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**IS FIREFIGHTER COMPETENCY A DISCIPLINARY ISSUE?**

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*Editor’s Note:* This article is part of a [series of articles](http://lexipol.com/author/curt-varone) in which [Curt Varone](https://www.lexipol.com/author/curt-varone/) will address questions on important fire service legal issues. If you would like to submit a question, please email Shannon Pieper at [spieper@lexipol.com](mailto:spieper@lexipol.com)*.*

**Question**: Is competency a disciplinary issue?

**Answer**: That is a great question. Competency and discipline are distinct issues, but they often become intertwined for a number of reasons. First and most obviously, either may result in a person’s removal from a job. Second, both require a fair and unbiased investigation into the factual circumstances associated with employee behavior. Third, while theoretically distinct, distinguishing between them in real life can be a lot easier said than done.

**The Differences**

Let’s start with the clearest point of distinction: Competency in its purest sense is about whether a person can meet the [minimum requirements of a job](https://www.firerescue1.com/firefighter-training/articles/firefighter-training-and-certifications-understanding-the-many-levels-bEikHYpeVviOiKWy/). While our legal system has developed a number of fanciful expressions to identify the minimum requirements for a job—including terms like essential functions, principal activities, and bona fide occupational qualifications—we will use the more pedestrian term “minimum requirements” to embody all the legally justifiable requirements for a position.

With this in mind, a competency-based evaluation can be distinguished from a [disciplinary investigation](https://www.lexipol.com/resources/blog/fire-department-disciplinary-investigations-formal-or-informal/) because a disciplinary investigation is focused on determining whether a workplace rule has been violated. A competency evaluation looks at the ability of a person to meet the minimum requirements of a job. As such, a person who is incompetent is currently (or perhaps enduringly) unable to meet the minimum requirements in a way that can be objectively verified. It does not depend upon whether a workplace rule was violated.

In this regard, a disciplinary investigation generally looks into an act that has already occurred, although it is possible some investigations may involve ongoing violations. A competency evaluation generally looks into an employee’s current and ongoing ability to meet job requirements, understanding that a past act may have triggered the need for the evaluation.

**The Similarities**

Discipline and competence share a number of similarities. First, both processes benefit greatly from clarity. Clear rules and regulations make enforcement of discipline easier. In a similar way, clear performance requirements make the enforcement of minimum requirements easier.

Unfortunately, many fire departments have put little thought into their disciplinary rules, and even less thought into their minimum job requirements. Of even more concern, some departments have not clearly distinguished between disciplinary rules and minimum job requirements. This lack of clarity opens the door to confusion, which in turn makes dealing with real-life cases unnecessarily difficult. In a world where fire department leaders have their plates full, ensuring clarity is often viewed as being “nice-to-have” until a problem arises, at which point we realize it was actually “need-to-have.”

This explains why fire departments often have to rely upon vague disciplinary grounds like “conduct unbecoming” or “improper conduct” to address problem behavior, while competency-wise struggling to apply the requirements fairly. The lack of clear rules and minimum job requirements can also lead to subjective application, or the perception of subjectiveness, opening the door to allegations of bias. Both suffer from a related paradox: No matter how many clear rules or requirements we establish, there will always be something we failed to address.

A concrete example will hopefully help make this point. An officer complains that one of her firefighters is overweight and unable to meet the physical demands of the job. He is so out of shape that he stands back while other crew members do the physically demanding tasks. He cannot keep up with other crew members while climbing stairs or even walking on flat ground, slowing the crew down. The crew is frustrated and concerned that he will not be able to rescue them should the need arise, and they question whether they will be able to rescue him. The firefighter denies these allegations and contends the officer is picking on him. He claims she is singling him out despite others who are overweight, and creating a hostile work environment. He also claims the other crew members have been harassing him for months and the officer does nothing to stop it.

This example demonstrates just how intertwined discipline and competency can be. Is the firefighter unable to meet the minimum requirements of the job? Has the fire department defined minimum requirements? If the firefighter can meet the minimum requirements, the question becomes is he being lazy and intentionally shirking his duties? If so, it’s a disciplinary matter (assuming the department has a rule that prohibits shirking duties). We also have counter allegations about a hostile work environment and harassment, both disciplinary matters. As should be apparent, competency-related allegations can involve disciplinary concerns, and vice versa.

Another similarity between competency and discipline is that both are inherently about behavior, and as a general rule behavior can be changed. As such, both competency evaluations and disciplinary investigations can lead to performance improvement plans. With competency evaluations, knowledge of the requirements and intent to violate work requirements are not a concern. Rather, we are concerned with the objective ability of the person to meet the specified job requirements. When it comes to discipline, however, we must consider the person’s knowledge, motivation and intent to violate or ignore the rules. This often requires a more [subjective inquiry](https://www.lexipol.com/resources/blog/disciplining-similarly-situated-employees-in-the-fire-service/) that at some point may involve a credibility determination of those with different recollections of a past event.

Let’s apply this to another example: an allegation of carelessness. A recent lawsuit included an allegation that a probationary firefighter failed a training evolution because she dropped an axe twice while on a ladder. Supervisors must determine whether dropping the axe was intentional (a rule violation); due to carelessness (a rule violation); the result of a competency-based reason such as lack of stamina or grip-strength; or due to some other factor (ill-fitting gloves). If the department intends to wash the probationary firefighter out of the academy for competency reasons, we are not concerned with her knowledge, motivation or intent. The question is, does she have the stamina and/or grip strength to complete the task? On the other hand, if she dropped the axe intending to strike another member with whom she had a disagreement previously, we most certainly are concerned with intent. Proving that intent may be a separate challenge, but intent is relevant to whether a rule violation occurred. If the issue is carelessness, the investigation will need to rule out other possible causes for the behavior.

So to wrap up this discussion, competency and discipline are separate concepts that share a number of similarities. However, they must be distinguished in order to be addressed properly. Both can create litigation problems for fire departments that can be avoided through the development of proper disciplinary policies and legally justifiable job requirements. Fire officers should be trained to distinguish between the two, and fire departments must have the capability of investigating both fairly and in an unbiased manner.

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