

REFERENCE TITLE: **firefighters; bill of rights**

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2942

Introduced by
Representatives Hernandez C: Volk, Way

AN ACT

AMENDING TITLE 38, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4; RELATING TO FIREFIGHTERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 38, chapter 8, Arizona Revised Statutes, is amended by adding article 4, to read:

ARTICLE 4. FIREFIGHTERS

38-1181. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "APPEAL" MEANS A HEARING BEFORE A STATE OR LOCAL MERIT BOARD, A SERVICE BOARD, AN ADMINISTRATIVE LAW JUDGE OR A HEARING OFFICER.

2. "DISCIPLINARY ACTION" MEANS THE DISMISSAL, DEMOTION OR
DISMISSAL OF A FIREFIGHTER THAT IS A RESULT OF MISCONDUCT OR
UNSATISFACTORY PERFORMANCE.

3. "EXCUSABLE NEGLECT" MEANS NEGLECT OR INADVERTENCE THAT MIGHT BE THE ACT OF A REASONABLY PRUDENT PERSON UNDER SIMILAR CIRCUMSTANCES.

4. "FIREFIGHTER" MEANS:

(a) A NONPROBATIONARY PROFESSIONAL FIREFIGHTER WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

(b) A FIREFIGHTER WHO WORKS ON BEHALF OF THIS STATE OR A POLITICAL
VISION OF THIS STATE THROUGH AN EMPLOYMENT CONTRACT WITH A PRIVATE
NY.

(c) EMERGENCY MEDICAL SERVICES-CERTIFIED AMBULANCE PERSONNEL EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

5. "GOOD FAITH" MEANS A STATE OF MIND DENOTING HONESTY OF PURPOSE AND ABSENCE OF INTENT TO DEFRAUD AND BEING FAITHFUL TO ONE'S DUTY OR OBLIGATION.

6. "INVESTIGATIVE FILE" MEANS THE EMPLOYER'S COMPLETE INVESTIGATION REPORT AND ANY ATTACHMENTS SUPPORTING THE DISCIPLINARY ACTION, INCLUDING COMPLAINTS, AUDIO RECORDINGS, VIDEO RECORDINGS, PHOTOGRAPHS AND WITNESS STATEMENTS, AS WELL AS ANY EXONERATORY OR MITIGATING EVIDENCE.

7. "JUST CAUSE" MEANS:

(a) THE EMPLOYER INFORMED THE EMPLOYEE OF THE POSSIBLE DISCIPLINARY ACTION RESULTING FROM THE EMPLOYEE'S CONDUCT THROUGH AGENCY MANUALS, EMPLOYEE HANDBOOKS, THE EMPLOYER'S RULES AND REGULATIONS OR OTHER COMMUNICATIONS TO THE EMPLOYEE OR THE CONDUCT WAS SUCH THAT THE EMPLOYEE SHOULD HAVE REASONABLY KNOWN DISCIPLINARY ACTION COULD OCCUR.

(b) THE DISCIPLINARY ACTION IS REASONABLY RELATED TO THE STANDARDS OF CONDUCT FOR A FIREFIGHTER, THE MISSION OF THE AGENCY, THE ORDERLY, EFFICIENT OR SAFE OPERATION OF THE AGENCY OR THE EMPLOYEE'S FITNESS FOR DUTY.

(c) THE DISCIPLINE IS SUPPORTED BY A PREPONDERANCE OF EVIDENCE THAT THE CONDUCT OCCURRED.

(d) THE DISCIPLINE IS NOT EXCESSIVE AND IS REASONABLY RELATED TO THE SERIOUSNESS OF THE OFFENSE AND THE EMPLOYEE'S SERVICE RECORD.

38-1182. Firefighters bill of rights: preemption

THE FIREFIGHTERS BILL OF RIGHTS IS ESTABLISHED. THIS ARTICLE OUTLINES THE MINIMUM RIGHTS GIVEN TO FIREFIGHTERS IN THIS STATE. THIS

1 ARTICLE DOES NOT PREEMPT AGREEMENTS THAT SUPPLEMENT OR ENHANCE THE
2 PROVISIONS OF THIS ARTICLE, INCLUDING WRITTEN AGREEMENTS BETWEEN THE
3 EMPLOYER AND THE FIREFIGHTER OR THE FIREFIGHTER'S LAWFUL REPRESENTATIVE
4 ASSOCIATION.

5 38-1183. Discipline of firefighters

6 A FIREFIGHTER IS NOT SUBJECT TO DISCIPLINARY ACTION EXCEPT FOR JUST
7 CAUSE.

8 38-1184. Internal investigations; notice; employee
9 representative exception

10 A. AN EMPLOYER MUST NOTIFY A FIREFIGHTER OF ANY COMPLAINT ALLEGING
11 THAT THE FIREFIGHTER HAS ENGAGED IN MISCONDUCT WITHIN SEVEN WORKING DAYS
12 AFTER RECEIVING THE COMPLAINT.

