



Law Enforcement NEWSLETTER

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Welcome

to the seventh edition of the New York Municipal Insurance Reciprocal's Law Enforcement Newsletter. This newsletter is published to help keep NYMIR's law enforcement subscribers abreast of current developments and provide relevant law enforcement articles. It is designed to assist NYMIR's law enforcement professionals in controlling their law enforcement liability exposures.

This is YOUR newsletter! We would appreciate hearing from you about whether the articles are timely and relevant, and whether the information is useful to you. We welcome your comments and suggestions for improvement and on topics you would like to see. Please send your comments to Brett Carruthers, NYMIR Regional Risk Management Supervisor, at: 1711 Cudaback Avenue, Suite 5433, Niagara Falls, NY 14303 or
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We look forward to hearing from you!

Wrongful Termination Claims

Wrongful termination refers to employment actions where an employee claims he or she was improperly removed from a position by an unlawful act. Such acts include discriminatory termination based on an employee's age, race, sex, gender orientation, national origin, or disability; terminations resulting from an employee's reporting of an employer's illegal activity; or the filing of a workers' compensation claim. The unlawful act can also be the breach of Civil Service Law or of a collective bargaining agreement or personal employment contract.

The majority of public sector employees working in law enforcement organizations are afforded protection under Civil Service Laws and/or collective bargaining agreements, creating certain duties for law enforcement managers who need to discipline or terminate an employee.

Litigation

Many people seek justice in the courts when they are terminated. Former employees typically sue for lost wages & benefits, emotional distress, bodily injury, punitive damages, attorney's fees, or injunctive relief, such as reinstatement or promotion.

Nationally, according to Davis Mitchell, the average wrongful termination jury award based on age discrimination is \$551,646, down somewhat over the last few years. The average award based on disability discrimination is \$378,135. Depending on the complexity of the litigation, Richard V. Rupp reports that legal defense costs can range from \$200,000 to \$1,000,000 per case. And while Public Officials Liability policies typically cover wrongful termination claims, there may be elements of a lawsuit that are outside the scope of coverage, including claims for fines and penalties, punitive damages, or injunctive relief.

Reputation Risk

Wrongful termination claims have the potential to attract negative attention from the community and media portraying the law enforcement agency as an uncaring employer who disregarded the law or violated a contract to remove an employee. The unwanted publicity can have harmful effects and

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Red Sox Fan Killed by Police Projectile

Recently, a round fired from a pepper ball gun by a police officer killed a 21 year-old college student at a Yankees/Red Sox game. The projectile struck the young woman in the eye and she died from a head injury the following day. The round fired was a "glass penetrating" round. According to firearms experts that are pepper ball certified instructors, glass-penetrating rounds are not appropriate for use in dispersing crowds. They recommend that law enforcement agencies that deploy these weapons use only the soft pepper ball or antifreeze rounds in addition to their training rounds. They also recommend that the weapon is carefully "sited" by a law enforcement firearms instructor. It should be noted that the weapon involved in this incident was not a PepperBall® brand weapon, but rather a competitor's weapon.

by Brett Carruthers, CSP
Regional Risk Management Supervisor

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may create a perception that the organization is a difficult one to work for, dissuading qualified candidates from seeking employment.

Preventing Wrongful Termination Claims

No risk control program can guarantee that wrongful termination claims will not occur, but attention to the Civil Service Law, terms of collective bargaining agreements and employment contracts is essential. Attention to management basics, such as documenting employee misconduct and poor performance, investigating incidents of misconduct, and disciplining progressively, will help control the frequency and severity of wrongful termination claims. Involve the municipal attorney as needed. A properly administered termination process that is well planned, documented, in accordance with all union and employment agreements and in compliance with federal and state laws will help law enforcement managers control this exposure.

Tips For Law Enforcement Managers

Bear in mind that an employee protected by federal and state statutes can be terminated, but may be able to file a complaint with a federal or state regulatory agency, such as the New York State Division of Human Rights or the Equal Employment Opportunity Commission. He or she may also be able to litigate in federal or state court.

- Don't make promises regarding job security. This can create an implied contract between the employee and the municipality.
- Make sure a termination in no way is retaliatory. A discharge can be perceived as retaliatory in nature if the employee was recently involved in an activity perceived to be problematic for the employer, and the employee was harassed or had his or her work conditions changed in a negative manner.
- Don't fire anyone before documenting that an impartial investigation was conducted.
- Check against contracts, Civil Service rules and municipal policies and with the municipal attorney to make sure every grievance and disciplinary procedure was followed as written.
- Record all progressive and corrective discipline efforts including verbal warnings, counseling and documents sent to the union.
- Review the employee's file. It is difficult to document the rationale for dismissal because of poor performance when the employee's file shows good evaluations.
- Conduct any termination in private.

by Robert Bambino, CPCU
Director of Risk Management

On the Lighter Side (aka we all need a laugh or two)

You know you're living in 2005 when . . .

- You accidentally enter your password on the microwave.
- You haven't played solitaire with real cards in years.
- You have a list of 15 phone numbers to reach your children.
- You e-mail the person who works at the desk next to you.
- Your reason for not staying in touch with friends and family is that

they don't have email addresses.

- You go home after a long day at work and you still answer the phone in a business manner.
- You make phone calls from home and you accidentally dial "9" to get an outside line.
- Every commercial on television has a website at the bottom of the screen.
- Leaving the house without your cell phone, which you didn't have the first _____ years of your life, is now a cause for panic and you turn around to go and get it.

Tasers

"To Tase or not to Tase" is a question faced by many law enforcement executives. Tasers provide law enforcement officers with an additional tool in the less than lethal arena in controlling hostile or threatening individuals. Because of recent news media coverage concerning several deaths allegedly resulting from the use of these devices, Tasers have come under close public scrutiny. NYMIR Risk Management receives many calls monthly regarding the potential liability associated with these devices.

Liability risk exposure can be drastically reduced by developing procedures and general orders for the training and appropriate use of Tasers. These procedures and training should cover:

- The required amount of training necessary to use each piece of issued equipment
- The topics that must be covered in the training process
- A system to document training
- Procedures for when it's acceptable to use each piece of equipment
- Procedures for unacceptable use of equipment
- Procedures for the use of discretion in responding to particular circumstances
- Procedures for maintenance of issued equipment
- Guidelines for safety directives.

Sal Trentanelli, Chief of Police of the Coming Police Department, shares the following on their department's decision to deploy Tasers. "Agencies need to understand the type of weapon and equipment they are investigating or using. There is a huge difference between the standard Stun Gun and a Taser or other conductive energy weapons. We did a lot of homework on less lethal weapons before we elected to purchase Tasers, weighing the costs, effects, liability and training of Tasers, Stun Guns, Bean Bag Guns, Foam and Pepper Ball Guns and the like. We were able to obtain sample policies from a number of law enforcement agencies and developed a defensible and comprehensive policy and procedure. We permit only trained and certified personnel to carry and to use the weapon and we have annual follow-up training. We have deployed the weapon several times with no injuries sustained. A Weapons Discharge and Use of Force Report follow any deployment of this device. The guidance provided by NYMIR Risk Management was right on the money!"

By Brett Carruthers, CSP
Regional Risk Management Supervisor

