



"Hot Topics"

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NOTE:

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MINIMUM STANDARDS FOR EMPLOYING PAID FIREFIGHTERS

I have found in visiting with Districts throughout Idaho, that there is some confusion on the minimum standards that the Idaho Code requires for hiring paid firefighters. One reason for the confusion is that the standards are not found in the Fire Protection District Law, but rather are set forth in the Labor law title of the Idaho Code, specifically sections 44-1801 and 44-1812. Section 44-1812 provides:

(1) No person may be employed as a paid firefighter as defined in sections 44-1801 (1) and 59-1391 (1), Idaho Code, until that person:

(a) Has met and has been certified by the examining physician selected by the corporate authority as having met the minimum medical and health standards set forth in subsection (4) of this section; (b) Is at least eighteen (18) years of age at the time of appointment; and (c) Has met prescribed physical performance standards as adopted by the corporate authority. ... (4) For purposes of this section, the phrase "minimum medical and health standards" shall mean the pre-placement medical evaluation provisions of chapter 2-3 of the 1997 edition of NFPA 1582, the standard on medical requirements for firefighters published by the national fire protection association. ...

Idaho Code section 44-1801 provides the definition of 'paid firefighter' and 'supervisor', and sets out the supervisory exception to the general rule.

"Firefighter" shall mean the paid members, except supervisors, of any regularly constituted fire department in any city, county, fire district or political subdivision within the state. The term "supervisor" means any individual having authority in the interest of an employer to hire, direct, assign, promote, reward, transfer, lay off, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to effectively recommend such action if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; *provided, the term "supervisor" shall include only those individuals who perform a preponderance of the above specified acts of authority on a day-to-day basis;* and provided further, *a supervisor's administrative responsibilities must include demonstrated involvement in policy and budget formulation for the department. ...*

The confusion comes in when a district wants to hire an employee to fill what they believe is a supervisory position that is exempt from the physical agility test and medical exam requirements for hiring a paid firefighter. For example, say a district wants to hire a person to act as a fire marshal, a deputy chief, or an assistant chief. They also want to have the individual respond for duty to fire and EMS incidents that occur in the district. Because they consider the individual to be an administrator, they don't believe he falls within the definition of "paid firefighter", and is therefore exempt from having to take the physical exam and agility test.

The answer depends on exactly what this person will be doing most of the time. Although a fire marshal may handle a lot of paperwork and other administrative duties, his job duties probably do not include promoting, laying off, suspending, disciplining, or discharging employees, and even if he does some of these tasks on an occasional basis, he certainly does not perform a "preponderance of the acts on a day-to-day basis." Section 44-1801 further requires that, to be afforded the supervisory exemption, the employee's responsibilities must include "demonstrated involvement in policy and budget formulation for the department." Therefore, although the employee in our example may be considered by the district to be an administrator, he likely does not qualify as a "supervisor" under 44-1801, but is most likely to be deemed a "paid firefighter." As such, he/she would not be exempt from the medical exam and agility test requirements of 44-1812. The same could be true for many employees who have been designated as a deputy chief, assistant chief, etc.

The key to making sure that an employee does not lose their "supervisor" status is to first be aware of the duties an employee must perform on a day-to-day basis to be afforded the status of a supervisor under 44-1801, and to then incorporate those duties into a written job description. Next, the district should conduct periodic reviews to insure that the employee is actually performing a preponderance of those duties on a day-to-day basis. The district should also make sure that the employee's duties are not merely clerical or routine in nature, but actually call for the employee to exercise independent judgment. Finally, the district should involve the employee in the formulation of the budget and development of other district policies.

Another area of confusion is whether an existing paid firefighter (who has passed a physical exam and agility test several years earlier) must take a new exam and test when he/she is to be promoted to a higher-ranking position, such as lieutenant, captain, battalion chief, etc. The answer lies in the additional exemptions section of 44-1812 (5). First, that sub-section provides a

complete medical exam and agility test exemption (a grandfather clause) for all paid firefighters who were employed before October 1, 1980, and have had continuous employment since that time. In addition, the sub-section states that the exam and test will not be required for “promotional appointments”, or to the re-employment of a paid firefighter by the same or different employer within two (2) years after the termination of the employee’s employment; or for reinstatement of paid firefighters who have been on military or disability leave, disability retirement status, leave of absence status, or from a reduction in force.

Therefore, a paid firefighter who is to be promoted, is not required to take a new medical exam or agility test, so long as they have either been grand fathered in, or have taken an earlier exam and test, and have since been continuously employed as a paid firefighter.

I do, however, take issue with the ‘return from disability leave exemption’. You all have heard about the federal law, “The Americans’ With Disabilities Act”. That Act was enacted after the Idaho statutes referenced above were enacted, and it allows employers to require *existing* employees to submit to medical exams or tests when the employer can demonstrate that the request for the medical examination is “job-related and consistent with business necessity”. It seems that if a fire district has an employee returning from disability leave, the exam and agility test may, depending on the nature and severity of the disability, be job related and also consistent with the business necessity of making sure that all fire fighters are in a physical condition that allows them to adequately and safely perform their job duties.