A guide to the
FIREFIGHTERS PROCEDURAL BILL OF RIGHTS ACT
This chapter shall be known, and may be cited, as the Firefighters Procedural Bill of Rights Act.
“Firefighter” means any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank, but does not include probationary employees or inmates performing firefighting duties.

– Does the act cover volunteers? Seasonal firefighters? Limited term firefighters?
“Punitive action” means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

- *White v. County of Sacramento* (1982) 31 Cal.3d 676 – “For purposes of punishment” only modifies the word “transfer.”

- *McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975 – Transfer resulting in loss of pay is per se punitive.


Government Code § 3252
Political Activity

Unless a firefighter is on duty or in uniform, he or she may not be prohibited from engaging or coerced/required to engage in political activity, nor shall a firefighter be prohibited from seeking election to the board of any city, county, district, or agency where the firefighter is not employed.
When any firefighter is under investigation and subjected to interrogation by his or her commanding officer, or any other member designated by the employing department or licensing or certifying agency, that could lead to punitive action, the interrogation shall be conducted under the following conditions:

- **CCPOA v. State of California (2000) 82 Cal.App.4th 294** – Questions by an outside agency can trigger the protections listed below. In this case, witnesses were told by a commanding officer that they must answer questions being asked by the Attorney General's Office or be suspended. The targets of the investigation were told they must answer the Attorney General's questions or be immediately arrested.

- **City of Los Angeles v. Superior Court (Labio) (1997) 57 Cal.App.4th 1506** – Any inquiry into sanctionable conduct triggers the protections listed below. The inquiry need not be a formal investigation.

- **Paterson v. City of Los Angeles (2009) 95 Cal.Rptr.3d 333** – Even if an officer is exonerated, POBR rights apply to the underlying investigation as the investigation was one which *while it was being conducted* “could lead to punitive action.”
1) Conducted at a reasonable hour

2) Conducted on-duty, unless there is an imminent public safety threat

3) If conducted off-duty, Firefighter must be compensated

4) No loss of compensation for missing work while being interrogated

   - [What about seasonal employees?]
A Firefighter under investigation shall be informed of the person in charge of the interrogation, have no more than two interrogators at one time, and be informed of the nature of the investigation prior to any interrogation.

The interrogation shall be for a reasonable period of time, and the Firefighter must be allowed reasonable breaks.

*City of Los Angeles v. Superior Court (Labio) (1997) 57 Cal.App.4th 1506 – Statements obtained in violation of these rules, even in an informal investigation, can be suppressed. (Labio drove by fatal accident in a marked patrol vehicle to a doughnut shop. He was questioned without being advised that he was under investigation, without being advised of his Miranda rights. If he were informed he might have taped the discussion and requested a representative).*
Government Code § 3253(e)
Criminal Immunity

Before the employer can compel a Firefighter to respond to incriminating questions, the employer “shall provide to, and obtain from, an employee a formal grant of immunity from criminal prosecution, in writing.” If a grant of immunity is obtained, the Firefighter must be informed that the failure to answer questions may result in punitive action.

- No Lybarger warning as under POBR. See Lybarger v. City of Los Angeles (1985) 40 Cal.3d 822.

- This was a response to the Court of Appeal decision in Spielbauer v. County of Santa Clara (2007) 53 Cal.Rptr.3d 357, which had threatened to turn a long line of cases on its head by holding that an employee has a constitutional right to remain silent unless given an express grant of immunity. The California Supreme Court subsequently granted review and agreed with our position, expressed in our amicus curiae brief filed with the California Supreme Court, that while employees can be ordered to respond to questions during an administrative investigation (and can be punished for refusal to answer those questions), the use of those statements in any criminal proceeding is forbidden, without any need to obtain a formal grant of immunity.

- While this section appears to require a formal grant of immunity, the language is ambiguous.

- Also, this section differs from the POBR, and raises the question of whether the POBR or the FFBOR would prevail where the employee is both a Firefighter and a Peace Officer.
Government Code § 3253(e)(2)

Media

- A Firefighter’s **photograph and contact information** shall not be given to the media, nor shall the Firefighter be subjected to visits by the media without express written consent of the Firefighter.
A statement made during interrogation by a Firefighter under threat of punitive action shall not be admissible in any subsequent judicial proceeding, except when:

1) The department is seeking civil service sanctions against any firefighter, including disciplinary action brought under Section 19572.

