Ranch Fire District, 2013b). The

policy goes on to stress that the district enforces all federal and state regulations relating to fair and proper treatment of employees (Golder Ranch Fire District, 2013b). Golder Ranch's harassment policy also includes an anti-retaliation statement and possible disciplinary action for a false or pretentious claim (Golder Ranch Fire District, 2013b).

Golder Ranch also has a code of employee relations policy that states the district seeks to provide a safe working environment for all employees (Golder Ranch Fire District, 2013a). Dovetailing that policy is a workplace violence policy that strives for a safe work environment that is free of harassment, intimidation, threats, or violence (Golder Ranch Fire District, 2013d). Finally, Golder Ranch has an open door policy to facilitate communications between employees and management that would encourage receipt of information related to hazing or harassment in the work place (Golder Ranch Fire District, 2013c).

The Tucson Fire Department has a manual directly addressing hazing in the department (Tucson Fire Department, 2009). Tucson Fire's hazing manual is very specific; it goes so far as to state that infringement on bodily integrity includes roping, tying, choking, taping, handcuffing, holding down, etc" is unacceptable (Tucson Fire Department, 2009). Moreover, the manual directly states that it is not a defense to a violation of this policy that the hazing victim consented to or participated in the hazing activity (Tucson Fire Department, 2009). Additionally, the policy has teeth—any infringement on bodily integrity will be linked to the intermediate level of the discipline matrix (Tucson Fire Department, 2009). Different from other fire entity policies reviewed, Tucson's hazing manual pointedly relies on supervisors and leaders to "set the tone and maintain a workplace environment where all employees feel safe and are able to carry out their duties" (Tucson Fire Department, 2009).

The Tucson Fire Department hazing manual also refers to the overarching City of Tucson Rules of Conduct requiring employees to act professionally and in a manner that does not compromise other employees' ability to perform their work (Tucson Fire Department, 2009). The hazing manual also dovetails with the Tucson Fire Department Manual of Operations which requires professional behavior to reflect the department's mission, values, and purpose (Tucson Fire Department, 2009). Finally, different from other local policies, the Tucson Fire Department hazing manual refers to the "impact of hazing activities" and the "irrevocable harm to its victims, their families, and the community as a whole" (Tucson Fire Department, 2009). Finally, the City of Tucson, which also applies to the Tucson Fire Department, has a separate harassment policy which promotes equitable treatment of all employees and prohibits retaliation (City of Tucson, 2012).

Rural/Metro Fire Department is a private fire department that operates as the fire service provider in the unincorporated areas of Pima County, including the Tanque Verde Valley, the Catalina Foothills, the town of Sahuarita, and south side areas adjacent to Tucson Fire Department jurisdiction (M. Schwartz, personal communication, January 8, 2015). Rural/Metro operates 8 fire stations in Pima County with 160 uniformed personnel (M. Schwartz, personal communication, January 8, 2015).

Rural/Metro has several policies tied to harassment. For example, Rural/Metro strictly prohibits work place violence, including intimidation, harassment and/or coercion (Rural/Metro Fire Department, 2011a). Rural/Metro also has a harassment policy which specifically prohibits hazing and requires compliance with the law (Rural/Metro Fire Department, 2010). This policy also has an anti-retaliation clause (Rural/Metro Fire Department, 2010). Rural/Metro also maintains a hotline for confidential reporting of complaints or allegations, including hazing and

harassment (Rural/Metro Fire Department, 2011b). Rural/Metro's employee handbook also prohibits harassment (Rural/Metro Fire Department, 2013).

All of the United States Armed Forces maintain hazing and harassment policies. The United States Air Force has a zero-tolerance policy against harassment, threats, and intimidation (United States Air Force, 2012). This same policy pointedly states that "bullying, hazing, or any instance where an Airman inflicts any form of physical or psychological abuse that degrades, insults, dehumanizes, or injures another Airman" is prohibited (United States Air Force, 2012, p. 13).

The United States Navy has established a hazing policy that tracks substantiated cases of hazing of uniformed service members (United States Navy, 2013). The policy created the Navy Office of Hazing Prevention (OPNAV) as the lead Navy entity for hazing policy (United States Navy, 2013). OPNAV maintains a historical record of hazing events and performs trend analysis on a quarterly basis (United States Navy, 2013). The policy defines hazing and states that it need not involve actual physical contact (United States Navy, 2013). Moreover, actual or implied consent does not eliminate the culpability of the perpetrator (United States Navy, 2013). The policy also points out that hazing degrades the ability of "victims to function within their unit, it destroys our sailors confidence and trust in their shipmates and is destructive to unit cohesion and combat readiness" (United States Navy, 2013, p. 2).

The United States Marines Corps hazing order strictly prohibits hazing and establishes enforcement guidelines (United States Marine Corps, 2013). Similar to the United States Navy policy, the Marine Corps policy explains how hazing "impairs our ability to fight and win the nation's battles" (United States Marine Corps, 2013, p. 1). This policy also places the responsibility of investigating and reporting allegations on commanders and leaders (United

States Marine Corps, 2013). Additionally, the policy states that “commanders at all echelons will ensure all Marines understand that hazing violates our core values and impairs our ability to fight and win the nation’s battles”—again placing additional responsibility on senior leadership (United States Marine, 2013, p. 1). The Marine Corps also establishes a procedure to track and analyze reported cases of hazing (United States Marine Corps, 2013). Additionally, the policy requires annual training on hazing prevention and sets time limits for the investigation of alleged hazing (United States Marine Corps, 2013).

The United States Army Command Policy prohibits hazing and explains that soldiers who violate the policy may be subject to punishment under the UCMJ (United States Army, 2014). The policy also explains what is not considered hazing, including administrative corrective measures, extra military training, physical training, or the physical and mental hardships associated with operations (United States Army, 2014). The policy explains that hazing can be verbal, physical, or psychological in nature (United States Army, 2014). Finally, the policy also sets forth a detailed complaint process (United States Army, 2014). The United States Army command staff formally renounced hazing in 2012, explaining how hazing has a negative impact on readiness and destroys trust and cohesion among soldiers (United States Army Stand To!, 2013).

