

**Discrimination against Women Firefighters:
Some Questions and Answers**

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Women who fight fires in New York state can turn to employment law if their fire companies or districts treat them unfairly. The following questions address only a few of the problems you may experience as a firefighter. This handout is not a substitute for a lawyer's advice, but it does provide useful information that will help you stand up for your rights under federal and New York law. On the last page there is information on how to contact agencies that can help you to resolve problems with your fire company or to file a lawsuit if necessary.

I'm a volunteer firefighter, not a paid one. Can I use employment law to deal with discrimination against me?

Unlike many states, New York provides so many benefits to volunteer firefighters, including workers' compensation,¹ that employment law might apply to you even if you are not paid wages.² However, the larger your company, especially if there are more than four volunteers, the more likely it will be that particular laws will apply to you.

I want to join the fire company in my town, but their entry requirements are so physically difficult that only men can meet them. Is this legal?

If the requirements for hiring are not closely connected to the skills of the job (like a height requirement, or a timed test with an arbitrary cutoff time) and they disqualify more women than men (or more members of a particular race, color, religion, or national origin), the law considers this discrimination. It doesn't matter whether the fire company meant for the test to keep out women. One of the agencies listed at the end of this handout can help you to prove your qualification for the job using an appropriate alternative method, although you may eventually have to file a lawsuit to make this happen.

I passed all the entry requirements for my volunteer fire company, but when the membership voted on my candidacy, I didn't get in^{3/4} just like every other woman who has ever applied. Is there anything I can do?

Volunteer fire companies may not discriminate against anyone or exclude anyone from membership on the basis of his or her race, creed, color, national origin, sex, sexual orientation, military status, or marital status.³ This includes the secret membership ballots of the fire company volunteers. However, discrimination can be difficult to prove because it doesn't leave a lot of evidence behind. You are more likely to be successful in a court if there are many facts suggesting that anti-woman bias was at work, for instance: if many women have been rejected in the past, if several members have made anti-woman statements in public, or if you or other women have experienced other types of harassment.

The protective gear provided by my fire department is designed for men and doesn't fit me properly. This could cause a safety problem—what should I do?

You have the right to the same safety standards as anyone else; again, it doesn't matter whether the fire company had bad intentions or not. You should ask for new gear, and if the fire company refuses or takes a long time to supply it, you should contact one of the agencies listed below.

How can I get my supervisor to stop hinting that I'll get better scheduling assignments if I agree to date him?

It is illegal for a supervisor to offer or threaten to hire, promote, or dismiss you, or to change your assignments or benefits in any way, because of your personal or physical relationship with him or her. If your fire company has a sexual harassment policy or a grievance policy, now is the time to use it. If not, you can contact the New York State Division of Human Rights or the federal Equal Opportunity Commission, whose contact details are listed below. Many fire companies have sexual harassment policies that could be adapted to your company too; if you're interested, contact NOW Legal Defense at (212)925-6635 and we will help.

The training in my company isn't very good^{3/4}an instructor shows us a skill but we never get to practice it^{3/4}and then later I get criticized for not knowing how to do something I was "trained" to do. What can I do?

If you suspect that you are deliberately being given less training than other firefighters because you are a woman, then this is discrimination. If everyone gets the same training, but it appears that you are given less leeway for your mistakes than male trainees, this is also discrimination, and the law can help you. If your training is just bad, you should work with your company to develop better, safer, more effective training methods.

Any time someone intentionally changes the usual rules and conditions of your job because you're a woman, whether it's giving you less training, giving you less desirable work schedules, paying you less, showing more flexibility only to male employees, giving you fewer employment benefits, or retaliating against you for complaining about unfair practices on the job, this is illegal discrimination.

I keep getting passed over for promotions while less experienced men get chosen. Can I file in court for this?

All of the laws described above apply to promotions, including being promoted less often than similarly qualified men, taking on more duties or different duties while your job title remains the same, or being promoted only to a certain level and no higher. If you are being treated differently because you are a woman, or if the requirements tend to exclude women but aren't really related to the job, then you should contact one of the agencies listed below. Your claim will be easier to prove if you have been denied promotions many times, no or few women have ever been promoted, or your company has a known history of anti-woman attitudes or harassment.

While most of the firefighters I work with are fine, there are a few who insult me all the time and insist on hanging pornography all over the station. Do I have to put up with this, or should I just ignore it?

If this kind of abuse is based on your gender and happens often enough, or is severe enough, or unreasonably keeps you from doing your job as you'd like, so that your fire company as a whole is an intimidating, hostile, or abusive work environment, then this is a form of sexual harassment, and you have the right to demand that it stop. This is true even if your pay, promotions, assignments, and other aspects of your work aren't affected. The harassment must be serious or frequent enough to affect your entire job; isolated incidents of boorishness or immaturity are not enough, unless they are unusually serious.

If you think it might be worthwhile simply to confront your harassers informally and tell them that their behavior is unwelcome and should stop, this is always a good idea. If this doesn't work and your fire company has a harassment policy, it is important that you use it. Keep records of unacceptable incidents, and use any grievance procedures available to you. If you notify your fire company about harassment and it does nothing, or someone retaliates against you for coming forward, you can sue the fire company itself for lost wages, opportunities, the costs of any health care relating to the incidents, and your other costs.