13 B. IF AN EMPLOYER INTERVIEWS A FIREFIGHTER IN THE COURSE OF AN
14 ADMINISTRATIVE INVESTIGATION AND THE EMPLOYER OR FIREFIGHTER REASONABLY
15 BELIEVES THAT THE INTERVIEW COULD RESULT IN DISMISSAL, DEMOTION OR
16 SUSPENSION:

17 1. THE FIREFIGHTER MAY REQUEST TO HAVE A REPRESENTATIVE OF THE
18 FIREFIGHTER PRESENT DURING THE INTERVIEW. THE FIREFIGHTER SHALL SELECT A
19 REPRESENTATIVE WHO IS AVAILABLE ON REASONABLE NOTICE SO THAT THE INTERVIEW
20 IS NOT UNREASONABLY DELAYED. UNLESS AGREED TO BY THE EMPLOYER, THE
21 REPRESENTATIVE SHALL NOT BE AN ATTORNEY AND SHALL BE FROM THE SAME AGENCY
22 EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT REASONABLY
23 AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE FIREFIGHTER'S
24 REPRESENTATIVE MAY BE FROM THE FIREFIGHTER'S PROFESSIONAL MEMBERSHIP
25 ORGANIZATION. THE FIREFIGHTER OR THE FIREFIGHTER'S REPRESENTATIVE MAY
26 TAKE NOTES DURING THE INTERVIEW. ANY NOTES TAKEN BY THE FIREFIGHTER OR
27 THE FIREFIGHTER'S REPRESENTATIVE DO NOT CONSTITUTE AN OFFICIAL RECORD OF
28 THE INTERVIEW AND ARE NOT SUBJECT TO DISCLOSURE UNDER PUBLIC RECORDS
29 LAW. THE FIREFIGHTER MAY DISCUSS THE FIREFIGHTER'S INTERVIEW WITH THE
30 FIREFIGHTER'S REPRESENTATIVE OR ATTORNEY. THE FIREFIGHTER WILL BE ALLOWED
31 REASONABLE BREAKS OF LIMITED DURATION DURING ANY INTERVIEW FOR TELEPHONIC
32 OR IN-PERSON CONSULTATION WITH AUTHORIZED PERSONS, INCLUDING AN ATTORNEY,
33 WHO ARE IMMEDIATELY AVAILABLE. AN EMPLOYER MAY NOT DISCIPLINE, RETALIATE
34 AGAINST OR THREATEN TO RETALIATE AGAINST A FIREFIGHTER FOR REQUESTING THAT
35 A REPRESENTATIVE BE PRESENT OR FOR ACTING AS THE REPRESENTATIVE OF A
36 FIREFIGHTER PURSUANT TO THIS PARAGRAPH.

37 2. BEFORE THE COMMENCEMENT OF ANY INTERVIEW DESCRIBED IN THIS
38 SECTION, THE EMPLOYER SHALL PROVIDE THE FIREFIGHTER WITH A WRITTEN NOTICE
39 INFORMING THE FIREFIGHTER OF THE ALLEGED FACTS THAT ARE THE BASIS OF THE
40 INVESTIGATION, THE SPECIFIC NATURE OF THE INVESTIGATION, THE FIREFIGHTER'S
41 STATUS IN THE INVESTIGATION, ALL KNOWN ALLEGATIONS OF MISCONDUCT THAT ARE
42 THE REASON FOR THE INTERVIEW AND THE FIREFIGHTER'S RIGHT TO HAVE A
43 REPRESENTATIVE PRESENT AT THE INTERVIEW. THE EMPLOYER WILL PROVIDE THE
44 FIREFIGHTER WITH A COPY OF THE WRITTEN NOTICE THAT THE FIREFIGHTER MAY
45 RETAIN. ALONG WITH THE NOTICE, THE EMPLOYER WILL PROVIDE ANY RELEVANT AND

1 READILY AVAILABLE MATERIALS, INCLUDING COMPLAINTS THAT CONTAIN THE ALLEGED
2 FACTS, EXCEPT FOR COMPLAINTS THAT ARE FILED WITH THE EMPLOYER AND THAT
3 INCLUDE ALLEGATIONS OF UNLAWFUL DISCRIMINATION, HARASSMENT OR RETALIATION
4 OR COMPLAINTS THAT INVOLVE MATTERS UNDER THE JURISDICTION OF THE UNITED
5 STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. THE FORMAT OF THE
6 MATERIALS MAY BE WRITTEN, AUDIO OR VIDEO.

