

## WHERE THERE'S A WILL, THERE'S YOUR WAY

As firefighters, your job is to protect the citizens of New York. Yet so many of you pointedly avoid doing one of the most important things you can to protect your own families; you avoid making a will.

Putting off making a will is not unique to firefighters. But the realization that a will is necessary can come too late - such as when death or disability occurs. You have the right to decide how your estate is distributed, and who will care for your minor children. If you die without a will, you have no guarantee that your wishes will be carried out.

In order to give something back to the firefighters who protect us, our office has pledged to prepare a will for any active firefighter for free. We have already prepared over 2500 simple wills for firefighters and their spouses, and we have provided this service free of charge. Let us prepare a simple will for you. It will give you peace of mind, and it won't cost you a penny.



Recent visitors who accompanied their parents to our office to watch them sign their Free Wills.

continued from "Spotlight on Drunk Driving" page 3

Should I speak to the officer?

You should be cooperative, but there is no penalty for limiting conversation to pedigree information. The refusal to engage in conversation is not admissible at trial, but statements that a motorist makes to the officer can be. It is not uncommon for a motorist to admit to having come from a party, or having had one or two drinks, statements that may be used to prove intoxication.

Once a motorist is placed under arrest, a clear and unequivocal request to speak with an attorney will invoke the constitutional right to counsel. This right cannot be waived unless the attorney is present, and will generally render any subsequent statements inadmissible.

## SEE YOU IN ATLANTIC CITY AT THE UFA DELEGATE SEMINAR! THIS YEAR AT TROPICANA CASINO & RESORT!

We're looking forward to seeing the good friends we've made over the years and to meeting those of you attending for the first time. Please look for us at our information table and at our hospitality suite.

What is my obligation to notify the Department?

FDNY members are reminded that Department Rules require a member

to "immediately" notify the officer on duty where a member is arrested or issued a Desk Appearance Ticket.



This is the SIXTY-FOURTH edition of the BARASCH McGARRY SALZMAN & PENSON NEWSLETTER...attorney advertising which presents topics of interest to firefighters. For questions, additional copies, or more information about topics raised in this newsletter, call or write:

BARASCH McGARRY SALZMAN & PENSON 11 PARK PLACE SUITE 1801 NEW YORK, NEW YORK 10007  
Toll Free No. 1-888-FIRELAW (1-888-347-3529) or 212-385-8000 [www.firelaw.com](http://www.firelaw.com)

Vol. 64

# FIREFIGHTERS' NEWSLETTER



## WHAT THEY DON'T TEACH YOU IN PROBIE SCHOOL

### Injured Firefighters Are Entitled to Compensation When Injured in the Line of Duty

To the nearly 1,000 of you who recently graduated from the Fire Academy, we extend our congratulations and also our sincerest appreciation, as you embark upon your new career. You learned a lot in Probie School, but that was only the beginning of your training. Your fellow firefighters and your officers will teach you so much more about how to do your job well, and how to protect yourself. But there are some other things that you probably didn't learn in Probie School. For instance, you have *significant legal rights* in the event that you are injured in the line of duty.

### Know your Rights: Property Owners have insurance in case firefighters get hurt

The New York State Legislature enacted General Municipal Law 205-a to protect firefighters who are injured in the line of duty by affording them a means to recover against negligent property owners. The statute was also intended to force

citizens to comply with the law, thereby diminishing the risks faced by our firefighters.

Under GML § 205-a, a person or corporation who violates the building code, electrical code, fire code, etc.... is liable to an injured firefighter, so long as the violation played *some part* in causing the injury. For

example, if a firefighter injures himself tripping on debris while fighting a fire that began because the owner placed a burning candle too close to combustibles (a fire code violation), the owner would be liable to the firefighter for his pain and suffering and lost earnings.

continued on page 2

## FIREFIGHTERS MAKE THE BEST HUSBANDS

Alright, we'll admit it. Firefighters make better husbands than lawyers do. Your job is more exciting, you're in better shape, you're better cooks, you're handier, and, as if that weren't enough, your schedules are very flexible and you can be home to help out quite a bit. Your wives and girlfriends probably already know how lucky they are.

On the other hand, the biggest risk of injury to lawyers is a paper cut. Obviously, firefighters face more serious risks. When a firefighter is injured, his ability to help around the house is often derailed, putting a tremendous financial and emotional strain upon the family. You probably don't even realize just how many things you do, large and

continued on page 3



[www.firelaw.com](http://www.firelaw.com)

"You protect us...we protect you."

