



FIREFIGHTERS' NEWSLETTER



RECENT SETTLEMENTS FOR INJURED FIREFIGHTERS

Getting injured in the line-of-duty isn't just "part of the job". New York State laws are meant to provide "an umbrella" of protection for injured firefighters. Here are some examples of recent settlements for disabled firefighters.

- **\$1.25 million** for Bronx firefighter who injured dominant hand while responding to a manhole fire, resulting in multiple surgeries.
- **\$750,000** for Queens firefighter who fractured his ankle when he fell through a floor at a house fire.
- **\$800,000** for Staten Island firefighter who injured his knee resulting in multiple surgeries.
- **\$2.8 million** for Brooklyn firefighter who suffered head and neck injuries as a result of a ceiling collapse at a warehouse fire.
- **\$725,000** for Manhattan firefighter who fell on broken step at his firehouse, injuring his lower back.
- **\$350,000** for Manhattan firefighter who stepped out of the rig onto a broken curb at Randall's Island, injuring knee.

(See article on p.2 to learn how NYS law protects firefighters injured in the line of duty)

9/11 VICTIM COMPENSATION FUND AND MEDICAL MONITORING PROGRAM ARE ACTIVELY HELPING 9/11 VICTIMS

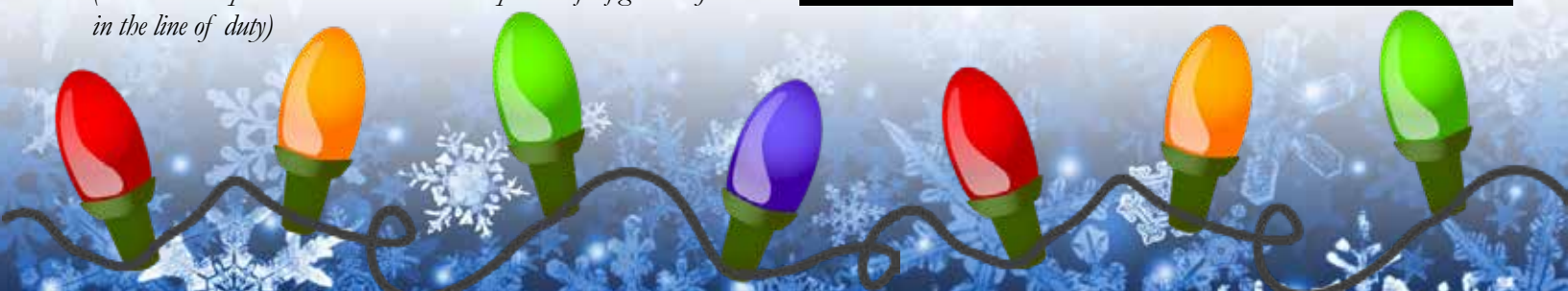
\$3 billion awarded to 14,000 victims to date

In 2015, in response to compelling evidence that there is a 9/11 health crisis, Congress extended the 9/11 Zadroga Victim Compensation Fund (VCF). Many gastrointestinal and respiratory illnesses, as well as **68 cancers** are now officially linked to exposure to WTC toxins. Given the magnitude of the epidemic, Congress set aside **\$7.3 billion** to compensate sick rescue workers, residents, workers, students and teachers.



Mike Barasch spoke at a press conference highlighting the health crisis facing firefighters and the entire 9/11 community due to their exposure to World Trade Center toxins

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HOW NEW YORK LAW PROTECTS FIREFIGHTERS INJURED IN THE LINE OF DUTY

In New York, firefighters are an esteemed group. Our legislature has gone to great lengths to ensure that firefighters are afforded special protections when they are injured in the line of duty. Today, firefighters have the right to recover damages for pain and suffering and lost income from responsible parties.

Injured Firefighters Used to Have Little Legal Recourse

The law has not always been generous towards firefighters. In fact, injured firefighters used to have fewer rights than the public at large, and they frequently had no legal recourse at all after an accident. If a lawyer trips and falls (stop smirking, please), he has the right to bring what is known as a common-law negligence lawsuit against responsible parties. But a doctrine called the “firefighter’s rule” prevented injured firefighters from bringing common-law negligence lawsuits for most line-of-duty injuries, even when there was clear evidence of negligence. The justification for this was that firefighters “assumed the risk” of injury, and were paid to confront that risk.

