

FIREFIGHTERS' NEWSLETTER

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS



“WE ARE GREAT AT TAKING CARE OF OTHER PEOPLE... WE JUST SUCK AT TAKING CARE OF OURSELVES”

-Anonymous Firefighters

All too often, we hear this refrain from firefighters who come into our office to meet with us. It does seem to be a truism that the very individuals who take care of the rest of us, often forget to take care of themselves. As Dirty Harry said, “a man has got to know his limitations.” How many times have you heard your fellow firefighters bemoan the fact that they have forgotten to pay a bill on time and now were being hit with finance charges? How many wives have you heard complain about the fact that their husbands don’t get around to fixing things in the home, but they are the first to help out another brother firefighter or widow?! How many are stuck with a high interest rate on their mortgage, because they simply will not shop for a better rate? How many fail to get a competitive quote on their automobile insurance? And how many have been meaning to get a will done but just haven’t gotten around to it?

When it comes to line-of-duty injuries, firefighters often put themselves last as well. Most often, they do it by waiting too long to speak with a lawyer after an accident, failing to adequately fill out a CD-72, and

failing to follow up with physicians. Here are some ways that you can start looking out for yourself:

Let Us Help You –

We are Lawyers for Firefighters

The lawyers at our firm are experienced in helping firefighters with their legal problems. We understand that there is often pressure on firefighters not to consult an attorney, and that some believe that injuries are just part of the job. In fact, not all injuries are just part of the job. While not all injuries are compensable, the law in New York State provides special protections for firefighters, and very often, injured firefighters are entitled to compensation for line-of-duty injuries. In fact, over the years the legislature has made it easier for firefighters to prevail in a lawsuit, and they have done it for two very specific reasons. First, they believe that when certain criteria are met, injured firefighters should be compensated. Second, they believe that permitting injured firefighters to sue those responsible for their injuries will foster compliance with the law. For example, if a building owner knows that

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WTC Update: September 11th Health and Compensation Act

For so many of our clients, the years since September 11, 2001 have brought worsening health problems. Mt. Sinai Medical Center has released a study showing that 24% of WTC responders have sustained serious lung ailments. However, the opportunity to receive compensation from the Victim’s Compensation Fund (VCF) is no longer available to them. The deadline to file a claim with the VCF expired on December 22, 2003. That date had no special significance; it was an arbitrary date chosen by the government.

When the fund was open, it required any firefighter who received compensa-

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Congresswoman Carolyn Maloney with Michael Barasch speaking at the WTC site in favor of the September 11th Health and Compensation Act.

THE "TICKING CLOCK"

AND WHAT THEY DON'T TELL YOU ABOUT SOCIAL SECURITY DISABILITY

by Robert Ungaro, Esq.

Did you know:

1. The Social Security Administration requires that you establish disability within a limited period of time?
2. Your eligibility for Social Security Disability is directly effected by the date of your retirement from the City?
3. That the Social Security Administration puts a cap on retroactive payments and a delay in filing can result in a direct financial loss as well as reducing the limited time period within which you are required to establish disability?
4. Your entitlement to disability benefits can also be affected by factors which include your individual history of Medical Leave, leaves of absence, breaks in employment, outside employment, and the amount of your FICA contributions?

Most firefighters who consult with us are unaware that Social Security Disability must be established within a specific period of time. Your eligibility for Social Security Disability benefits may be directly affected

by your employment and retirement. Social Security disability eligibility is based upon (FICA) contributions to Social Security made by the City during your employment. These contributions generally cease upon your retirement. **When you stop making contributions to Social Security, a clock starts ticking on the time you have left to establish disability.....** For this reason, your individual eligibility for social security disability benefits is based upon your personal earnings history, contributions and retirement date and is unique to you. You cannot rely upon "kitchen" talk or another Firefighter's experience when planning your application, determining your eligibility or amount of benefits.

Social Security Disability entitlements can now exceed \$800.00 a week in income to you and your family. Unlike an accident disability pension, Social Security Disability has meaningful Cost of Living Adjustments ("COLA"). Social Security Income is not reduced by any pension, passive or spousal income. Unfortunately, the Social Security

Disability application process can often take several years, and thus, it is important to begin the process as quickly as possible, and do so with great care and attention. Poorly handled claims and equivocal medical evidence are likely to waste away valuable time and result in the denial of your claim.

An attorney can assist you determine not only your eligibility but, more significantly, he can guide you on the best way to establish a medical disability within that eligibility period. Because attorney fees are capped, and because you do not receive disability benefits for the first five full months, it makes financial sense to have an attorney on board as quickly as possible to help you prepare the application and continue to present a persuasive case.

Please feel free to call me directly at (212) 766-5500 if you have any other questions. We are paid only upon a successful result, and consultations are free.

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tion for an injury, even a minor or non-disabling injury, to sign a waiver agreeing that they would make no further claims. In some cases, these health problems have now become disabling. Nevertheless, the waiver would preclude them from seeking further compensation if the fund were reopened.