THIS DOCUMENT CONTAINS IMPORTANT  
INFORMATION ABOUT FIREFIGHTER RIGHTS



continued from "Probies" page 1

The violations do not have to be fire code violations, nor do the injuries have to be sustained in the course of fighting a fire. Firefighters have recovered substantial monetary awards for injuries that occurred in their firehouse, on the sidewalk, and on the rig. They have recovered for violations of the Labor Law, the Building Code, the Property Maintenance Code, the Penal Code, the Electrical Code, and the Plumbing Code, to name just a few. An experienced attorney can identify whether there has been a violation, and whether a firefighter is entitled to damages for an injury.

Firefighters sometimes tell us that they are reluctant to contact a lawyer after sustaining an injury, often citing anxiety over bringing a lawsuit, and

concern that their fellow firefighters will think less of them if they do. However, a firefighter who has sustained an injury, especially one that may be career-ending, owes it to himself and his family to learn about his legal rights. It could mean financial security for a lifetime.

While the decision to sue someone is never something to take lightly, a lawyer can help you to determine whether there is a legal basis to bring a claim. It is our job to help our clients navigate the legal system, so that the process is not intimidating or overwhelming. You should never let concern for what others might think, stop you from exploring your legal rights. In your shoes, they would do the same. Legally speaking, injuries

to firefighters aren't always "just part of the job." When the injuries are caused by someone's negligence, a firefighter has substantial rights under New York law.

#### Firefighters are permitted to sue their employer

You should also know that New York City firefighters are *not* barred from making claims and bringing suits against the City of New York if the City violated any of its own laws. However, in order to bring a lawsuit against the City, a notice of claim must be filed within 90 days of the accident, and a lawsuit must be brought within one year and 90 days of the accident. Because of these time considerations, it is important to contact a lawyer promptly after an accident.

## LINE-OF-DUTY INJURIES TO NEW YORK CITY EMS WORKERS ARE NOT "JUST PART OF THE JOB"

Like FDNY firefighters, New York City EMS workers are employed by the New York City Fire Department. But when it comes to line of duty injuries, there are significant differences between the rights afforded to EMS workers as compared to the rights afforded to firefighters. EMS workers do have the right to sue when they are injured in the line of duty as a result of someone's negligence. However, unlike firefighters, NYC EMS workers may not sue their employers.

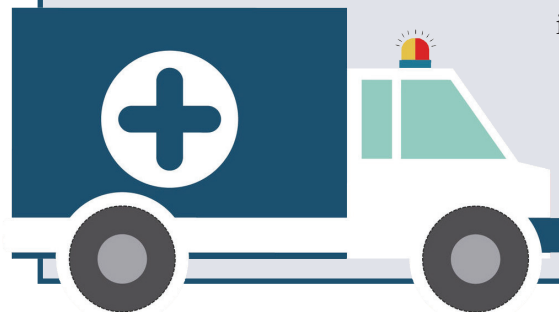
Generally, any employee who receives workers' compensation benefits for an accident at work is barred from suing his or her employer for those injuries. NYC firefighters who are injured in the line of duty do not receive workers' compensation benefits; their lost wages and medical costs are paid directly by the City of New York. Therefore, NYC firefighters are not subject to the workers' compensation bar; they have the right to sue their employer.

On the other hand, paramedics and EMT's who are injured in the line of duty are entitled to workers' compensation benefits. Therefore, even if the City of New York negligently causes an injury to an EMS worker, the workers' compensation act bars him from bringing a lawsuit against the City.

However, where an injury to an EMS worker is caused by a person or entity other than the City of New York, the injured EMS worker has the right to bring a lawsuit seeking compensation against the responsible party. For example, because EMS workers spend so much time on the road, many of the lawsuits brought by EMS workers stem from motor vehicle accidents. But EMS workers have also recovered compensation for injuries sustained while responding to motor vehicle accidents. In one case, an EMS worker suffered a severe laceration to his arm while working through a broken window on an injured driver trapped inside his car. The accident was caused by the driver's negligence, and the EMS worker was entitled to compensation for the injuries.