The United States Army addresses sexual harassment separately within the command policy (United States Army, 2014). The Army sexual harassment policy specifically states that all leaders must understand that if they “witness or otherwise know of incidents of sexual harassment, they are obligated to act. If they do not, they themselves are also engaging in sexual harassment” (United States Army, 2014, p.68). The Army harassment policy defines sexual harassment and states that all units will conduct “progressive, interactive small group sexual

harassment training twice each year” that uses small mixed-gender groups, situational vignettes, and role playing (United States Army, 2014, p. 70). The policy also sets forth a distinct timeline for making complaints, investigating complaints, and maintaining records of complaints (United States Army, 2014).

The Defense Equal Opportunity Management Institute Directorate of Research Development and Strategic Initiatives conducted a pilot study of hazing in the military (2013). The study reports that hazing is “steeped in tradition, bound by silence, and ritualistic in nature” (Defense Equal Opportunity Management, 2013, p. 2). The study explained that the costs of hazing are high (Defense Equal Opportunity Management, 2013). For example, it was determined that the costs of one hazing incident at the United States Air Force Academy in 2012 amounted to \$14,062.50 in lost productivity in a single day for the 27 cadets involved (Defense Equal Opportunity Management, 2013).

The study also explains how hazing may seem benign but in reality introduces unhealthy dynamics of power and control to the unit (Defense Equal Opportunity Management, 2013). Moreover, with each act of hazing, an environment of acceptance is created (Defense Equal Opportunity Management, 2013). The study included a survey of active duty military members which reflected that 89% of respondents had witnessed hazing, 67% had been hazed, and 44% had hazed others (Defense Equal Opportunity Management, 2013).

The United States Coast Guard has a “clear and specific policy against hazing” because a survey of Coast Guard students indicated that hazing occurs fairly often and is a “more common practice in the Coast Guard that we can accept” (United States Coast Guard, 1991, p. 1). The policy explains that hazing is detrimental to the accomplishment of missions (United States Coast Guard, 1991). The policy states that remedies for hazing range from counselling to

administrative discharge proceedings (United States Coast Guard, 1991). The policy outlines how hazing may be addressed and punishable under the Uniform Code of Military Justice (UCMJ), specifically under Articles 92 (failure to obey a lawful general order), 80 (attempts), 81 (conspiracy), 134 (soliciting another to commit an offense), and 133 (unbecoming conduct) (United States Coast Guard, 1991; United States Army, 2014). Additional Articles address dereliction of duty, cruelty and maltreatment of a person subject to the orders of another, and how one makes a complaint against their commanding officer (Uniform Code of Military Justice, 2014).

Many private employers are also adopting anti-harassment policies. For example, Coca-Cola has an anti-harassment policy which seeks to create a work environment free from harassment (Coca-Cola, 2014). Harassment and sexual harassment is defined, explains that claims can be made on the “Ethicsline”, and a clause prohibiting retaliation (Coca-Cola, 2014, p. 5).

Starbucks has standards of business conduct which prohibit harassment (Starbucks, 2011). The standards of business conduct include an ethics hotline and website where complaints, including harassment complaints, can be made (Starbucks, 2011).

In summary, harassment can be unlawful but the conduct must meet the legal criteria in the Civil Rights Act to hold up to federal scrutiny. Hazing behavior can also be unlawful if it meets the legal requirements of state law tort claims such as assault, battery, false imprisonment, and intentional infliction of emotional distress. The review of hazing and harassment incidents, including settlements and lawsuits, reflect that claims are being made and the public is paying attention. These findings influenced the project in that many legal claims are settled with a confidentiality clause and remain private; thus, it is not always possible to follow the trail of

claims and litigation if a settlement is made (A. Hernandez, personal communication, December 4, 2014).

A review of policies from fire entities in the greater Tucson area reflects that fire entities have written policies to address harassment. Tucson Fire Department has a separate hazing manual related only to hazing while the other entities reviewed did not. A review of the United States Armed Services and other employers show that the adoption of harassment policies is becoming more commonplace.

Procedures

To answer research question a, a review of current case law, statutes, and regulations related to hazing and harassment was performed using Westlaw, a legal research service. Internet searches were also performed to track litigation and settlements of legal claims. Additionally, a review was done of the United States Equal Employment Opportunity Commission website. The EEOC website provided detailed information explaining its role in employment matters and litigation, including hazing and harassment. The website also outlines governing statutes, case law, and regulations related to hazing and harassment. Review of the EEOC website provided a detailed understanding of their procedures and efforts related to workplace hazing and harassment. An interview was also conducted of Tucson attorney Amy Hernandez at her office at Piccarreta Davis PC, who has a special interest in hazing and harassment litigation in the fire service.

To answer research question b, a review was conducted of hazing and harassment policies from several local fire entities, including Northwest Fire District, Golder Ranch Fire District, Tucson Fire Department, and Rural/Metro Fire Department.

To answer research question c, a literature review was conducted from all branches of the United States military and other entities and employers. Internet searches were performed to locate the harassment policies of the United States Navy, Army, Air Force, Marines, and Coast Guard. Additional Internet searches were done for private employer harassment policies.

For the purposes of this paper, hazing is defined as any intentional or reckless act against another employee that effects or interferes with work performance and potentially causes physical injury, mental harm, or degradation. Harassment is defined as unwelcome conduct that impairs an employee's ability to perform the job or has the effect of interfering with work performance or creating a hostile work environment.