We do not believe firefighters should be prevented from bringing a claim simply because their illnesses became appreciably worse after the deadline. We have been fighting to change this. Recently, we met with Congresswoman Carolyn Maloney, and other politicians, to ask for their support in reopening the VCF to firefighters who were unable to file by the deadline.

Congress Is Working to Help These Firefighters

On February 4th, several New York members of Congress, including Congress-

woman Maloney, introduced the 9/11 Health and Compensation Act, also known as the James Zadroga Act, in an effort to have the Federal government fund monitoring and treatment programs for workers and residents who are suffering 9/11-related illnesses and injuries. In addition to providing health care, the act would also compensate individuals who were unable to file by the original 2003 deadline. With a new Congress and a new President, there is a possibility that such a bill will pass.

We think it is important that your Congressional representatives hear from you. While we certainly support efforts to bring back the VCF, we believe that it would be unfair to exclude individuals who were forced to sign a waiver at a time when the health effects of exposure at the WTC were still relatively unknown. We urge you to contact your representative's office and tell them how unjust you think it would be to preclude the claim of a firefighter who re-

ceived a small award for a non-disabling injury. The new fund should be open to all injured rescue workers.

With the grave economic problems facing our country, it is certainly possible that the new government will be unable to find the funds to help sick rescue workers. On the other hand, if the fund is reopened, we believe all disabled rescue workers should have an opportunity to be heard. Please make sure Carolyn Maloney hears from you. You can reach her office at:

Congresswoman Carolyn Maloney
Manhattan Office:
1651 3rd Avenue, Suite 311
New York, NY 10128
Att: Joe Soldevere
joe.soldevere@mail.house.gov
(212) 860-0606 - phone
(212) 860-0704 - fax
If you have any further questions,
please feel free to contact our office.

Recently, the UFOA called on city workers to boycott the New York Post because of a series of articles pointing to a spike in the percentage of Fire Department retirees receiving disability pensions since 9/11. The tabloid argued that between 2004-2007, 72% of retiring firefighters left with a disability pension, compared to 62% in 2000. The Post ignored the obvious fact that hundreds of WTC rescue workers were forced to retire as a result of the respiratory injuries they sustained due to the toxic air and dust they were exposed to at the site. It refused to publish an Op-Ed article written by UFOA President John McDonnell. We are proud to publish it in our newsletter.

This is the THIRTY-EIGHTH edition of the **BARASCH McGARRY SALZMAN & PENSON NEWSLETTER...**

attorney advertising which presents topics of interest to firefighters.

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**By Battalion Chief John J. McDonnell, President
Uniformed Fire Officers Association
February 18, 2009**

A recent spate of stories and an editorial in the New York Post tried hard to convince its readers that Fire Department pension costs are out of control and firefighters are abusing the system.

Truth, fairness and journalistic integrity took a beating in the process.

In the fourth paragraph of the original story (RAGING PENSION FIRE, Feb. 8) this stunningly vicious blind quote was used to support the premise of the entire series:

"Everybody has been getting a disability. They see it as an entitlement," a top city official sniped. "People have been talking about this and it has become so outrageous."

Dear Blind Quote – Every disability pension granted to a New York City firefighter comes after a carefully-monitored medical determination, and final approval is awarded by a Pension Board that is evenly divided between union officials and city representatives.

So what did cause FDNY pension costs to skyrocket in the last seven years? The answer is as plain as it is powerful. Virtually the entire "explosion in disabilities" is traceable to two hours of terror at the World Trade Center on September 11, 2001.

On that morning, 343 NYC firefighters died, and thousands more were permanently disabled in the ensuing rescue and recovery effort. The very nature of this profession, which demands an aggressive interior attack of the fire, results in debilitating injuries and regrettably, sometimes death.

It has taken fully seven years for the Fire Department to fight its way through the after-effects of the WTC disaster. The graphics offered by the Post series concentrate on the rise in Disability awards, but almost unnoticed is the fact that retirement levels have slowed dramatically in the last two years.

One of the most offensive comments in the Post series came from the Citizens Budget Commission, which was not a surprise to firefighters. For 40 years the CBC has made no effort to conceal its hatred of the FDNY in general and its firefighters in particular.

Don't all those pillars of the business community realize that without its Fire Department, New York City would be a prairie?

Their latest attack on the FDNY took this form:

Charles Brecher, a spokesman said that, "The City Administration, including the FDNY Commissioner, have been letting the system go along without aggressively trying to curb the looting of pensions." All of the available evidence points in the opposite direction, Mr. Brecher. Overtime in the final year of an FDNY disability retiree averages approximately 125 hours. But a huge proportion of that total is attributable to a contract provision that gives every rank-and-file firefighter 96 hours of scheduled overtime duty. There is very little overtime for anyone else on Light Duty, and Battalion Chiefs and Deputy Chiefs do not receive overtime at all.

Rest in peace, Mr. Brecher. No one is looting the FDNY Pension Fund.

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a firefighter injured in his building has the right to sue, he will be more likely to maintain his building in a safe condition, and comply with applicable building codes.