The firefighter’s rule punished firefighters for working in a risky profession. But what about construction workers, pilots, roofers, arborists, iron workers, truck drivers, utility workers, electricians, electrical line installers, and taxi drivers? We don’t strip them of their legal rights because they have a higher risk of electrocution, or falls, or accidents. And we shouldn’t do it to firefighters.

Even a law specifically enacted to protect firefighters, General Municipal Law 205-a (which we’ll talk more about), was

wrongly dismissed.

From a public policy standpoint, the old way of doing things made no sense. We want building owners to mitigate fire and safety hazards, we want drivers to drive safely, we want employers to provide safe workplaces, and we want everyone to follow the laws that were enacted to protect the public in general and firefighters in particular. When they don’t it is firefighters who pay the price. There ought to be consequences in order to deter dangerous behavior. By letting responsible parties skate, the law was rewarding bad behavior.

The Legislature Sets Things Right

The law eventually fell fully into line in 1996, when the legislature made clear that it didn’t want fewer rights for injured firefighters, it wanted greater rights. It did two important things that year. First, it expanded General Municipal Law 205-a, making clear to judges that the statute is meant to be interpreted broadly, and to protect firefighters no matter when or where they are injured. Second, it abolished the firefighter’s rule, except as to a firefighter’s employer.

General Municipal Law 205-a

General Municipal Law 205-a, “the firefighter’s statute” is meant to provide broad protection to firefighters. Here are some highlights of the statute.

→ The law permits firefighters to recover for injuries that occur in the line of duty “at any time or place”. This means that firefighters can recover for injuries that occur in the firehouse, in the rig, at any kind of call, during building inspection, at a drill, while shopping for the meal, during training, and, of course, at a fire. You get the picture, “anywhere”.

→ The law requires the firefighter to prove that the negligent party violated a statute or law. This is extremely broad and includes the vehicle and traffic law, the labor law, the penal code, the building code, the fire code and the property maintenance code, to name a few. The only requirement is that the statute or regulation be part of a “well developed body of law”.

→ The firefighter must prove that the violation of a statute “played a part” in causing the injury. In contrast, in a typical negligence case, the plaintiff must show that the defendant’s negligence “was a substantial factor” in causing the injury, a much more difficult standard to meet. This lighter burden for firefighters as to causation is a major part of the legislature’s plan to provide protection to injured firefighters.

→ The law prohibits an assessment of fault against the firefighter. In a typical personal injury case, the jury is asked to decide whether the plaintiff bears some responsibility for the accident. The jury must assign a percentage of fault to the defendant, and to the plaintiff. The recovery will be reduced by the plaintiff’s percentage of fault. But in firefighter injury cases brought under GML 205-a, it is impermissible to assign fault to the injured firefighter.

General Obligations Law 11-106

There are situations where a building owner (or driver, or contractor, or tenant, etc.) acts negligently, but did not actually violate a rule of law. Humans do all kinds of crazy, er..., stuff. There’s not a statute for every stupid, negligent or reckless thing people do. In such cases, a firefighter cannot bring a GML 205-a lawsuit (because that requires a statutory violation), but he is entitled to bring a lawsuit for ordinary negligence against the defendant (just like the rest of our society has long been able to do). One of the important things the New York State legislature did in 1996, was to enact General Obligations Law 11-106, which abolished the “firefighter’s rule”, except as to a firefighter’s employer.

In order to prevail in a negligence case, the firefighter must show that the defendant acted negligently and that the negligence was a substantial factor in causing the injury. The firefighter’s own negligence may be considered in such a case.

If you are injured in the line of duty, you should know that you have substantial rights. You should always speak with an attorney to ensure that you don’t miss critical deadlines.

Should I Choose a Pension Option?

By Richard Alles, Deputy Chief FDNY, Ret.