7 3. IN THE COURSE OF AN ADMINISTRATIVE INVESTIGATION, THE
8 FIREFIGHTER IS ALLOWED TO RECORD THE FIREFIGHTER'S OWN INTERVIEW.
9 RECORDINGS MADE BY THE FIREFIGHTER OR THE FIREFIGHTER'S REPRESENTATIVE DO
10 NOT CONSTITUTE AN OFFICIAL RECORD OF THE INTERVIEW.

11 4. AT THE CONCLUSION OF THE INTERVIEW, THE FIREFIGHTER IS ENTITLED
12 TO A PERIOD OF TIME TO CONSULT WITH THE FIREFIGHTER'S REPRESENTATIVE AND
13 MAY MAKE A STATEMENT NOT TO EXCEED FIVE MINUTES ADDRESSING SPECIFIC FACTS
14 OR POLICIES THAT ARE RELATED TO THE INTERVIEW.

15 C. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO AN INTERVIEW OF A
16 FIREFIGHTER THAT IS EITHER OF THE FOLLOWING:

17 1. PRELIMINARY QUESTIONING BY A SUPERVISOR TO DETERMINE EITHER THE
18 SCOPE OF THE ALLEGATIONS OR IF AN INVESTIGATION IS NECESSARY.

19 2. CONDUCTED DURING THE COURSE OF A CRIMINAL INVESTIGATION.

20 D. IF THE EMPLOYER SEEKS TO IMPOSE DISCIPLINARY ACTION AT THE
21 CONCLUSION OF AN INVESTIGATION, THE EMPLOYER, ON THE FIREFIGHTER'S
22 REQUEST, MUST PROVIDE A SUMMARY OF ANY DISCIPLINE ORDERED WITHIN THE
23 PREVIOUS TWO YEARS AGAINST ANY OTHER FIREFIGHTER EMPLOYED BY THE EMPLOYER
24 FOR THE SAME OR A SIMILAR VIOLATION. AS AN ALTERNATIVE, THE EMPLOYER MAY
25 PROVIDE FILE COPIES OF THE RELEVANT DISCIPLINARY CASES. THE EMPLOYER MAY
26 NOT ORDER DISCIPLINE UNTIL THE BASIC SUMMARY OR FILE COPIES HAVE BEEN
27 PROVIDED.

28 38-1185. Firefighter as witness: right to representation

29 A. IF A FIREFIGHTER IS DESIGNATED AS A WITNESS BY THE FIREFIGHTER'S
30 EMPLOYER IN AN INVESTIGATION THAT COULD LEAD TO DISCIPLINARY ACTION
31 AGAINST ANOTHER FIREFIGHTER, THE WITNESS FIREFIGHTER MAY REQUEST TO HAVE A
32 REPRESENTATIVE PRESENT DURING THE WITNESS INTERVIEW. UNLESS AGREED TO BY
33 THE EMPLOYER, THE REPRESENTATIVE WILL BE FROM THE SAME AGENCY AND WILL NOT
34 BE AN ATTORNEY EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT
35 REASONABLY AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE WITNESS'S
36 REPRESENTATIVE MAY BE FROM THE WITNESS FIREFIGHTER'S PROFESSIONAL
37 MEMBERSHIP ORGANIZATION. THE REPRESENTATIVE MAY TAKE NOTES DURING THE
38 INTERVIEW. ANY NOTES TAKEN BY THE FIREFIGHTER OR THE WITNESS FIREFIGHTER'S
39 REPRESENTATIVE DO NOT CONSTITUTE AN OFFICIAL RECORD OF THE INTERVIEW AND
40 ARE NOT SUBJECT TO DISCLOSURE UNDER PUBLIC RECORDS LAW.

41 B. THE WITNESS FIREFIGHTER SHALL ANSWER ALL QUESTIONS ASKED BY THE
42 INVESTIGATOR. INFORMATION LEARNED DURING A WITNESS INTERVIEW IS CONSIDERED
43 PROPRIETARY AND CONFIDENTIAL BY THE EMPLOYER AND REMAINS SO UNTIL THE
44 WITNESS FIREFIGHTER IS RELEASED FROM THE CONFIDENTIALITY REQUIREMENTS OF
45 THIS SECTION.

C. IF, DURING A WITNESS INTERVIEW, AN INVESTIGATOR DISCOVERS INFORMATION THAT THE WITNESS MAY HAVE ENGAGED IN MISCONDUCT, THE INVESTIGATOR MUST END THE INTERVIEW AND ISSUE A NOTICE OF INVESTIGATION BEFORE CONTINUING.

D. THE WITNESS FIREFIGHTER MAY DISCUSS THE FIREFIGHTER'S WITNESS INTERVIEW WITH THE FIREFIGHTER'S REPRESENTATIVE OR LEGAL COUNSEL.