This research had several limitations. First, harassment under federal law must be based on race, color, religion, sex, age, disability, or national origin to be unlawful but the general public seems to adopt a broader definition of harassing conduct. Therefore, a strict interpretation was not done but rather a broad overview to paint a picture of current legal issues related to hazing and harassment. Additionally, harassment and hazing are two distinct concepts but often used interchangeably by the media to describe inappropriate conduct. Thus, both terms were reviewed in relation to behavior in the fire service. Another limitation is that a review of state law was not feasible given the variances among the 50 states. Finally, harassment was only reviewed in a narrow scope within the fire service. For example, age and pregnancy discrimination are unlawful under federal law in the fire service, for example, but every type of harassing behavior could not be examined in this research paper.

Results

Research Question a: What are the legal ramifications of hazing and harassment in the fire service?

A review of federal law, case law, and media reports make clear that administrative claims and lawsuits often follow reported hazing and harassment claims that are not handled to the claimant's satisfaction. The EEOC is the first step to making a harassment claim; the claimant must first file with the EEOC (United States Equal Employment Opportunity Commission, 1999). Thus, the EEOC closely tracks the number of claims made with the agency (Appendices B and C). The EEOC statistics are unequivocal—harassment and retaliation claims are on the rise (Appendices B and C). Further, the reported cases from Westlaw and media reports support that this type of behavior is receiving public attention in a very negative way.

Harassment based on an unlawful reason such as age, disability, race, color, gender, and other enumerated factors, is unlawful and state and federal claims can be made (*Burlington Industries, Inc. v. Ellerth*, 1998; *Oncale v. Sundowner Offshore Services, Incorporated*, 1998; United States Equal Employment Opportunity Commission, 1999). There is no distinct federal hazing law; however, hazing claims can be made under the state tort umbrella of claims such as battery, assault, intentional infliction of emotional distress, false imprisonment, retaliation, harassment, and unlawful detention (A. Hernandez, personal communications, December 4, 2014). Moreover, if the hazing is sexual in nature, Title VII protections will attach (*Oncale v. Sundowner Offshore Services, Incorporated*, 1998).

The review of the numerous lawsuits and claims filed reveal that these types of claims are being made and litigated at great expense to fire entities, cities, and taxpayers (A. Hernandez, personal communication, December 4, 2014). The Los Angeles Fire Department paid out \$13,500,000 in 2007 alone for harassment claims (Zahniser, 2007). A review of the cases and claims discussed in the literature review shows that juries are awarding large sums of money, into the seven figures, in cases where the harassment was particularly egregious or long-standing

(*Bressler v. City of Los Angeles*, 2009; *Lee v. City of Los Angeles*, 2010; Zahniser, 2007). This seemed particularly true in fire entities where the harassing behavior was widespread and part of the organizational culture (*Bressler v. City of Los Angeles*, 2009; *Lee v. City of Los Angeles*, 2010).

A search for hazing statutes resulted in numerous state statutes that provide hazing protection to students specifically but none providing that same protection to non-students (A.R.S. § 15-2301, 2001; N.J.S.A. 2C:40-3, 1980; N.R.S. 200.605, 1999). Thus, there appears to be a gaping hole in the law that fails to protect individuals from hazing behavior that is not sexual in nature or related to age, disability, race, etc. Hazing claims, therefore, must be pursued on other grounds such as assault, battery, false imprisonment, and intentional infliction of emotional distress.

In sum, there are numerous legal claims that can be made to hold fire entities legally accountable for hazing and harassing behavior in the fire service.

Research Question b: What policies do fire entities in the greater Tucson area have in place to prevent hazing and harassment in the fire service?

Review of policies from fire entities in the greater Tucson area reflect that fire entities are addressing harassment, at least in written form. Northwest Fire District, Golder Ranch Fire District, Tucson Fire Department, and Rural/Metro Fire Department all have formal written policies related to harassment. All of the policies reviewed defined harassment and included anti-retaliation clauses. Two of the policies—Northwest and Golder Ranch—had language stating that false claims would result in discipline, up to and including termination (Golder Ranch Fire District, 2013b; Northwest Fire District, 2013).

Tucson Fire Department has its own manual on hazing (Tucson Fire Department, 2009). The manual specifically provides that consent is not a defense to hazing behavior (Tucson Fire Department, 2009). Moreover, the manual states that any infringement on bodily integrity will be linked to the intermediate level of the discipline matrix (Tucson Fire Department, 2009). In other words, the department treats the infringement of bodily integrity more strongly through a leap in the corresponding discipline matrix. The Tucson Fire Department hazing manual also comments on the damage to employees, the department, and public perception when hazing occurs (Tucson Fire Department, 2009). None of the other policies from local fire entities specifically addressed the damage caused by such behavior as pointedly. Rural/Metro's harassment policy prohibits hazing but there is no separate manual or policy (Rural/Metro Fire Department, 2010).

The EEOC delineates what should be included in a harassment policy. The policy and complaint procedure should be provided to every employee (United States Equal Employment Opportunity Commission, 1999). The policy should contain an explanation of prohibited conduct, the complaint process, the assurance of confidentiality for complaints, and an anti-retaliation clause (United States Equal Employment Opportunity Commission, 1999). None of the policies or manuals reviewed from local fire entities met all of the suggested criteria set forth by the EEOC (United States Equal Employment Opportunity Commission, 1999). As a result, certain defenses may not be available to potential defendants should litigation be instituted (A. Hernandez, personal communication, December 4, 2014; United States Equal Employment Opportunity Commission, 1999).

Several fire entities in the greater Tucson area had multiple policies which support their anti-harassment policy. For example, Golder Ranch has other supporting policies which encourage open discussion and reporting of claims and an employee relations policy which

provides for a safe work environment (Golder Ranch, 2007a-d). Rural/Metro had several policies in addition to the harassment policy as supporting documents. Rural/Metro has a policy related to their hotline for reporting hazing and harassing behavior and a policy prohibiting workplace violence including harassment (Rural/Metro Fire Department, 2011a).

Research Question c: What do other entities have in place to prevent hazing and harassment in the workplace?