One of the most common questions that we get from firefighters who are in the process of retiring is whether they should choose an “option”, or take a full pension and increase their life insurance coverage. There’s no easy answer to that question, because there is no one size fits all when it comes to planning for retirement. Factors such as a member’s age, health, and financial situation, as well as the age and health of their spouse are all relevant in making this important decision.

What is an Option?

Let’s start with the premise that a member

who elects to take a “full pension” will receive payments up until the date of his death. This will be the largest monthly payment, but a surviving spouse gets nothing after the member’s death. An option is a one-time election that a member makes at retirement, to provide for pension benefits to a beneficiary after the member’s death. In electing an option, the retiree accepts a reduced retirement allowance. The reduction is based on the option selected, age of the member, and sometimes the age of the beneficiary. The main advantage to a pension option is that a defined pension amount continues to be paid

out, after the member dies, over the course of the beneficiary’s life. If the member does not take an option, there must be adequate life insurance in place, which generally pays out a lump sum that must be managed carefully to support the surviving spouse for life. Not an easy or stress free task!

Including “Pop-Up” provisions, there are currently six pension options to choose from.

Once the pension is finalized the option cannot be changed.

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The VCF has been carrying out its mission apace. Special Master, Rupa Bhattacharyya, recently announced that:

- The VCF has paid over **\$3 billion** to more than **14,000 victims** exposed to WTC toxins.
- The average personal-injury award is **\$217,852**.
- The average award to the families of those who died from a 9/11 certified illnesses is **\$744,317**.

The hardest hit group has been first responders. As of this past September 11th, 1,752 firefighters have been diagnosed with at least one WTC-related cancer and 159 have died from a WTC cancer. The FDNY honored 32 of those members and their names were added to the Memorial Wall. The Feal Good Foundation honored another 160 first responders who passed away this year from 9/11 illnesses. John Feal asked Mike Barasch and Noah Kushlefsky to read their names aloud at the ceremony.

FDNY WTC Health Program – Brief Overview of Services

In addition to the VCF, Congress extended the WTC Health program to provide medical monitoring and treatment to victims.

Skin cancers (basal cell, squamous cell and melanoma) and **prostate cancer** are the most common WTC cancers. It is critical that active and retired firefighters go for their annual WTC physical exams, as well as private full-body skin exams.

WTC Medical Monitoring

What is it? How often? What happens?

WTC medical monitoring is available to all active and retired FDNY members. This program is singularly important to first responders. One thing you will not have to worry about, is access to medical care. Here are some of the things the program provides:

In-depth yearly evaluations

Retired? WTC Medical appointments, available yearly at **five NY-area locations – Call 718-999-1858** --- and nationwide through the **LHI Program (877-498-2911)**

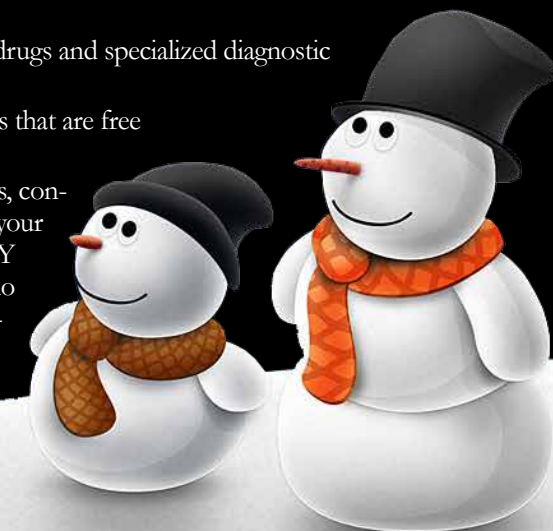
Active? Annual Company Medical at BHS is your WTC Medical. You will see two doctors, one of whom will be a WTC Physician.

The FDNY WTC Medical staff have no duty-determination responsibilities.

Once a WTC health issue is certified, free services include treatment, prescription drugs and specialized diagnostic tests.

FDNY **Counseling Services Unit** (212-570-1693) provides mental health services that are free and confidential.