I just found out that I'm pregnant. Can my supervisor tell me when to stop working?

The law does not allow fire companies to force you to take a leave of absence while you are pregnant, as long as you can still do your job in a reasonable way.⁴ This also applies to other changes in your duties on account of your pregnancy without your permission.

If I'm pregnant, can I ask for light duty?

At the very least, you are entitled to whatever other workers with similar disabilities get, so if other firefighters have been able to change their duties while injured, then you are entitled to do so as well. This includes both the company's formal, written policies and their informal practices in the past, so ask around to find out how other firefighters have been treated. (If you are allowed to take light duty, make a point of continuing to participate in meetings, conferences, and training opportunities.)

If your fire company has a parental leave policy, a disability policy, or a collective bargaining agreement, it must offer you at least as much accommodation as other disabled workers get, and it may offer you even more. It is easier to write and implement a parental leave or disability policy before you get pregnant, so if you're interested in having one in your fire company, contact NOW Legal Defense at (212)925-6635 and we will help.

Am I allowed to take time off before or after I have a baby?

This depends. If firefighters in your company are usually allowed to take disability leave after similar medical problems, like bypass surgery (again, whether there is a formal, written policy or not), then you have the right to take a disability leave because of your

pregnancy too. This applies to any aspect of your condition that makes you unable to work, whether before or after the birth, and the length of your leave depends on your doctor's advice. However, if nobody is ever allowed to take disability leave, then you cannot for your pregnancy. Again, any parental leave policy or collective bargaining agreement must offer you at least as much accommodation as other disabled workers get, and may offer you even more.

There is one exception to this rule: the federal Family Medical Leave Act (FMLA). The FMLA guarantees that if your fire company has fifty firefighters or more and you are not in the highest-paid ten percent of your company, then you can take up to twelve weeks of unpaid leave for the birth or adoption of a child, or for the placement of a foster child. You will also get to keep your health insurance benefits. When you return, you are entitled either to your exact position, or to another one similar in pay, benefits, and other conditions. If this situation applies to you, call the federal Department of Labor at 1-800-959-FMLA for more information.

Should you wish to, New York law also allows you to breast-feed in all public or private places where you are otherwise authorized to be.

My father just had surgery and I need to take care of him for six weeks. Will my job still be there when I get back?

Again, if other firefighters in your company have traditionally been allowed to take time off for personal duties, then you have a right to do it too. Likewise, if your company has fifty firefighters or more and you are not in the highest-paid ten percent of your company, then under the Family and Medical Leave Act you can take up to twelve weeks off, unpaid but with health insurance, to care for yourself or for a seriously ill parent, child, or spouse. When you return, you are entitled either to your exact position, or to another one similar in pay, benefits, and other conditions. Call the federal Department of Labor at 1-800-959-FMLA for more information.

Who can help me protect my rights?

If your company has at least four firefighters, you can ask the New York State Division of Human Rights (NYSDHR) to investigate your situation free of charge, as long as you call within one year after the discrimination has occurred.⁵ Call (718)741-8400 and they will connect you with your local office. If your company has at least fifteen firefighters, then you can also call the federal Equal Employment Opportunity Commission (EEOC) at (202)663-4900, as long as you call within ten months of the last time the discrimination occurred.⁶ These time limits are very important; do not delay in contacting these agencies. You can always decide to terminate the investigation later.

What happens if I take formal action?

If you contact the NYSDHR or the EEOC, they will investigate your complaint free of charge and will keep your complaint confidential. If these agencies decide that there has been discrimination, they will usually attempt to resolve the situation with your company informally. If the company refuses, the agency might file a lawsuit on your behalf, although this is rare.

◆ *Legal Momentum* ◆

If the agency decides that it has not found enough evidence of discrimination, it will give you a “right to sue” letter, which means that you can hire your own lawyer and take your case directly to the courts. This may or may not be the best solution or the only solution to your problem. Filing a lawsuit takes a long time (sometimes years) and can polarize your workplace. Lawyers tend to be very expensive, but if your income is less than 125% of the federal poverty level, you may be able to get help from the Legal Aid Society of New York.

¹ N.Y. VOL. FIRE. BEN. LAW §§ 5-24.

² *Pietras v. Bd. of Fire Comm’rs*, 180 F.3d 468, 473 (2d Cir. 1999) (holding that volunteer fire company in New York state was “employer” within meaning of Title VII of Civil Rights Act of 1964).

³ N.Y. TOWN LAW § 176-b(15)(a); N.Y. EXEC. LAW § 296(9)(a). *See also* *Gibson v. Hurleyville Fire Co.*, 1 F. Supp. 2d 329, 332-33 (S.D.N.Y. 1998) (holding that discriminatory vote of volunteer fire company violated TOWN LAW § 176-b(15)(a) even if voting members of fire company were never informed that they could not vote according to whim or social acceptability).

⁴ 42 U.S.C. § 2000e(k); N.Y. EXEC. LAW § 296(1)(g).

⁵ N.Y. EXEC. LAW §§ 292(5), 297(5).

⁶ 42 U.S.C. §§ 2000e(b), 2000e-5(e)(1).