All branches of the United States Armed Forces have policies which prohibit hazing and harassment (United States Air Force, 2012; United States Army, 2014; United States Coast Guard, 1991; United States Marines, 2013; United States Navy, 2013). These policies have stronger language than that found in the fire entities' policies. For example, the Air Force has a zero-tolerance policy and does not allow unlawful discrimination of any kind, including sexual harassment (United States Air Force, 2014).

The United States Navy's anti-hazing policy goes a step further and creates an entity to track reported hazing claims and analyze the results quarterly (United States Navy, 2013). The results guide future training programs (United States Navy, 2013). Moreover, actual or implied consent does not eliminate the culpability of the perpetrator under the Navy policy (United States Navy, 2013).

The Marine anti-hazing policy delineates specific timelines that must be followed when complaints are made (United States Marine Corps, 2013). The Marine policy also places additional responsibility on its commanders to ensure its Marines are aware of the policy, trained on the policy, and provide a non-hostile environment (United States Marine Corps, 2013).

Both hazing and harassment are addressed by the Army. The harassment policy requires action and reporting by any individual who witnesses or knows of incidents of sexual

harassment; otherwise, they are viewed as also engaging in sexual harassment (United States Army, 2014). No other entity or employer used such strong language. The Army harassment policy also very specifically lays out the required bi-annual training and what methods are to be utilized (United States Army, 2014). The Army also strictly prohibits hazing (United States Army, 2014).

Discussion/Implications

Research question a reviewed the legal ramifications of hazing and harassment in the fire service. A review of applicable case law and claims brought reflect that fire entities are being sued for hazing and harassment (*Bernstein v. The Village of Piermont*, 2013; *Bressler v. City of Los Angeles*, 2009; DaRonco, 2013; *Lee v. City of Los Angeles*, 2010; *Skinner v. City of Miami, Florida*, 1995). This same review reflects that individuals bringing these claims are being awarded large sums of money from juries, including seven figure judgments (*Bressler v. City of Los Angeles*, 2009). The inference being that the general public who serves on juries does not find the fact that such behavior occurred in the fire service an excuse for the behavior. In other words, if there was a public perception at any time that the fire service was exempt from common standards of acceptable behavior or somehow different, that is certainly no longer the case.

In fact, such behavior holds the fire service back; it is 2015, not 1965. Hazing and harassment perpetuates a “good old boys club” mentality and, at times, an anti-women culture. This harms the public image of the fire service and will prevent the image of a profession which has adapted and progressed.

The research conducted also shows the high costs of this type of behavior. First, individuals who make hazing and harassment claims normally do not remain employed, resulting

in personnel turnover. Individuals who engage in such behavior may be terminated, also resulting in personnel turnover. New personnel must be screened, hired, trained, and make it through a probationary period. That process costs money and the fire entity loses experienced fire personnel. There is a loss of productivity when investigations are required (Defense Equal Opportunity Management, 2013). Second, the legal costs of defending hazing and harassment claims is high, as evidenced by the Los Angeles Fire Department spending \$1,300,000 to defend one claim in 2007 (Zahniser, 2007). These funds can be better used in other areas to improve the fire entity such as for training, capital purchases, or additional personnel.

Research question b asked what policies exist for fire entities in the greater Tucson area to prevent hazing and harassment in the fire service. Review of the policies from local entities shows that, at a minimum, these fire entities have a policy, which is the first step to addressing the problem. All four of the local entities had a harassment policy but only Tucson Fire Department had a separate hazing manual targeting hazing and harassing behavior (Tucson Fire Department, 2009). While Rural/Metro's harassment policy included hazing as a prohibited behavior, they did not have a separate policy (Rural/Metro Fire Department, 2010). It is imperative that all fire entities adopt and enforce a standalone anti-hazing policy to send a clear message to its personnel that hazing will not be tolerated. Tucson Fire Department has a separate manual prohibiting hazing that was enacted in 2009 yet claims have been made since the adoption of the hazing manual related to hazing and harassment (DaRonco, 2013; Tucson Fire Department, 2009). Thus, it is apparent that a policy alone will not prevent inappropriate behavior.

Discipline for hazing and harassment must be consistent. Tucson Fire Department's hazing manual specifically targets senior leadership as the enforcer of appropriate behavior,

starting at the station level (Tucson Fire Department, 2009). This confirms that the change agent must come from the top. As an organization, fire entities must change the culture which accepts hazing and harassment. Having a formal, written policy is a first step and is legally prudent; enforcing the policies in place will change behavior and organizational culture. Each fire entity should, however, ensure that its policy is EEOC compliant.

Golder Ranch, Tucson Fire Department, and Rural/Metro have several policies which forbid hazing and harassment (Golder Ranch Fire Department, 2007a-d; Rural/Metro Fire Department, 2010, 2011a, 2011b, 2013; Tucson Fire Department, 2009). It is inconclusive whether having multiple policies makes a difference to behavior; however, it certainly cannot be detrimental to have multiple policies making clear the fire entity's position on hazing and harassment.

Research question c asked what other entities have in place to prevent hazing and harassment in the workplace.

The United States Armed Services all have anti-hazing and harassment policies (United States Air Force, 2012; United States Army, 2014; United States Coast Guard, 1991; United States Marine Corps, 2013; United States Navy, 2013). Collectively, these policies have stronger language than those reviewed from fire entities in the greater Tucson area. It is unclear the reason for the difference—perhaps because the military does not have collective bargaining and have their own justice system.

The military policies collectively were longer, more detailed, and more direct in defining harassment and hazing, explaining the process for complaints and investigation, setting forth consequences, and outlining required training (United States Air Force, 2012; United States Army, 2014; United States Coast Guard, 1991; United States Marine Corps, 2013; United States

Navy, 2013). The military policies also collectively placed more responsibility on the shoulders of senior leadership as a change agent to ensure hazing and harassment do not occur (United States Air Force, 2012; United States Army, 2014; United States Coast Guard, 1991; United States Marine Corps, 2013; United States Navy, 2013). The military policies also had strict timelines to be followed and more formal procedures, tracking, and analysis of hazing and harassment claims (United States Air Force, 2012; United States Army, 2014; United States Coast Guard, 1991; United States Marine Corps, 2013; United States Navy, 2013).