If you have been diagnosed with a cancer, and received biopsy & pathology reports, contact Nadia Jaber- 718-999-1223 to start your WTC cancer certification process. Once your illness is certified, you will be entitled to an award from the VCF. The dedicated FDNY WTC Cancer Care team includes doctors, nurse case managers, and social workers who will help you through every step of your WTC cancer care treatment. Any other questions about FDNY Health Care? Please call **FDNY WTC Nurses – 718-999-1898**



routinely interpreted too narrowly by judges, resulting in countless injured firefighters having their cases

YOUR WILL WON'T SIGN ITSELF

In order to give something back to the firefighters who protect us, our office has pledged to prepare a will for any firefighter for free. We have already prepared over 3,000 simple wills for firefighters and their spouses, and we have provided this service free of charge.

Now, we really are sorry to nag you, but we're going to. Some of you have requested and received a will kit from us, but have not made an appointment to come to our office to execute the will. I won't name names, you know who you are. All kidding aside, putting off making a will is common, and it is not unique to firefighters.

Making a will is something that you do to protect the people you love. You have the right to decide how your estate is distributed, and who will care for your minor children. If you have requested the paperwork from us, take the next step and call us to make the appointment. And if you haven't called us to start the process, stop putting it off. We promise, we'll make it easy for you, and it will give you and your loved ones peace of mind.



These boys are protected because their parents called to set up an appointment

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The Six Options:

Option 1: was only available to Tier 1 members and will not be discussed here.

Option 2, Joint and 100% Survivor: The retiree receives a reduced monthly lifetime allowance. Upon the death of the retiree, this option allows the named beneficiary to receive 100% of the reduced pension allowance for life. Only one beneficiary may be named, and the designated beneficiary may not be changed once the option is in effect. So, if your spouse pre-deceases you, or you divorce your spouse, you may not choose a new beneficiary.

Option 3, Joint and 50% Survivor: The retiree receives a reduced monthly lifetime allowance. Upon the death of the retiree, this option allows the named beneficiary to receive 50% of the reduced pension allowance for life. Only one beneficiary may be named, and the designated beneficiary may not be changed once the option is in effect.

Option 4, Lump Sum: The retiree receives a reduced annual pension allowance for life with the provision that upon the death of the retiree, the beneficiary (or beneficiaries) will receive a limited lump-sum payment specified by the retiree at the time the option is chosen. More than one beneficiary may be named and the beneficiaries may be changed at any time;

Option 5, Annuity: The retiree receives a reduced annual pension allowance for life with the provision that upon the death of the retiree, the beneficiary will receive some other specified annual annuity. Only one beneficiary may be named, and the designated beneficiary may not be changed once the option is in effect.

Pop-Up Option Modification: Under this

option modification, if the named beneficiary predeceases the retiree, the retirement allowance reverts back to the maximum retirement allowance. This Pop-Up provision may only be applied to Option 2, Option 3, and Option 4 annuities. There is an extra cost for this option.

Attend a Pension Seminar

Among many other retirement issues, these options are discussed at the monthly FDNY Pension Seminars held in the first floor auditorium of FDNY Headquarters. We strongly advise any member contemplating retirement to attend the seminar and to even go multiple times. No registration is required unless you are actually planning to submit a retirement application. We also strongly advise that you bring your spouse along. The decision you make will affect both of you, and it deserves careful consideration. Two heads are certainly better than one in these matters.

Meet With a Financial Planner and Discuss Your Future With Your Union Trustee

There is no "one size fits all" when it comes to your retirement. For some members, taking an option is the first thing to do. For other members, a full pension and life insurance is the best choice. Depending on your age and health, you may be entitled to a "preferred rate". Life insurance policies allow you to change beneficiaries, and may accrue cash value. Some financial advisors recommend term life insurance, while others recommend a blend of term and whole life insurance. And, some policies have options that enable members to stop paying premiums if they retire due to a disability and/or get social security disability. We urge you to talk to your union trustee and financial planner. They have the most experience to give you the best advice - for your particular circumstances.

Safe And Happy
Holidays From All
Of Us At Barasch
McGarry Salzman
& Penson To All
Of You And Yours



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