



# OLR RESEARCH REPORT

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## **LIABILITY PROTECTIONS FOR VOLUNTEER FIREFIGHTERS**

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You want to know if volunteer firefighters are considered municipal employees in Connecticut and whether they have the same immunity and indemnification protections as paid firefighters. Also you want to know the standard of care in emergency situations.

### **SUMMARY**

State law classifies volunteer firefighters as municipal employees for workers' compensation purposes. It does not classify them as municipal employees for other purposes, and the Connecticut Supreme Court recently declined to express an opinion on whether they could be considered as such in other situations.

State law immunizes paid and volunteer firefighters performing their duties from lawsuits in certain circumstances. Also, the state's Good Samaritan Law immunizes both from liability for negligently administering emergency medical care.

Volunteers, including volunteer firefighters, enjoy additional immunity protection under the federal Volunteer Protection Act, which immunizes them from liability for negligent acts committed during the course of their duties. The act also establishes a clear and convincing standard of proof for punitive damages to be awarded against volunteers and makes

them liable for noneconomic damages (pain and suffering) only to the degree their wrongdoing caused the harm.

Municipalities must indemnify both types of firefighters for legal fees and damage awards that they become legally liable to pay as a result of negligence in discharging their firefighting duties. Neither type of firefighter is protected for wilful or wanton actions. But municipalities must indemnify both for legal expenses and costs for such actions, and firefighters must reimburse the municipality if a court finds their actions malicious, wanton, or willful.

Paid firefighters discharging their duties appear to have more indemnity protection than volunteer firefighters under a law that requires municipalities to indemnify municipal employees (presumably including firefighters) in civil rights cases (CGS § 7-101a(a)). The law excludes claims based on wilful or wanton conduct and actions.

Generally, both volunteer and paid firefighters performing firefighting activities have a duty to use the care and caution that a reasonably prudent person would use. But a specific local employment contract and rules for paid fire fighters might have duties and responsibilities different from those that apply to a specific volunteer fire company.

### **ARE VOLUNTEER FIREFIGHTERS MUNICIPAL EMPLOYEES?**

The law defines “volunteer firefighters” as municipal employees for purposes of the workers’ compensation statutes, but not for other purposes. Specifically the law states:

active members of volunteer fire departments . . . shall be construed to be employees of the municipality for the benefit of which volunteer fire services . . . are rendered while in training or engaged in volunteer fire duty. . . and shall be compensated in accordance with the [Workers’ Compensation Act] for death, disability or injury incurred while in training for or engaged in volunteer fire duty (CGS § 7-314a(a)).

In *Mayfield v. Goshen Volunteer Fire Company, Inc.*, the Connecticut Supreme Court said that it recognized that volunteer firefighters may have relationships with a municipality independent of the relationship between their fire company and the political subdivision the company serves (22 A.3d 1251; 301 Conn. 739 (2011)). As examples of such relationships, the Court cited the statutes:

1. requiring municipalities to establish a pension system for municipal employees and volunteer firefighters;
2. providing municipal indemnification of volunteer firefighters in work-related lawsuits; and
3. defining state or municipal employee to include “any person, whether appointed or under contract, who provides services for a city, town or other political subdivision of the state for which a pension is provided.”

The Court declined to express an opinion as to whether volunteer firefighters can be considered municipal employees for other than the workers’ compensation statutes (*Id* at p. 1258, internal citations omitted).

## **IMMUNITY GENERALLY**

In general, firefighters may be sued for intentional torts such as assault and battery, false imprisonment, invasion of privacy, and defamation to the same extent as any other Connecticut citizen, and they may be sued for negligently injuring people or damaging property while performing firefighting duties. (“Firefighting duties” include duties performed while at, going to, or returning from fires, mutual aid assistance calls, fire drills or parades, tests or trials for fire department apparatus, or instruction in fire duties (CGS § 7-314a)).