2) The Firefighter or his or her association has brought a civil or administrative action, arising out of a disciplinary action.

- **Garrity v. New Jersey** (1967) 385 U.S. 493 – The seminal case overturning peace officer convictions that had been based in part on the officers’ own statements given after being told that if they refused to answer questions they would be terminated. The Court held that the threat of removal from public office rendered the resulting statements involuntary and therefore inadmissible in the state criminal proceedings.

The interrogation of a Firefighter may be recorded, and the Firefighter may bring his or her own recording device. The Firefighter shall have access to any recording prior to any further interrogation. The firefighter is entitled to a transcribed copy of any notes made by a stenographer or any reports or complaints made by investigators or other person, except those portions that are required by law to be kept confidential. Confidential notes or reports shall not be entered in the firefighter’s personnel file.

- **Pasadena POA v. City of Pasadena** (1990) 51 Cal.3d 564 – No pre-interrogation discovery. However, a transcript or tape of the employee’s own prior interrogation is available at any follow-up interrogation. No right to complaints and reports until receipt of Skelly package.

- **McMahon v. City of Los Angeles** (2009) 172 Cal.App.4th 1324 – Department did not have to provide officer with materials used in investigation if he was cleared of all charges, and such materials could not be used for personnel purposes. In such circumstances all that must be provided is a summary of complaints and the identity of the complainants. This is so due to the fact that the officer was exonerated and Department’s regulations prohibited the use of such materials in making personnel decisions.
If, prior to or during the interrogation of a firefighter, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

[See Criminal Immunity – § 3253(e) and Lybarger Immunity - § 3253(f)]
Whenever an interrogation may result in punitive action against a firefighter, that firefighter shall have the right to a representative of his or her choice present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, or be subject to any punitive action for refusing to disclose, any information received from the firefighter under investigation for noncriminal matters. This does not apply to counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other firefighter.

- *Titus v. Civil Service Commission* (1982) 130 Cal.App.3d 357 – Attorney-client privilege vs. Police Officer’s law enforcement duties. (Discharge of Lieutenant, who was also an attorney, upheld where he refused, due to attorney-client privilege, to disclose name and identity of individual possessing dynamite).

- *Redwoods Community College District v. Public Employment Relations Board* (1984) 159 Cal.App.3d 617 – Although this section purports to exclude representation for “counseling” this case held that in some (unusual) circumstances, right to representation exists for counseling under bargaining laws when (for example) the issue is highly emotional and contentious.

- *Upland POA v. City of Upland* (2003) 111 Cal.App.4th 1294 – Employee entitled to a “reasonably available representative of his or her choice.” Court also implied a “mutually agreeable time.” In this case, it was held that the representative (who was a lawyer) was only entitled to reschedule the interrogation once.
A firefighter shall not be loaned or temporarily reassigned to a location or duty assignment if a firefighter in his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

- *Crupi v. City of Los Angeles* (1990) 219 Cal.App.3d 1111. (Being assigned to a desk job was normal for officers involved in shootings, until the officers are cleared by a psychiatrist).
A firefighter shall not be subjected to or threatened with punitive action, or denied promotion, because of the lawful exercise of the rights granted under this Act, or under any existing administrative grievance procedure.

[Court v. PERB/Arbitration? See § 3260.]
Government Code § 3254

Punitive Action (Administrative Appeal)

Punitive action or denial of promotion on grounds other than merit shall not be undertaken against any non-probationary firefighter without providing the firefighter with an opportunity for administrative appeal.

- **James v. City of Coronado** (2003) 106 Cal.App.4th 905 – For some discipline, hearing need not be a “due process hearing,” unless there is a loss of pay.


A fire chief shall not be removed without written notice and an opportunity for administrative appeal. Nothing in this subdivision shall be construed to create a property interest, if one does not otherwise exist by rule or law, in the job of fire chief.