Private employers also have enacted policies prohibiting harassment (Coca-Cola, 2014; Starbucks, 2011). These policies include broad language and explain that a hotline is available to report inappropriate behavior (Coca-Cola, 2014; Starbucks, 2011). These policies, however, did not have strict timelines for complaints or investigation (Coca-Cola, 2014; Starbucks, 2011). Neither policy was EEOC complaint (Coca-Cola, 2014; Starbucks, 2011). The two policies lacked the strength of the military policies.

There are several organizational implications related to hazing and harassment in the fire service. First, most fire entities likely do not have EEOC compliant harassment policies in place, which can affect their legal rights should a claim be brought for harassment (United States Equal Employment Opportunity Commission, 1999). Fire entities that do not take a hard line against hazing and harassing behavior can expect increased legal defense costs and negative publicity. Funds must be invested in training and enforcing anti-hazing and harassment policies, which hopefully will decrease claims and future litigation costs.

Fire entities must change organizational culture, starting with senior leadership making clear hazing and harassment will not be tolerated. In sum, the main implication to fire entities is change your culture or risk legal liability for such behavior and expect million dollar claims to be

brought. Finally, fire entities must understand that hazing and harassment comes with a price greater than the costs of litigation—morale, personnel, public image, and unit cohesion are all negatively affected.

Recommendations

Fire entities must walk the walk and not just talk the talk. Fire entities should adopt a zero tolerance policy related to hazing and harassing behavior that is founded. Mandatory training should be conducted using hypotheticals and real world role playing scenarios which require participation of attendees. Training should include a discussion with an attorney to explain the legal ramifications of hazing and harassing behavior and what the fire entity's position is related to such behavior. Training should also be framed in a manner which allows the employee to understand the personal ramifications of such behavior.

A hotline to report inappropriate behavior should be available to employees. All complaints should be investigated by a third party outside of the fire entity if possible within 72 hours of the complaint. A strict timeline to conduct and complete the investigation should be followed.

All fire entities should review their harassment policies and ensure they meet the criteria set forth by the EEOC. All fire entities should also adopt separate policies specifically prohibiting hazing so it is unambiguous that such behavior will not be tolerated.

Hazing laws should be broadened to protect all individuals, not just students in educational settings.

Senior leadership must be willing to enforce disciplinary actions related to founded hazing and harassment claims. Organizational culture must change from a "good old boys club" mentality to a modern, professional fire service where hazing and harassment are not tolerated.

Future research could include measuring the effectiveness of hazing and harassment training through follow-up surveys of field personnel and tracking of claims. In addition, related research could include an analysis of the true costs of hazing and harassing behavior.

References

- Anonymous. (2007, June 12). Former Va. EMT pleads no contest in prank death of colleague.
JEMS.com. Retrieved from <http://m.jems.com/article/industry-news/former-va-emt-pleads-no-contes>
- A.R.S. § 15-2304 (2001).
- Becker, J. (2005, September 13). Eight Tucson firefighters disciplined over hazing of recruits.
Firehouse. Retrieved from <http://www.firehouse.com/news/10501144/eight-tucson-firefighters-disciplined-over-hazing-of-recruits>
- Bernstein v. The Village of Piermont, 2013 WL 5718450 (S.D. N.Y. 2013).
- Bressler v. City of Los Angeles, 2009 WL 200242 (Cali. 2009).
- Brosseau, C. (2008, October 16). Incoming Tucson Fire chief out to end hazing of rookies.
Tucson Citizen. Retrieved from <http://tucsoncitizen.com/morgue/2008/10/16/99715-incoming-tucson-fire-chief-out-to-end-hazing-of-rookies/>
- Broward County Bar Association. (2014, July 31). Hazing within the workplace [Web log post].
Retrieved from <http://www.browardbar.org/hazing-within-the-workplace/>
- Bryan, S. (2012, July 10). Female firefighters in South Florida face discrimination, harassment.
Sun Sentinel. Retrieved from http://articles.sun-sentinel.com/2012-07-10/business/fl-women-firefighters-bias-20120709_1_pregnant-firefighters-female-firefighters-california-firefighter
- Burlington Industries, Inc. v. Ellerth, 118 S.Ct. 2257 (1998).
- Coca-Cola (2014). *Global mutual respect policy*. Retrieved from <http://assets.coca-colacompany.com/cd/8f/106258bd4dbb89663257047f50f1/global-mutual-respect-policy-english-pdf.pdf>

City of Tucson. (2012). *Discrimination/harassment policy*. Retrieved from

<http://hr.tucsonaz.gov/files/hr/ad/2-05-8.pdf>

DaRonco, D. (2013, May 8). Firehouse allegation costs Tucson \$125,000. *Arizona Daily Star*.

Retrieved from http://tucson.com/news/local/govt-and-politics/firehouse-allegation-costs-tucson/article_98046741-0b49-5916-82a1-597a3bb94537.html

DaRonco, D. (2013, May 21). Fire captain's rank restored by Civil Service Commission. *Arizona*

Daily Star. Retrieved from http://tucson.com/news/local/govt-and-politics/fire-captain-s-rank-restored-by-civil-service-commission/article_f75fe7d4-03f5-5756-9fdb-1c906277aa4d.html

Decker, T. (1996, October 29). 3 firefighters settle sexual-harassment suit with Reedy Creek.

Orlando Sentinel. Retrieved from http://articles.orlandosentinel.com/1996-10-29/news/9610281097_1_reedy-creek-creek-improvement-district-harassment

Defense Equal Opportunity Management Institute Directorate of Research Development and

Strategic Initiatives. (2013). *Hazing in the military: A pilot study*. Retrieved from

http://www.deomi.org/eoeeresources/documents/Hazing_Pilot_Study_Svec_20130510.pdf

Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998).

