



**LEGAL UPDATE FOR FIRE DISTRICTS**

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**I. WORKER'S COMPENSATION CLAIMS**



- R.C. § 4123.026
- R.C. § 4123.68

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**R.C. § 4123.026—**  
**Costs of Post-Exposure Medical Diagnostic Services After Peace Officer, Firefighter, or Emergency Medical Worker's Exposure to Blood or Other Body Fluid**

(A) The administrator of workers' compensation, or a self-insuring public employer for the peace officers, firefighters, and emergency medical workers employed by or volunteering for that self-insuring public employer, shall pay the costs of conducting post-exposure medical diagnostic services, consistent with the standards of medical care existing at the time of the exposure, to investigate whether an injury or occupational disease was sustained by a peace officer, firefighter, or emergency medical worker when coming into contact with the blood or other body fluid of another person in the course of and arising out of the peace officer's, firefighter's, or emergency medical worker's employment, or when responding to an inherently dangerous situation in the manner described in, and in accordance with the conditions specified under, division (A)(1)(a) of section 4123.01 of the Revised Code, through any of the following means:

- (1) Splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;
- (2) A puncture in the skin;
- (3) A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.

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### R.C. § 4123.026—

Costs of Post-Exposure Medical Diagnostic Services After Peace Officer, Firefighter, or Emergency Medical Worker's Exposure to Blood or Other Body Fluid

(B) As used in this section:

- (1) "**Peace officer**" has the same meaning as in section 2935.01 of the Revised Code.
- (2) "**Firefighter**" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.
- (3) "**Emergency medical worker**" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.

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### R.C. § 4123.68—

Schedule of Compensable Occupational Diseases

R.C. § 4123.68 provides, in part:

Every employee who is disabled because of the contraction of an occupational disease or the dependent of an employee whose death is caused by an occupational disease, is entitled to the compensation provided by sections 4123.55 to 4123.59 and 4123.66 of the Revised Code subject to the modifications relating to occupational diseases contained in this chapter. An order of the administrator issued under this section is appealable pursuant to sections 4123.511 and 4123.512 of the Revised Code.

The following diseases are occupational diseases and compensable as such when contracted by an employee in the course of the employment in which such employee was engaged and due to the nature of any process described in this section. A disease which meets the definition of an occupational disease is compensable pursuant to this chapter though it is not specifically listed in this section.

**SCHEDULE**

Description of disease or injury and description of process:

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### R.C. § 4123.68(W)

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- (W) Cardiovascular, pulmonary, or respiratory diseases incurred by firefighters or police officers following exposure to heat, smoke, toxic gases, chemical fumes and other toxic substances: Any cardiovascular, pulmonary, or respiratory disease of a firefighter or police officer caused or induced by the cumulative effect of exposure to heat, the inhalation of smoke, toxic gases, chemical fumes and other toxic substances in the performance of the firefighter's or police officer's duty constitutes a presumption, which may be refuted by affirmative evidence, that such occurred in the course of and arising out of the firefighter's or police officer's employment. For the purpose of this section, "firefighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer, and "police officer" means any regular member of a lawfully constituted police department of a municipal corporation, township or county, whether paid or volunteer.

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### R.C. § 4123.68(W)

. . . . .

This chapter does not entitle a firefighter, or police officer, or the firefighter's or police officer's dependents to compensation, medical treatment, or payment of funeral expenses for disability or death from a cardiovascular, pulmonary, or respiratory disease, unless the firefighter or police officer has been subject to injurious exposure to heat, smoke, toxic gases, chemical fumes, and other toxic substances in the firefighter's or police officer's employment in this state preceding the firefighter's or police officer's disablement, some portion of which has been after January 1, 1967, except as provided in division (E) of section 4123.57 of the Revised Code.

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### R.C. § 4123.68(X)

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(X)

(1) Cancer contracted by a firefighter: Cancer contracted by a firefighter who has been assigned to at least six years of hazardous duty as a firefighter constitutes a presumption that the cancer was contracted in the course of an arising out of the firefighter's employment if the firefighter was exposed to an agent classified by the international agency for research on cancer or its successor organization as a group 1 or 2A carcinogen.