Firefighters may also be sued under federal civil rights laws for constitutional violations. Because of the U.S. Constitution’s Supremacy Clause, state and local governments cannot immunize individuals performing government functions such as firefighting from liability under federal laws. But the U.S. Supreme Court has indicated that groundless constitutional claims against government actors should be disposed of as early as is appropriate in a given case (*Anderson v. Creighton*, 483 U.S. 635 (1987)).

Firefighters are immune from certain types of suits, such as trespass actions when they enter property to extinguish or investigate fires (CGS § 7-308, as amended by PA 11-243)). Also CGS § 52-557n(b) immunizes municipal employees, presumably including paid firefighters, from certain types of suits although the statute’s provisions do not appear to readily apply to most situations involving firefighters (see OLR Report 2009-R-0444, which discusses civil liability of municipal officials). And Connecticut courts have long held that municipal employees are immune from liability for their official acts or omissions as long as they are done “in

good faith, in the exercise of an honest judgment, and not in abuse of discretion, or maliciously or wantonly . . . . Where the discretion has been exercised erroneously but in good faith through an error of judgment, the public official should not be required to pay damages for his acts” (*Wadsworth v. Middletown*, 94 Conn. 435). They are allowed wide latitude in the performance of duties that involve supervisory or discretionary functions and are executed for the public's benefit, not for a specific person to whom a special duty is owed. Conversely, they are given much less latitude in performing ministerial duties, which are acts in which the employee must follow specific procedures and make no judgments. Employees may be held liable if they perform such ministerial duties negligently.

### **STATE GOOD SAMARITAN IMMUNITY**

Under CGS § 52-557b(b), the Good Samaritan law, paid and volunteer firefighters who render emergency first aid are immune from liability for ordinary negligence if they have completed a first aid course offered by the American Red Cross or some other specified organization. They are also immune from liability for property damages caused when they forcibly enter a home to render emergency first aid. The immunity does not apply to acts or omissions constituting gross, willful, or wanton negligence.

“Ordinary negligence” is the failure to exercise the care most people ordinarily exercise under the same or similar circumstances (*Clemens v. State*, 176 Wis. 289; 57 Am. Jur. 2d, Negligence, § 98). “Gross negligence” generally signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences (*Alsbaugh v. Diggs*, 195 Va. 1, 77 S.E. 2d 362; *Prosser on Torts*, Gross Negligence). “Willful or wanton negligence” is an action or omission that amounts to an extreme departure from ordinary care, in a situation where a high degree of danger is apparent (*Prosser on Torts*, Degrees of Negligence). Willful or wanton negligence must be more than mere thoughtlessness, inadvertence, or simple inattention.

One trial court has held that notwithstanding the Good Samaritan law’s exclusion of acts of gross negligence, our common law does not recognize gross negligence as a cause for action, and only wilful or wanton negligence can give rise to liability under this law (*Shaham v. Wheeler*, 1997 Ct. Sup. 64 (Jan. 2, 1997)). But a later court case rejected this reasoning (*Ivy Hansen et al. v. Mohegan Fire Company, Inc. et al.* No. CV960111388, Oct. 1, 2001). Thus, there is an unresolved split at the Superior Court level.

## **VOLUNTEER IMMUNITY UNDER FEDERAL LAW**

Federal law provides certain protections for certain volunteers, including volunteer firefighters, that do not apply to paid government employees such as municipal firefighters. The federal Volunteer Protection Act grants people who perform volunteer work for nonprofit organizations or government entities immunity from civil liability for injuries they cause by their negligence while volunteering (14 USC § 42-14501 et seq.). States can opt out of the law by passing an act explicitly doing so. Connecticut has not opted out; thus, the law applies here.

