

Fire Presentations

AB 220 The Firefighter Procedural Bill of Rights

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Fire Presentations

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The History

Fire Presentations

- **The POBOR (Public Safety Officers Bill of Rights) was passed in 1996**
- **Fire investigators were included in “peace officer” description but Firefighters were not**
- **AB 411 (2000) AB 2857 (2006) were defeated before reaching the governor**

The History

Fire Presentations

- **Supporters argued that firefighters were at times under immense pressure and stress like peace officers**
- **FFs deserved the same protection as peace officers**

The History

Fire Presentations

- **Opponents argued that the number of investigations on FFs is far less than police**
- **Considered needless and very expensive**
- **Estimated \$1.3 million statewide to comply (over \$20 mil for POBOR)**

The History

- **January 1, 2008 Assembly Bill 220 passed**
- **Also known as the Firefighter Procedural Bill of Rights**
- **California Government Code §§ 3250-3262**

Who is Covered

- **All firefighters employed by a public agency**
- **Includes FFs who are paramedics or emergency medical technicians**
- **Does not include probationary FFs**

When it's Triggered

- **When entering into an investigation, interview, or line of questioning that *could* lead to punitive action, the FBOR is triggered**

- **Factors that determine whether there is a “reasonable” belief that punitive action could result:**

When it's Triggered

- **The interview concerns an issue that could result in discipline**
- **Employer has possession of prior evidence of wrongdoing on FF who is being interviewed**
- **The person conducting interview has authority over FF to discipline or is empowered to act on behalf of someone who is**
- **The information provided to the FF on the significance of the interview would lead the FF to believe it could result in punitive action**

When it's Triggered

- **FBOR is triggered at "Punitive Action"**

- **Broadly Defined as:**
 - **Written Reprimand**
 - **Dock in Pay**
 - **Suspension**
 - **Demotion**
 - **Transfer (as punishment)**
 - **Termination**

When it's Triggered

- **These DO NOT Trigger it:**
 - **Counseling**
 - **Instruction**
 - **Informal Verbal Admonishment**
 - **Routine Contact**
 - **Unplanned Contact**
 - **Routine Negative Evaluations are NOT Considered Punitive**

The Progressive Discipline Process

Pre-AB220

- **C** – Counseling
- **O** – Oral Warning
- **W** – Written Reprimand

Pre-Disciplinary Procedures

- **S** – Substantial Discipline

- Time off without pay
- Reduction in pay
- Demotion
- Suspension
- Termination

Formal Discipline

The Progressive Discipline Process

Post AB220

➤ **C** – Counseling

Pre-Disciplinary Procedures

➤ **O** – Oral Warning

➤ **W** – Written Reprimand

➤ **S** – Substantial Discipline

➤ Time off without pay

➤ Reduction in pay

➤ Demotion

➤ Suspension

➤ Termination

Formal Discipline

Rights Under AB220

- **Investigation Timeline:**
 - **One year to complete investigation**
 - **Exceptions to one year rule:**
 - **Acts discovered before Jan. 1, 2008**
 - **FF waives one year rule**
 - **Investigation involves multiple agencies**
 - **Criminal investigations**

Rights Under AB220

- **Exceptions to one year rule:**
 - **Civil litigation where FF is defendant**
 - **Investigations involving work comp fraud**
 - **Investigations may be re-opened in spite of one year time period if**
 - **Significant new evidence surfaces**
 - **Evidence could not have been reasonably discovered in one year time frame**

Rights Under AB220

- **Interrogation Rights:**
 - **FF must be informed of the name, rank, and command of person in charge of interrogation AND**
 - **Any other participants AND**
 - **The nature of the interrogation**

Rights Under AB220

- **Interrogation Rights:**
 - **Must be compensated**
 - **No more than two interrogators**
 - **Reasonable breaks**
 - **Reasonable period of time (based on seriousness and complexity of issue)**
 - **No offensive language or threats**
 - **No incentives or bribes**

Rights Under AB220

- **Interrogation Rights:**
 - **Recording devices allowed**
 - **Copy must be given to FF**
 - **FF can tape record meeting**
 - **Transcribed copy of stenographer notes or reports must be given to FF (excluding legally confidential items)**
 - **If during or prior to interrogation criminal charges are contemplated, FF must be informed of constitutional rights**

Rights Under AB220

- **Representation:**
 - **When a proceeding could or is leading to punitive action, FF has the right to request representation**
 - **Union Representative**
 - **Attorney**
 - **Any other person they choose (except someone subject to the same investigation)**

Rights Under AB220

➤ Privacy Rights:

- FF cannot be forced to take Polygraph (notes cannot be made of refusal and refusal not admissible)**
- FF cannot be forced to talk to media**
- FF cannot be forced to disclose financial information (assets, expenses, debts, income, etc)**

Rights Under AB220

- **Privacy Rights:**
 - **Locker or personal storage space may not be searched unless:**
 - **FF is present**
 - **Search warrant has been obtained**
 - **FF has given consent**
 - **FF has been informed**

Rights Under AB220

➤ Political Rights:

- FF cannot be prohibited or required to participate in political activity while in uniform**
- FF cannot be prohibited from seeking election or serving on a governing board in a city, county, or special district where they are NOT employed**

Rights Under AB220

- **Personnel File:**
 - **Adverse comments or evaluations cannot be entered in personnel file without allowing FF to read and sign**
 - **FF cannot be forced to sign but can be forced to sign acknowledgement that they refused to sign**
 - **FF has 30 days to respond in writing to adverse comments**
 - **Response must be attached to adverse comment**

Rights Under AB220

➤ Personnel File:

- FF has right to view file pertinent to employment, promotion, discipline, termination, etc. Upon request IF**
- Request is made during normal business hours**
- Files must be kept in a place where they can be provided in a reasonable amount of time**

Rights Under AB220

➤ Personnel File:

- If FF believes information in file is inaccurate or has been placed in file unlawfully, they may request in writing that the information be corrected or removed**
- Written statement becomes part of file**
- Employer has 30 days to approve or deny**
- Denials must be written statements explaining why and must be made part of personnel file**

Rights Under AB220

- **Administrative Appeals:**
 - **If employer seeks punitive action OR denies promotion, FF is entitled to administrative appeal**
 - **NOT the same as POBOR**
 - **Appeal must be consistent with rules and procedures adopted by employer that are in accordance with Government Code Section 11500**

Rights Under AB220

- **Notification:**
 - **After investigation if disciplinary action will be imposed, FF must be notified in writing**
 - **Within 30 days of decision**
 - **Not less than 48 hours prior to imposing discipline**

Penalties

- **Penalties for Violating the FBOR:**
 - **FF may seek injunctive or other “extraordinary” relief**
 - **Civil penalties up to \$25,000 for each malicious violation intended to hurt FF**
 - **The court can order sanctions against the suing party (and attorneys) for suits brought in bad faith (including the payment of the attorney fees incurred by the fire department)**

Don't Fall Prey

- **Unwillingness to discipline**
- **Letting things slide**
- **Keeping everything at an informal discipline level**
 - **Fear of the process**
 - **Fear of challenge**
 - **Fear of making mistakes**
 - **A LACK OF DISCIPLINE IS HURTING MORALE!**

Stay the Course

- **Discipline needs to be:**
 - **Fast**
 - **Firm**
 - **Fair**

- **Remind FFs:**
 - **If you discipline yourself, others won't have to!**