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### R.C. § 4123.68(X)

(2) The presumption described in division (X)(1) of this section is rebuttable in any of the following situations:

- (a) There is evidence that the firefighter's exposure, outside the scope of the firefighter's official duties, to cigarettes, tobacco products, or other conditions presenting an extremely high risk for the development of the cancer alleged, was probably a significant factor in the cause or progression of the cancer.
- (b) There is evidence that shows, by a preponderance of competent scientific evidence, that exposure to the type of carcinogen alleged did not or could not have caused the cancer being alleged.
- (c) There is evidence that the firefighter was not exposed to an agent classified by the international agency for research on cancer as a group 1 or 2A carcinogen.
- (d) There is evidence that the firefighter incurred the type of cancer alleged before becoming a member of the fire department.
- (e) The firefighter is seventy years of age or older.

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### R.C. § 4123.68(X)

- (3) The presumption described in division (X)(1) of this section does not apply if it has been more than fifteen years since the firefighter was last assigned to hazardous duty as a firefighter.
- (4) Compensation for cancer contracted by a firefighter in the course of hazardous duty under division (X) of this section is payable only in the event of temporary total disability, working wage loss, permanent total disability, or death, in accordance with division (A) or (B)(1) of section 4123.56 and sections 4123.58 and 4123.59 of the Revised Code.
- (5) As used in division (X) of this section, "hazardous duty" has the same meaning as in 5 C.F.R. 550.902, as amended.

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## II. FISCAL OFFICER'S ROLE IN DISCIPLINARY PROCEEDINGS



- R.C. § 505.38—Appointment of Firefighting Personnel
- R.C. § 733.35—Mayor shall file charges against delinquent officers
- R.C. § 733.36—Hearing of charges

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### R.C. § 733.38— POWER OF LEGISLATIVE AUTHORITY AS TO PROCESS

- The legislative authority of a municipal corporation may issue subpoenas or compulsory process to compel the attendance of persons and the production of books and papers before it, and such legislative authority may provide by ordinance for exercising and enforcing this section.

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### R.C. § 507.06— OATHS

- The township fiscal officer may administer oaths, and take and certify affidavits, that pertain to the business of the township or of the board of education of the fiscal officer's local school district, or are connected with the official business of either the township or the local school district, including the official oaths of township and school officers, and oaths required in the execution, verification, and renewal of security interests.

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### III. BUDGETING FOR FIRE DEPARTMENT CAPITAL NEEDS



A. Steps in the Development of a Capital Budget

B. Types of Fire Department Capital Needs

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### Types of Fire Department Capital Needs

- Buildings – New or Repairs
- Fire Apparatus
- SCBA
- Turnout Gear
- Heart Monitors/Defibrillators
- Radio Equipment and Pagers
- Gas Monitors

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## IV. BIDDING REQUIREMENTS FOR FIRE DISTRICTS



A. R.C. § 505.37—Fire Protection Service Requirements

B. Cooperative Purchasing

C. R.C. § 505.08—Emergency Contracts

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### R.C. § 505.37— FIRE PROTECTION SERVICE REQUIREMENTS

- When the estimated cost to purchase fire apparatus or equipment or services exceeds fifty thousand dollars, the contract shall be let by competitive bidding.

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### COOPERATIVE PURCHASING

- There are two exceptions, however, to the competitive bidding requirements. Both are found in R.C. §125.04.
  - **R.C. § 125.04(B)(3)** permits a political subdivision who is part of the State of Ohio's Department of Administrative Services cooperating purchase contract program to make purchases directly pursuant to the State cooperating bid contracts.
  - **R.C. § 125.04(B)(3)(c)** permits a political subdivision to purchase equipment directly from a vendor if the political subdivision can purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications, but at a lower price than it can through the state contracts.

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**R.C. § 505.08—  
EMERGENCY CONTRACTS**

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**V. EMS CONTRACTS**



- R.C. § 505.44—Contracts For Ambulance Service
- R.C. § 505.84—Reasonable Charges For Use Of Ambulance Or  
Emergency Medical Services

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**VI. BONDING**



- R.C. § 507.03—Bonding Of The Township Fiscal Officer
- R.C. § 505.372—Bond Of Clerk Of The Board Of Fire District  
Trustees
- R.C. § 505.02—Bond Of Township Trustees
- Bond Of Fire District Board Of Trustees

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**R.C. § 507.03—  
Bonding of the Township Fiscal Officer**

- The township fiscal officer, before entering upon the discharge of official duties, shall give a bond, payable to the board of township trustees, with sureties approved by the board, in the sum determined by the board but not less than the sum provided in this section, and conditioned for the faithful performance of the duties of the office of township fiscal officer.
  - This bond shall be recorded by the township fiscal officer, filed with the county treasurer, and carefully preserved.
- The minimum sum of the township fiscal officer's bond is determined by township population, and ranges from \$10,000 to \$250,000.