Punitive action or denial of promotion on grounds other than merit shall not be undertaken if the investigation of an allegation is not completed within one year of discovery, if the discovery of the act, omission, or other misconduct occurred on or after January 1, 2008. If it is determined that discipline may be taken, the investigation must be completed and the firefighter must be notified of the proposed disciplinary action within one year, except in any of the following circumstances:

- *Sanchez v. City of Los Angeles* (2006) 140 Cal.App.4th 1069 – Upholds one-year statute of limitations. While the one-year statute of limitations is still applicable, the California Supreme Court, in *Mays v. City of Los Angeles* (4/17/08),--- Cal.Rptr.3d ----, 2008 WL 1745210, held that the analogous section of the POBR merely requires that the public agency must notify the employee that it has decided that it might take some type of disciplinary action against the officer for certain, specified misconduct. Notice of the specific level of discipline to be imposed is no longer required.

Government Code § 3254
Punitive Action (Limitations Period)

*continued*

But see:

- **CCPOA v. SPB (2007) 147 Cal.App.4th 797** – Extensive lying during administrative interview can constitute a separate offense triggering a new one year statute of limitations period. (Unlike Alameida, the charges were only a few months past the statute of limitations period, so memories were still fresh. Additionally, the dishonesty was not simply a denial of charges, but concerned a variety of issues regarding the investigation).

- **Melkonians v. Los Angeles County Civil Service Commission (2009) 174 Cal.App.4th 1159** – SOL to bring a punitive action against an employee for one set of allegations was tolled during the period of time the officer had been terminated (and was appealing) his termination for other alleged misconduct.

Government Code § 3254

Punitive Action (Limitations Period. Exceptions.)

1) If the firefighter waives the one-year time period, the period shall be tolled for the time specified in the written waiver.

2) If the allegation of misconduct is also the subject of a criminal investigation or prosecution, the time during which the criminal investigation or prosecution is pending shall toll the one-year time period.

3) If the investigation is multijurisdictional and requires a reasonable extension for coordination of the involved agencies.

- Huelsse v. County of Santa Clara (May 7, 2010) WL 1828616 (unpublished opinion) – The SOL for punitive action against an officer is tolled during a pending criminal investigation of another officer for conduct related to the conduct that is the subject of the punitive action.
4) If the investigation involves an employee who is incapacitated or unavailable.

5) If the investigation involves a matter in civil litigation where the firefighter is named as a defendant, the one-year time period shall be tolled while that civil action is pending.

6) If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant’s criminal investigation and prosecution.

7) If the investigation involves an allegation of workers’ compensation fraud by the firefighter.
If the employing department or licensing or certifying agency [includes EMT Certification, Paramedics License, etc.] decides to impose discipline, that agency shall notify the firefighter in writing of its decision to impose discipline within 30 days of its decision, but not less than 48 hours prior to imposing the discipline.

- Due process requires a pre-disciplinary hearing, and an evidentiary appeal after imposition of the discipline. *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194. However, in the case of short term suspensions (generally 5 days or less), no pre-disciplinary hearing is required – rather the hearing may occur shortly after the imposition of the penalty. *Ng v. State Personnel Board* (1977) 68 Cal.App.3d 600; *Civil Service Association, Local 400 v. City and County of San Francisco* (1978) 79 Cal.3d 540).

- *Neves v. California Department of Corrections and Rehabilitation* (2012) – Public safety officer was properly notified of intent to impose disciplinary action where he received notice of adverse action within 30 days of the decision to impose the action. This leads to situations where as long as the employee is notified that some discipline will be imposed within the 1-year period of limitations, the Department has an additional 30-days to notify the employee of what that discipline might be.
An investigation may be reopened after the one-year limitations period if:

1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation, and

2) The evidence could not reasonably have been discovered in the normal course of investigation or the evidence resulted from the firefighter’s pre-disciplinary response.
Administrative appeals “shall be conducted in conformance with the rules and procedures adopted by the employing department or licensing or certifying agency, that are in accordance with the California Administrative Procedure Act (APA).”

- An Amendment to the FFBOR provides that if an MOU provides for binding arbitration of administrative appeals, the arbitrator shall serve as the “hearing officer” in accordance with the APA. However, an MOU with binding arbitration does not control the process for administrative appeals with licensing or certifying agencies. Such appeals must adhere to the requirements of the APA.