Golder Ranch Fire District. (2007a). *1201 Code of employee relations*.

Golder Ranch Fire District. (2007b). *1202 Harassment/sexual harassment*.

Golder Ranch Fire District. (2007c). *1203 Open door policy: Solving employee concerns*.

Golder Ranch Fire District. (2007d). *1204 Workplace violence*.

Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

Krikorian, G. (2007, April 21). L.A. Fire Department probes alleged hazing. *Los Angeles Times*.

Retrieved from <http://articles.latimes.com/2007/apr/21/local/me-hazing21>

Lamothe, Jr., E. (2006, April 17). Former New York firefighters sue over alleged hazing.

Firehouse. Retrieved from <http://www.firehouse.com/news/10500497/former-new-york-firefighter-sues-over-alleged-hazing>

Lee v. City of Los Angeles, 2010 WL 553022 (Cali. 2010).

Maliniak v. City of Tucson, CV 07-125 TUC-JMR (Ariz. 2008).

Meritor Savings Bank v. Vinson, 106 S. Ct. 2399, 40 EPD ¶ 36, 159 (1986).

Miller, M. (2013, March 28). Judge throws out \$700,000 verdict in Miami Beach firefighter's

sexual harassment suit [Web log post]. Retrieved from

http://blogs.miaminewtimes.com/riptide/2013/03/judge_throws_out_700000_verdic.php

Murphy, J. & Murphy, B. (2010, March 1). Legal and psychological effects of workplace

harassment. *Fire Engineering*.

N.R.S. 200.605 (1999).

N.J.S.A. 2C:40-3 (1980).

N.C.G.S.A. § 14-35 (1969).

Northwest Fire District. (2011). *Standards of cover*.

Northwest Fire District. (2013). *4.6 Harassment/sexual harassment*.

Oncale v. Sundowner Offshore Services, Inc., 118 S.Ct. 998 (1998).

Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 228 (1937).

Rural/Metro Fire Department. (2010). *Harassment*.

Rural/Metro Fire Department. (2011a). *Workplace violence*.

Rural/Metro Fire Department. (2011b). *Rural/Metro hotline*.

Rural/Metro Fire Department. (2013). *Rural/Metro employee handbook: Prohibiting harassment*.

Skinner v. City of Miami, Florida, 62 F.3d 344 (11th Cir. 1995).

Smart v. City of Miami Beach, Florida, 933 F.Supp.2d 1366 (S.D. Florida 2013).

Smith v. The City of New York, CV144982 (E.D.N.Y. 2014).

Starbucks. (2011). *Business ethics and compliance: Standards of business conduct*. Retrieved from <http://www.starbucks.com/assets/eecd184d6d2141d58966319744393d1f.pdf>

The Civil Rights Act, 42 U.S. C. § 1983 (1964).

Title VII of the Civil Rights Act of 1964, Section 2000e.

Tucson Fire Department Manuals. (2009). Section 216 *Hazing*. Retrieved from <http://i-women.org/wp-content/uploads/2014/04/Hazing-Policy-Tucson-Fire-Dept.pdf>

Uniform Code of Military Justice. (2014). Retrieved from <http://www.ucmj.us/>

United States Air Force. (2012). *Air Force instruction 1-1: Air Force culture*. Retrieved from <http://www.180fw.ang.af.mil/shared/media/document/AFD-120820-005.pdf>

United States Army. (2014). *Army regulation 600-20: Army command policy*. Retrieved from http://www.apd.army.mil/pdffiles/r600_20.pdf

United States Army Stand To! (2013, September 17). *Ready and resilience campaign: Hazing*. Retrieved from http://www.army.mil/standto/archive_2013-09-17/

United States Coast Guard. (1991). *Hazing awareness training*. Retrieved from https://www.uscg.mil/directives/ci/1000-1999/CI_1610_1.pdf

United States Constitution. Fourteenth Amendment.

United States Equal Employment Opportunity Commission. (1990). *Policy guidance on current issues of sexual harassment* (N-915050). Retrieved from <http://www.eeoc.gov/policy/docs/currentissues.html>

United States Equal Employment Opportunity Commission. (2014). *Harassment*. Retrieved from

<http://www.eeoc.gov/laws/types/harassment.cfm>

United States Equal Employment Opportunity Commission. (1999). *Enforcement guidance on vicarious employer liability for unlawful harassment by supervisors (915.002)*. Retrieved from <http://www.eeoc.gov/policy/docs/harassment.html>

United States Fire Administration. (2010). *America's fire and emergency leader: Strategic plan, fiscal years 2010-2014*. Retrieved from: www.usfa.fema.gov/downloads/pdf/strategic_plan.pdf

United States Marine Corps. (2013). *Marine Corps Order 1700.28B: Hazing*. Retrieved from <http://www.2ndmlg.marines.mil/Portals/67/Docs/EOA/MCO170028B.pdf>

United States Navy. (2013). *Navy policy for reporting substantiated hazing and assignment of Responsibility for tracking hazing incidents*. Retrieved from <http://www.public.navy.mil/bupers-npc/reference/messages/Documents/NAVADMIN/NAV2013/NAV13034.txt>

Varone, C. (2013, May 13). Bizarre Tucson sexual harassment claim settled for \$125k [Web log post]. Retrieved from <http://www.firelawblog.com/2013/05/13/bizarre-tucson-sexual-harassment-claim-settled-for-125k/>

Varone, C. (2013, August 14). Baltimore County Fire Department facing \$39 million training harassment suit [Web log post]. Retrieved from <http://www.firelawblog.com/2013/08/14/baltimore-county-fire-department-facing-39-million-training-harassment-suit/>

Zahniser, D. (2007, September 22). L.A. to pay black firefighter \$1.5-million settlement. *Los Angeles Times*. Retrieved from <http://www.latimes.com/local/la-me-pierce22sep22-story.html>

Appendix A

Interview with Attorney Amy Hernandez, Partner, Piccarreta Davis PC

December 4, 2014

1. What is your background in hazing, specifically fire service hazing?

I was in the military for four years and personally witnessed hazing and harassment as well as the effects on individuals involved. As an attorney, I have an interest in the fire service generally and hazing specifically. I have reviewed case law addressing the issue of hazing and harassment, provided legal guidance to fire entities and individuals, and presented training/classes to fire service personnel related to hazing and harassment.