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**R.C. § 505.372—  
Bond Of Clerk Of The Board Of  
Fire District Trustees**

- Before entering upon the duties of his office, the clerk of the board of fire district trustees shall execute a bond, in the amount and with surety to be approved by the board of fire district trustees, payable to the state, conditioned for the faithful performance of all the official duties required of him. Such bond shall be deposited with the presiding officer of the board, and a copy thereof, certified by him, shall be filed with the county auditor.

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**R.C. § 505.02—  
Bond of Township Trustees**

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**Bond Of Fire District  
Board Of Trustees**

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**VII. CRIMINAL RECORDS  
CHECK**



- R.C. § 505.381—Criminal Records Check

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**VIII. ACCEPTANCE AND  
DISPOSITION OF PROPERTY**



- R.C. § 550.10—Acceptance And Disposition Of Property

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**R.C. § 505.10—  
Acceptance And Disposition Of Property**

- (1) If the fair market value of property to be sold is, in the opinion of the board, in excess of two thousand five hundred dollars, the sale shall be by public auction or by sealed bid to the highest bidder.
- (2) If the fair market value of property to be sold is, in the opinion of the board, two thousand five hundred dollars or less, the board may do either of the following:
  - (a) Sell the property by private sale, without advertisement or public notification
  - (b) Donate the property to an eligible nonprofit organization

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**R.C. § 505.10—  
Acceptance And Disposition Of Property**

- (3) If the board finds, by resolution, that the township has motor vehicles, road machinery, equipment, or tools that are not needed or are unfit for public use, and the board wishes to sell the motor vehicles, road machinery, equipment, or tools to the person or firm from which it proposes to purchase other motor vehicles, road machinery, equipment, or tools, the board may offer to sell the motor vehicles, road machinery, equipment, or tools to that person or firm, and to have the selling price credited to the person or firm against the purchase price of other motor vehicles, road machinery, equipment, or tools.

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**R.C. § 505.10—  
Acceptance And Disposition Of Property**

- (D) Notwithstanding anything to the contrary in division (A) or (B) of this section and regardless of the property's value, the board may sell personal property, including motor vehicles, road machinery, equipment, tools, or supplies, that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, by internet auction.

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**IX. REQUIRED OR RECOMMENDED POLICIES**



**A. General Township Policies**

**B. Fire Department Policies and Procedures**

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**GENERAL TOWNSHIP POLICIES**

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|----------------------------------|-------------------------------|
| 1. Credit Card Policy            | 8. Public Records Policy      |
| 2. Code of Ethics                | 9. Records Retention Schedule |
| 3. Social Media Policy           | 8. Sexual Harassment Policy   |
| 4. Employee Speech Policy        | 9. Military Leave Policy      |
| 5. Travel Policy                 | 10. Fraud Reporting Policy    |
| 6. Donation Policy               | 11. Petty Cash Policy         |
| 7. Communication Resource Policy | 12. Bank/Investment Policy    |

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**FIRE DEPARTMENT POLICIES AND PROCEDURES**

1. General Employment Policies
2. Rules and Regulations for Administrative Information
3. Rules and Regulations Relating to Personal Conduct
4. Rules and Regulations Relating to Personal Hygiene
5. Rules and Regulations Relating to Departmental Business and Information, Advertising, Sales and Gratuities
6. Rules and Regulations Relating to Orders
7. Rules and Regulations Relating to Fire Department Property and Equipment
8. Rules and Regulations Relating to Fire Station Safety
9. Rules and Regulations Relating to Respiratory Protection
10. Rules and Regulations Relating to Personal Protective Clothing and Equipment

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## FIRE DEPARTMENT POLICIES AND PROCEDURES

11. Rules and Regulations Relating to Hose, Couplings and Nozzles
12. Rules and Regulations Relating to Ground Ladders
13. Fire Department Occupational Safety and Health Policy
14. Fire Department Exposure Control Plan
15. Policy for Training and Education
16. Fire Department Purchase Order Policy
17. Fire Department New Employee Criminal Records Check Policy
18. Cellular Phone Use Policy
19. Pregnancy and Breastfeeding Policy
20. Digital Imagery Policy
21. Residency Policy