### ***Scope of Limitation on Liability***

Under the act, volunteers of a nonprofit organization or government entity are not liable for harm caused by their act or omission if:

1. they were acting within the scope of their responsibilities at the time of the act or omission;
2. they were properly licensed, certified, or authorized by the appropriate authorities in the state where the harm occurred;
3. the harm was not caused by wilful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the person who suffered harm; and
4. the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft or other vehicle for which the state requires the operator or owner to possess a license or maintain insurance.

The act does not affect (1) civil actions brought by the nonprofit organization or government entity against the volunteer or (2) the liability of any nonprofit organization or government entity with respect to harm caused by a volunteer (42 USC § 14503(b) and (c)).

The act preempts inconsistent state laws, but not laws that provide additional liability protection. The act also specifies that a state law is not inconsistent with the federal act because it:

1. requires the organization or entity to adhere to risk management procedures, including mandatory training of volunteers;

2. makes the organization or entity liable for the volunteer's acts or omissions to the same extent as an employer is liable for its employees' acts or omissions;
3. makes a limitation of liability inapplicable if the civil action was brought by a state or local government officer under state or local law; or
4. makes a liability limitation apply only if the organization or entity provides a financially secure source of recovery such as an insurance policy for those harmed by the volunteer (42 USC § 14503(d)).

### ***Exemptions to Immunity***

The act does not apply to any misconduct that:

1. constitutes a crime or act of international terrorism as defined by federal law for which the volunteer has been convicted,
2. constitutes a hate crime as defined by federal law,
3. involves a sexual offense as defined by state law for which the volunteer has been convicted,
4. involves misconduct for which the volunteer has been found to have violated a federal or state civil rights law, or
5. occurred when the volunteer was under the influence of intoxicating liquor or any drug.

### ***Limits on Punitive Damages***

The act prohibits the award of punitive damages against a volunteer unless the person harmed establishes by clear and convincing evidence that the harm was proximately caused by the volunteer's actions which constituted willful or criminal misconduct, or a conscious, flagrant indifference to the injured person's rights or safety (42 USC § 14503(e)).

### ***Liability for Noneconomic Loss***

Under the act, a volunteer may be liable for noneconomic loss allocated to him in direct proportion to the percentage of his or her responsibility for the harm. The act requires the jury (or judge in a

nonjury trial) to determine the volunteer's percentage of responsibility for the harm (42 USC § 14504).

## **STATE LAW AND FIREFIGHTER INDEMNIFICATION**

State law requires municipalities to indemnify both paid and volunteer fire fighters for work-related personal and property damages caused by their negligence or wanton, wilful, or malicious actions, provided an injured party complies with statutory notice and deadline requirements (CGS § 7-308, as amended by PA 11-243, and CGS § 7-101a). This means that municipalities must assume all expenses, including legal fees and costs, to defend both types of firefighters against any such claims. But if a court finds their action was wanton, wilful, or malicious, they must reimburse the municipality for any expenses incurred in providing a defense. Connecticut courts have defined "wilful" as meaning purposely and knowingly (*State. v DeJesus*, 194 Conn. 376, 383 (1984)), and "wanton" as meaning recklessly, in disregard of the rights of others, but without intending harm (*Dubay v. Irish*, 207 Conn. 518, 532 (1988)).

Paid firefighters appear to have more protection than volunteer firefighters in one area. The law requires municipalities to indemnify municipal employees, presumably including fire fighters, in civil rights cases, except for claims based on wilful or wanton conduct and actions outside the scope of employment (CGS §§ 7-101a(a) and 7-465(a)).

## **DUTY OF CARE**

We found no statutory or case law authority supporting the view that paid and volunteer fire fighters have a different duty of care in regard to fire fighting activities. Generally, they both have the duty to use the care and caution that a reasonably prudent person would use under the circumstances (*Voltz v. Orange Volunteers Fire Assoc., Inc.*, 118 Conn. 307 (1934)). But a specific local employment contract and rules for paid fire fighters might have duties and responsibilities different from those that apply to a specific volunteer fire company (see OLR Report 99-R-0070 which discusses this in more detail).