- Many local jurisdictions already have Civil Service Commissions and procedures which tend to be in accordance with the APA.
Government Code § 3255
Personnel Files (Adverse Comments)

A firefighter shall not have any adverse comments entered in a personnel file (or any other file used for personnel purposes), without the firefighter having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment. If the firefighter has read the instrument and refuses to sign it, that fact shall be noted on the document, signed or initialed by the firefighter, and then the entry may be made.

- **Miller v. Chico Unified School District** (1979) 24 Cal.3d 703 – Under the Education Code, any file used for personnel purposes is a personnel file.
- **Haight v. City of San Diego** (1991) 228 Cal.App.3d 413 – Excludes negative comments in promotional exam. This section does not cover promotional exams.
- **Poole v. Orange County Fire Authority** (2013) – The first Court of Appeal decision interpreting the FFBOR, this case held (consistent with POBR precedent) that adverse entries kept in daily logs at a fire station were subject to the protections of the FFBOR because they were used for personnel purposes. The Fire Authority violated the FFBOR by keeping these daily logs documenting work deficiencies for a period of over 1½ years, without giving the firefighter a copy and an opportunity to respond. The Fire Authority has appealed this decision to the California Supreme Court.
A firefighter shall have **30 days** within which to file a **written response** to any adverse comment entered in his or her personnel file. The written response shall be attached to, and shall accompany, the adverse comment.
Employers must keep Firefighters’ personnel files. Firefighters have the right to inspect their personnel files within a reasonable period of time after making a request, during normal business hours, with no loss of compensation.
If a firefighter believes that any material is mistakenly or unlawfully placed in their personnel file, the firefighter may request, in writing, that the mistaken or unlawful portion be corrected or deleted. Within 30 calendar days of the request, the employer shall either grant the request or notify the firefighter of the refusal to grant the request. If the employer refuses to grant the request, the employer shall state, in writing, the reasons for refusing the request, and that statement shall become part of the personnel file.

**Rosales v. City of Los Angeles** (2000) 82 Cal.App.4th 419 – Despite the confidentiality of peace officer personnel records under Penal Code sections 832.5 and 832.7, no remedy is set forth in the statutes, so there is no right to bring a private lawsuit for disclosure of confidential personnel records. [See also, Fagan v. Superior Court (2003) 111 Cal.App.4th 607]
A Firefighter cannot be compelled to submit to a lie detector test, and refusal to submit cannot be noted or used against the Firefighter.


A Firefighter cannot be required or requested to disclose his or her assets, income, or debts unless required under state law or pursuant to court order.

[This is more restrictive than POBR (Gov. Code section 3308), which provides that a Department can require or request disclosure when required under state law or court order AND/OR when the information “tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the Department to ascertain the desirability of assigning the officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.”]
Your employer cannot search your locker or other space for storage unless you are present, or you consent, or you have been notified that a search will be conducted, or unless a valid search warrant has been obtained.


- **Delia v. City of Rialto** (9th Cir. 2010) 621 F.3d 1069 – Compelled search of firefighter’s home during internal affairs investigation violates 4th Amendment. Thus, an employee has a constitutional right, in the course of an internal affairs investigation, not to be ordered (under the threat of discipline) to consent to a warrantless search of the employee’s home.
Government Code § 3260
Enforcement of this Act

- It is unlawful for the employer to deny or refuse any Firefighter the rights and protections of this Act, and a Firefighter or association may file a lawsuit in superior court alleging violations of this Act.

- The superior court can render injunctive or other extraordinary relief to remedy the violation(s) and to prevent future violations of a like or similar nature. This can include an injunction prohibiting the department from taking any punitive action against the Firefighter.

If the court finds that a department maliciously violated any provision of the Act with the intent to injure the firefighter, the department shall be liable for a civil penalty of up to $25,000, for each violation, in addition to actual damages established, to be awarded to the firefighter whose right or protection was denied and for reasonable attorney’s fees as may be determined by the court.

A court can also issue sanctions and award attorneys fees and expenses against a party filing an action under these sections, if it finds that the action was frivolous or brought in bad faith.
The rights and protections under the Firefighters Procedural Bill of Rights Act only apply to a firefighter during events and circumstances involving the performance of his or her official duties.

- Does this apply to acts only in the course and scope of employment? Would these rights and protections apply to, for example, on-duty, but non work-related activities, like sexual harassment?