2. What is the biggest challenge in addressing hazing?

The biggest challenge is overcoming the disconnect between the field and administration/chief fire officers. Chief fire officers attend formal trainings and professional conferences where hazing and harassment is often discussed. Field level personnel may receive annual training on hazing but how much is actually digested? How can we make the field care? Once a claim is brought, they are likely not an integral part of processing the claim. They will be interviewed and move on with their daily work. Senior staff will be asked their roles and oversight of lower level personnel. Attorneys, risk managers, and chief fire officers take a more active role. Policies and procedures will be analyzed. But for the firefighter in the field, nothing more may disrupt their life. Discipline may or may not be brought. These claims can result in huge payouts of taxpayer money yet the fire service continues to operate. So the biggest challenge is getting the field to understand the ramifications of their actions and change behavior. Administration and the field have different roles but certainly affect one another. The field level

employees affect the bottom line and legal responsibilities of these entities when they engage in hazing or harassment.

2. How can we prevent hazing incidents in the fire service?

Training is paramount. Actual training with field level employees where scenarios are discussed and/or role played. Senior officers should receive additional training on their role in preventing hazing and harassment and, most importantly, recognizing and addressing such behavior. Being a leader means making tough decisions. If senior officers are not willing to address this behavior, which certainly is uncomfortable, then they should not be in charge of personnel. Swift discipline of those involved with hazing and harassment sends a strong message to the field as well that the behavior will not be tolerated and engaging in such behavior will put your career and ability to promote at risk. Period.

3. How can we get the field to understand the legal implications of their behavior?

One often hears from the field that others “just don’t get it” and that they spend 24 hours together and are like a family; therefore, they feel their behavior is excused. The reality is that they are employees who are paid to do a job. The modern fire service has no place for hazing and harassment. It is 2014, not 1965. Fire service personnel with the mentality that hazing is acceptable and not harmful hurt all fire service personnel. Hazing and harassment claims cost cities, fire districts, and private fire service companies’ money and time and tarnish public perception of the fire service.

Likely the only way to get field personnel to understand the legal implications, and more importantly, care is to explain how it affects them individually and at a company level.

4. Do you think fire departments currently take a proactive approach to preventing hazing and harassment claims?

No, as evidenced by the dramatic increase in litigation related to such claims. Fire departments have a natural inclination to try to handle this type of behavior internally. That is the wrong approach. These claims must be taken seriously and investigated by a neutral third party or entity. Those involved, if founded, must be disciplined swiftly and harshly to reflect a zero tolerance policy. It is a slippery slope if some are allowed to get away with such behavior while others are not. That will not help in future litigation. Discipline of individuals involved with send a strong message that the behavior will not be tolerated.

The unions need to support chief fire officers and administration in these endeavors. The union's role in part is to protect the jobs and benefits of the fire service personnel through collective bargaining. Condoning or not directly opposing hazing or harassment by default allows public opinion to believe the union membership accepts such behavior, which lessons support overall for fire service personnel and their jobs/benefits. This ultimately harms fire service personnel. In most cases, taxpayers support first responders and certainly pay their salaries through taxes. But repeated payouts for claims and litigation costs as a general rule do not make city councils and taxpayers happy.

The general public cannot go into their place of business and engage in hazing or harassment without generally facing severe consequences. The fire service should not be different nor are they different in the eyes of the law.

Appendix B

Table A1. EEOC & FEPAs Combined: FY 1997-FY 2011 Harassment Charges

Harassment Charges EEOC & FEPAs Combined: FY 1997 - FY 2011

The following chart represents the total number of charge receipts filed and resolved alleging harassment as an issue.

The data in the harassment table reflect charges filed with EEOC and the state and local Fair Employment Practices agencies around the country that have a work sharing agreement with the Commission.

The data are compiled by the Office of Research, Information and Planning from data compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Receipts	23,047	23,062	22,854	24,239	24,385	25,678	25,240	22,910	23,192	23,034	27,112	32,535	30,641	30,989	30,512
Resolutions	24,429	25,280	25,118	24,918	24,702	25,202	25,243	23,986	22,263	22,408	22,572	25,910	28,100	32,053	33,956
Resolutions By Type															
Settlements	1,459	1,730	1,919	2,232	2,210	2,591	2,750	2,421	2,308	2,476	2,458	2,812	2,754	2,761	2,878
	6.0%	6.8%	7.6%	9.0%	8.9%	10.3%	10.9%	10.1%	10.4%	11.0%	10.9%	10.9%	9.8%	8.6%	8.5%
Withdrawals w/Benefits	1,296	1,349	1,354	1,445	1,520	1,437	1,525	1,613	1,724	1,784	1,991	2,444	2,497	2,587	2,619
	5.3%	5.3%	5.4%	5.8%	6.2%	5.7%	6.0%	6.7%	7.7%	8.0%	8.8%	9.4%	8.9%	8.1%	7.7%
Administrative Closures	7,448	7,454	6,688	5,659	5,450	5,321	5,232	4,610	4,151	3,978	4,184	4,670	5,131	5,510	5,770
	30.5%	29.5%	26.6%	22.7%	22.1%	21.1%	20.7%	19.2%	18.6%	17.7%	18.5%	18.0%	18.3%	17.2%	17.0%
No Reasonable Cause	13,645	13,956	14,188	14,133	13,748	14,343	14,562	14,396	13,134	13,323	13,092	15,094	16,583	19,400	21,410
	55.9%	55.2%	56.5%	56.7%	55.7%	56.9%	57.7%	60.0%	59.0%	59.5%	58.0%	58.3%	59.0%	60.5%	63.1%
Reasonable Cause	581	791	969	1,449	1,774	1,510	1,174	946	946	849	847	890	1,135	1,795	1,279
	2.4%	3.1%	3.9%	5.8%	7.2%	6.0%	4.7%	3.9%	4.2%	3.8%	3.8%	3.4%	4.0%	5.6%	3.8%
Successful Conciliations	215	242	257	329	521	399	320	326	274	285	346	304	406	443	373
	0.9%	1.0%	1.0%	1.3%	2.1%	1.6%	1.3%	1.4%	1.2%	1.3%	1.5%	1.2%	1.4%	1.4%	1.1%
Unsuccessful Conciliations	366	549	712	1,120	1,253	1,111	854	620	672	564	501	586	729	1,352	906
	1.6%	2.2%	2.8%	4.5%	5.1%	4.4%	3.4%	2.6%	3.0%	2.5%	2.2%	2.3%	2.6%	4.2%	2.7%
Merit Resolutions	3,336	3,870	4,242	5,126	5,504	5,538	5,449	4,980	4,978	5,109	5,296	6,146	6,388	7,143	6,776
	13.7%	15.3%	16.9%	20.6%	22.3%	22.0%	21.6%	20.8%	22.4%	22.8%	23.5%	23.7%	22.7%	22.3%	20.0%
Monetary Benefits (Millions)*	\$35.1	\$39.6	\$48.2	\$47.4	\$55.6	\$69.8	\$57.6	\$53.0	\$53.1	\$59.8	\$65.6	\$74.8	\$80.5	\$98.5	\$100.2