A consultation with an attorney at our firm is always free. If you ever have questions about your legal rights, do not put off speaking with an attorney. There are sometimes short time limits for protecting your rights, especially in cases involving the City. Moreover, any case that is worth investigating is best investigated early. Putting off an investigation increases the likelihood of lost witnesses, faded memories, and discarded evidence (e.g., because repairs



Brian Tuthill (E15), wife Susan with children Brodie and Skyla - are among the many hundreds of firefighter families who have taken advantage of our law firm's offer to draft free simple wills and living wills for active firefighters.

are usually made after a fire, there is often a very short window of time during which photographs of a defective condition may be taken).

There is No Reason for Any Firefighter to be Without a Will

The truth is, many of us, not just firefighters, put off getting a will. But a will is the only way that you can ensure that your wishes are carried out. Having a will prepared will force you to think about what your wishes really are, decisions that are too easily ignored. During the past four years, we have regularly reminded firefighters of the importance of getting a will. Our firm prepares free simple wills and living wills (appointing health-care proxies) for New York City Firefighters. To date, we have prepared over 1,000 free wills for firefighters.

On a similar note, many firefighters also fail to keep their beneficiary designation up to date. Especially after a marriage, divorce, or the birth of a child, it is important to make sure that your beneficiary information is current.

The tragic death of a firefighter at the Deutsche Bank fire has underscored the importance of dealing with these issues. In a case handled by our firm, the deceased firefighter's family members have been fighting bitterly over who should be the representative of the estate. And, his ex-wife is demanding her share of any death benefits, because she was still the

firefighter's designated beneficiary.

The only way to ensure that your wishes are carried out, is to communicate them now.

Line of Duty Injuries and CD-72's

CD-72's must be filled out correctly whenever a firefighter sustains an injury in the line of duty. This is absolutely necessary to protect your pensions. Never sign a CD-72 until you have read it carefully. Make sure that your officer has documented the defect, if any, that caused your accident. Make sure you indicate every injury you sustained. Don't ever be sloppy when documenting your injuries!

Maintain Adequate Insurance

Most of you own a car. Many of you own your home. That means that you have automobile insurance and homeowners insurance. Far too often we see firefighters who are underinsured, which leaves them vulnerable to losing their assets. There is no reason for this. Active firefighters are entitled to a free consultation with an attorney to review their automobile insurance and homeowner insurance policies.

Moral of the Story

It's time for firefighters to stop "sucking" at taking care of themselves. Please take advantage of the FREE legal advice that is available to you. We are proud of our association with New York's Bravest, and we will always go the extra mile to ensure that you are protected.

BEFORE YOU TAKE THAT DEDUCTION, BE SURE YOU UNDERSTAND WHAT THE IRS WILL REQUIRE IN THE EVENT OF AN AUDIT

by Elaine Frank,
Accountant at Barasch McGarry

As many of you know, the IRS targeted the 2006 tax returns of many firefighters, especially with respect to two items on the Schedule A: charitable contributions and unreimbursed employee expenses. I assisted several firefighters with the audit. I am happy to report that the audit is at last winding down. The following is an outline of what the IRS requires as proof for these deductions.

1. All firefighters receive \$450.00 in the month of December as a uniform cleaning allowance. Therefore your deduction should be the difference between the actual cost less the FDNY reimbursement.

2. Keep all receipts and cancelled checks for purchases of small tools and supplies (flash-

lights, clips, ropes, etc.). The IRS has questioned why these items were not reimbursed by the FDNY. Since it was impossible to get an official letter from the FDNY stating its reimbursement policy, some of the auditors did accept a letter from your Captains or Commissars on official stationery indicating that these tools are ordinary and necessary to perform your jobs efficiently and safely, but that the expenses are not reimbursed.

3. Please keep a diary of mileage and job site locations for portal to portal travel, training travel, and mileage to second jobs if you are making a deduction for business mileage. Record your car's odometer readings from the beginning of the year to the end of the year. Also, keep your repair bills because they verify the mileage.

4. If "house tax" paid is deducted on the return, enter the amount as compulsory firefighter dues. Once again, a letter from the Commissar stating the breakdown of what the tax covers is great back up for an audit.

5. Union dues are an accepted deduction, but if a return is under audit, the IRS wants an

official letter supporting the amount deducted on your Schedule A.

6. All charitable deductions should be documented from the qualified organization.

These are not necessarily the only allowable deductions for your Schedule A. Please check with your tax adviser for other possible deductions.

There is a possibility that the IRS will target firefighters for more audits in the future. Keeping purchase receipts, cancelled checks, credit card receipts, etc., will make the process much simpler. And it is imperative that travel logs be kept current. During some audits, it was extremely difficult to account for mileage traveled two years earlier.

In closing, I strongly urge all to carefully review the deductions on your tax return. If you don't understand or agree with the amount of the deduction, ask your tax preparer to explain them to you. You are the only responsible party to the IRS.

If you have any tax concerns feel free to call me.