EMS workers often find themselves in dangerous situations while responding to emergency calls. For example, EMS workers have been injured as a result of loose steps, poor lighting, holes in the floor, falling ceilings, and Collyer's-type conditions. Property owners have an obligation to maintain their premises in a safe condition. EMS workers who are injured as a result of someone's failure to maintain their property are entitled to compensation.

If you have been injured in an accident while in the line of duty, you should speak with an experienced attorney to protect your rights.



continued from "Husbands" page 1

small that help the household to run smoothly. And, you may not realize just how expensive it would be to hire someone to do all of those things if you could not do them.

When an injured person brings a lawsuit, his or her spouse is entitled to bring what is known as a derivative action to recover for "loss of services". Recovery for loss of services can include the value of any tasks the injured spouse previously did around the house that were made impossible by the injury. Tasks that can be considered include cleaning, cooking, child rearing, shopping, "chauffeuring" of family members, gardening, yard work, repairs around the house, managing financial affairs, and any other chores

that the injured person performed. In an appropriate case the spouse may also recover for services the spouse contributed to a family business.

***Do you want to make sure that your wife or girlfriend appreciates you a little more? Hint: Casually leave this article on the kitchen table where she can see it. (We're always looking out for you.)***

When a firefighter suffers an injury, it's obvious that he will deal with his own pain and limitations and the

frustration that sets in when one can no longer do the activities that he previously enjoyed doing. What is less obvious is the strain that this can place upon a family. The firefighter's spouse must care for her injured husband, deal with the emotional fallout that often accompanies a severe injury, and also shoulder far more responsibility for the household and family because the person she has relied upon can no longer do the same things. By bringing a derivative claim, she may recover compensation for these lost services.

If you are injured in an accident, you and your spouse should speak with an experienced personal injury attorney to learn your rights.

## SPOTLIGHT ON DRUNK DRIVING

The arrival of the summer season will bring beaches, BBQ's, ballparks and good times celebrating with family and friends. First responders know better than anyone that getting behind the wheel while intoxicated can have devastating, sometimes irreversible consequences. Plan ahead and you can avoid putting yourself and others in a dangerous position. Attorney Bruce Kaye of our criminal division answers some of the most frequently asked questions about the legal consequences of alcohol-related offenses.

*What is the difference between Driving While Intoxicated and Driving While Impaired?*

Driving While Intoxicated is a misdemeanor. This means that a conviction will result in a criminal record and will expose the driver to harsher penalties for second offenses. Driving While Impaired is a traffic infraction. It is not a crime, and will not result in a criminal record.

Like all states, New York prohibits anyone from operating a motor vehicle while under the influence of alcohol, marijuana, other drugs, or a combination of substances, and it divides such offenses into different categories. If a driver's blood alcohol concentration ("BAC") is .08% or higher, there is a rebuttable presumption that he is Driving While Intoxicated. A BAC in excess of .05% but

less than .08% is relevant evidence that the driver is Driving While Impaired. The BAC levels are lower for those with commercial drivers' licenses and NYS has a Zero Tolerance Law for those under 21.

When drugs are involved, however, New York has not specified minimum levels that establish impairment per se. Having any amount of a drug in your blood or urine, coupled with proof of impairment is sufficient to establish that the driver was under the influence.

*What are the penalties for Driving While Intoxicated and Driving While Impaired?*

The penalties for both offenses are serious, and include jail time and license suspension. A driver convicted of Driving While Intoxicated faces a sentence of up to one year in jail or three years probation, mandatory revocation of driving privileges for 6 months, and the installation and maintenance of an ignition interlock device in any car owned or operated by the defendant.

Mandatory fines range from \$500 to \$1000.

A driver convicted of Driving While Impaired faces a maximum jail term of 15 days and a mandatory license revocation for 90 days. Mandatory fines range from \$300 to \$500.

*What are the consequences of refusing the*



Bruce Kaye and two Barasch McGarry interns recently visited a firehouse to discuss important legal rights.

*chemical test?*

When a driver is suspected of driving while intoxicated, the officer will routinely administer a preliminary breath test. This is a roadside test in which the driver is asked to blow into a plastic tube attached to a hand held device. Historically, these test results have been considered unreliable and thus inadmissible at trial, but there is a growing trend within the court system toward allowing them to serve as evidence of intoxication. Primarily, they are used to establish probable cause for the DWI arrest and the officer's subsequent request to submit to further chemical breath testing. Refusal to take the preliminary breath test is a traffic infraction.

continued on page 4