* Does not include monetary benefits obtained through litigation.

The total of individual percentages may not always sum to 100% due to rounding.

Appendix C

Table B1. EEOC Retaliation-Based Charges FY 1997-FY 2013

Retaliation-Based Charges
FY 1997 - FY 2013

The following chart represents the total number of charges filed and resolved under all statutes alleging retaliation-based discrimination.

The data are compiled by the Office of Research, Information and Planning from data compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Receipts	18,198	19,114	19,664	21,613	22,257	22,768	22,690	22,740	22,278	22,555	26,663	32,690	33,613	36,258	37,334	37,836	38,539
Resolutions	22,112	23,053	24,246	24,286	25,006	25,288	24,720	24,704	22,514	22,006	22,265	25,999	30,571	37,970	41,743	42,025	38,831
Resolutions By Type																	
Settlements	788	928	1,329	1,780	1,753	2,153	2,314	2,340	2,160	2,428	2,624	2,777	2,891	3,288	3,547	3,484	3,272
	3.6%	4.0%	5.5%	7.3%	7.0%	8.5%	9.4%	9.5%	9.6%	11.0%	11.8%	10.7%	9.5%	8.6%	8.5%	8.3%	8.4%
Withdrawals w/Benefits	914	827	1,005	1,072	1,143	1,049	1,065	1,170	1,268	1,275	1,322	1,673	1,806	2,043	2,213	2,138	2,288
	4.1%	3.6%	4.1%	4.4%	4.6%	4.1%	4.3%	4.7%	5.6%	5.8%	5.9%	6.4%	5.9%	5.4%	5.3%	5.1%	5.9%
Administrative Closures	8,074	7,866	7,577	6,192	5,978	5,448	5,306	5,027	4,424	4,206	4,604	2,777	2,891	7,578	8,115	7,526	7,206
	36.5%	34.1%	31.3%	25.5%	23.9%	21.5%	21.5%	20.3%	19.6%	19.1%	20.7%	10.7%	9.5%	20.0%	19.4%	17.9%	18.6%
No Reasonable Cause	11,550	12,238	12,803	12,931	13,120	14,416	14,236	14,649	13,157	12,674	12,443	14,905	17,468	22,803	26,161	27,077	24,611
	52.2%	53.1%	52.8%	53.2%	52.5%	57.0%	57.6%	59.3%	58.4%	57.6%	55.9%	57.3%	57.1%	60.1%	62.7%	64.4%	63.4%
Reasonable Cause	786	1,194	1,532	2,311	3,012	2,222	1,799	1,518	1,505	1,425	1,272	1,330	1,519	2,278	1,707	1,800	1,454
	3.6%	5.2%	6.3%	9.5%	12.0%	8.8%	7.3%	6.1%	6.7%	6.5%	5.7%	5.1%	5.0%	6.0%	4.1%	4.3%	3.7%
Successful Conciliations	211	273	337	505	564	559	408	377	375	396	368	356	463	498	471	589	538
	1.0%	1.2%	1.4%	2.1%	2.3%	2.2%	1.7%	1.5%	1.7%	1.8%	1.7%	1.4%	1.5%	1.3%	1.1%	1.4%	1.4%
Unsuccessful Conciliations	575	921	1,195	1,806	2,448	1,663	1,391	1,141	1,130	1,029	904	974	1,056	1,780	1,236	1,211	916
	2.6%	4.0%	4.9%	7.4%	9.8%	6.6%	5.6%	4.6%	5.0%	4.7%	4.1%	3.7%	3.5%	4.7%	3.0%	2.9%	2.4%
Merit Resolutions	2,488	2,949	3,866	5,163	5,908	5,424	5,178	5,028	4,933	5,126	5,218	5,780	6,216	7,589	7,467	7,422	7,014
	11.3%	12.8%	15.9%	21.3%	23.6%	21.4%	20.9%	20.4%	21.9%	23.3%	23.4%	22.2%	20.3%	20.0%	17.9%	17.7%	18.1%
Monetary Benefits (Millions)*	\$41.7	\$41.1	\$70.4	\$76.3	\$89.1	\$88.5	\$80.7	\$90.5	\$88.8	\$96.9	\$124.8	\$110.7	\$133.8	\$150.8	\$147.3	\$177.4	\$169.4

* Does not include monetary benefits obtained through litigation.