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## FIRE DEPARTMENT POLICIES AND PROCEDURES

22. Educational Reimbursement Policy
23. Drug and Alcohol Policy
24. Body Ornamentation Policy
25. Administrative Leave Policy
26. Respiratory Protection Program
27. Written Plan Covering Use, Limitations, Care, Inspection
28. Incident Management System SOP
29. Accountability SOP
30. Two-In/Two-Out SOP
31. Motor Vehicle Accident Response SOP
32. Risk Management Plan
33. Health Related Fitness and Wellness Program Policy

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## FIRE DEPARTMENT POLICIES AND PROCEDURES

34. Hazardous Material SOP, Including Plan for Replacement of Equipment
35. Technical Rescue SOP
36. Agreement For Reimbursement For Training
37. Mayday/Urgent Radio Communications
38. Rapid Intervention Team
39. Chain Of Command

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## X. VOLUNTEER FIREFIGHTERS DEPENDENTS FUND



- Ohio Revised Code Chapter 146

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## XI. RECENT OHIO ATTORNEY GENERAL OPINIONS



- **OAG 2017-001:** Various undertakings that county, townships and municipal corporations may do with or for a regional council of governments to enable the council to demolish neglected and abandoned buildings and remediate other nuisance properties.
- **OAG 2017-002:** Authority of Board of County Commissioners under R.C. 307.691 to donate public monies to non-profit foundation.
- **OAG 2017-006:** Disclosure to a county drug force of the number of times county EMS personnel administer Naloxone to persons experiencing actual or suspected opioid overdoses.
- **OAG 2017-007:** Reimbursement under R.C. 505.60(D) of healthcare insurance premiums for coverage otherwise obtained for immediate dependence of a township officer or employee.
- **OAG 2017-027:** Situations in which a county hospital is required to disclose information that reveals the identity and condition of a patient seeking treatment for an illicit drug overdose.

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- **OAG 2013-036:** A township may not use tax revenue derived from a levy under R.C. 5705.19(l) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads.
- **OAG 2015-010:** Any tax levied by a joint fire district must be levied uniformly throughout the joint fire district.
- **OAG 2015-021:** Medical health plans and group health plans.
- **OAG 2015-035:** A countywide 9-1-1 system may operate more than the number of wireless public safety answering points and receive full disbursement of monies so long as the number of wireless public safety answering points for which a county uses those monies does not exceed the number specified in the Ohio Revised Code.

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- **OAG 2016-014:** A township fire department established by a board of township trustees under R.C. 505.37 for the purpose of providing fire protections services within the township or a township fire department has no authority to purchase a portion of building to house fire-fighting equipment.
- **OAG 2016-023:** Community para-medicine and contracts with private hospital systems.
- **OAG 2016-023:** An EMT or paramedic may not provide medical services on a routine, day-to-day basis outside of the boundaries of the township when revenue from a township's tax levy pays the emergency medical technician's compensation, unless the township has entered into a contract with another political subdivision pursuant to R.C. 9.60 or R.C. 505.44 or the township provides medical services to the territory of another township or municipal corporation as a member of a joint fire district pursuant to R.C. 505.371.

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## XII. CASE LAW UPDATE



- *Lee v. City of Moraine Fire Dept.*, 2015 WL 914440 (S.D. Ohio, March 3, 2015).

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- *In re M.A.*, 61 N.E. 3d 630 (11<sup>th</sup> Dist., Mar. 21, 2016).
- *Stinebaugh v. City of Wapakoneta*, 630 Fed. App'x 522 (6<sup>th</sup> Cir., Nov. 10, 2015).
- *Way v. Shawnee Twp.*, 192 F. Supp. 3d 867 (N.D. Ohio, June 20, 2016).
- *Holbrook v. Dumas*, 658 Fed. App'x 280 (6<sup>th</sup> Cir., Aug. 17, 2017).
- *Bagi v. City of Parma*, 2016 WL 4418094 (N.D. Ohio, Aug. 19, 2016).
- *Naghtin v. Montague Fire District Board*, 2016 WL 7494866 (6<sup>th</sup> Cir., 2016).
- *Valley v. Genoa Twp.*, 2017 WL 495504 (S.D. Ohio, Feb. 7, 2017).

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### XIII. EMBEZZLEMENT ISSUES



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