38-1186. Appeal of disciplinary actions; transcripts; change of hearing officer or administrative law judge; burden of proof; final disposition report; exception

A. FIREFIGHTERS HAVE THE RIGHT TO APPEAL DISCIPLINARY ACTION IMPOSED AGAINST THEM BY THEIR EMPLOYER.

B. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A FIREFIGHTER, THE PARTIES SHALL COOPERATE WITH EACH OTHER, ACT IN GOOD FAITH AND EXCHANGE COPIES OF ALL RELEVANT DOCUMENTS AND A LIST OF ALL WITNESSES PURSUANT TO THE FOLLOWING TIME PERIODS AND REQUIREMENTS:

1. WITHIN FOURTEEN CALENDAR DAYS AFTER THE EMPLOYER'S RECEIPT OF A WRITTEN REQUEST FROM THE FIREFIGHTER FOR A COPY OF THE INVESTIGATIVE FILE THAT IS ACCOMPANIED BY A COPY OF THE FILED NOTICE OF APPEAL, THE EMPLOYER MUST PROVIDE A COMPLETE COPY OF THE INVESTIGATIVE FILE AS WELL AS THE NAMES AND CONTACT INFORMATION FOR ALL PERSONS INTERVIEWED DURING THE COURSE OF THE INVESTIGATION.

2. NOT LATER THAN FOURTEEN CALENDAR DAYS BEFORE THE APPEAL HEARING, THE PARTIES SHALL PRODUCE AND SERVE ON EVERY PARTY THE FOLLOWING INFORMATION:

(a) THE NAME OF EACH WITNESS WHOM THE DISCLOSING PARTY EXPECTS TO CALL AT THE APPEAL HEARING, WITH A DESIGNATION OF THE SUBJECT MATTER ON WHICH EACH WITNESS MIGHT BE CALLED TO TESTIFY. A WITNESS MAY DECLINE AN INTERVIEW. THE PARTIES SHALL NOT INTERFERE WITH ANY DECISION OF A WITNESS REGARDING WHETHER TO BE INTERVIEWED. AN EMPLOYER MAY NOT DISCIPLINE, RETALIATE AGAINST OR THREATEN TO RETALIATE AGAINST ANY WITNESS FOR AGREEING TO BE INTERVIEWED OR FOR TESTIFYING OR PROVIDING EVIDENCE IN THE APPEAL.

(b) THE NAME AND CONTACT INFORMATION OF EACH PERSON WHO HAS GIVEN STATEMENTS, WHETHER WRITTEN OR RECORDED OR SIGNED OR UNSIGNED, REGARDING MATTERS RELEVANT TO THE NOTICE OF DISCIPLINE AND THE CUSTODIAN OF THE COPIES OF THOSE STATEMENTS.

(c) COPIES OF ANY DOCUMENTS THAT MAY BE INTRODUCED AT THE HEARING AND THAT HAVE NOT PREVIOUSLY BEEN DISCLOSED.

3. THE DUTY TO DISCLOSE INFORMATION CONTINUES TO EXIST THROUGHOUT THE PROCESS AND UP TO THE END OF THE APPEAL PROCESS.

C. IT IS UNLAWFUL FOR A PERSON TO DISSEMINATE INFORMATION THAT IS DISCLOSED PURSUANT TO SUBSECTION B OF THIS SECTION TO ANY PERSON OTHER THAN THE PARTIES TO THE APPEAL AND THEIR LAWFUL REPRESENTATIVES FOR PURPOSES OF THE APPEAL OF THE DISCIPLINARY ACTION. THIS SUBSECTION DOES

1 NOT PROHIBIT THE USE OF THE INFORMATION IN THE HEARING OR DISCLOSURE
2 PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2.

3 D. IF A TRANSCRIPT IS REQUIRED IN AN ADMINISTRATIVE HEARING, THE
4 EMPLOYER SHALL OBTAIN THE TRANSCRIPT AND PROVIDE A COPY TO THE
5 FIREFIGHTER, AT NO COST TO THE FIREFIGHTER, WITHIN TEN CALENDAR DAYS AFTER
6 THE EMPLOYER'S RECEIPT OF THE TRANSCRIPT.

7 E. FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION B OR C OF
8 THIS SECTION SHALL RESULT IN THE EXCLUSION OF THE WITNESS, EVIDENCE OR
9 TESTIMONY, UNLESS THE FAILURE TO COMPLY IS BECAUSE OF EXCUSABLE NEGLECT.

10 F. THE EMPLOYER OR THE FIREFIGHTER MAY SEEK A DETERMINATION BY THE
11 HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD HEARING THE
12 APPEAL REGARDING ANY EVIDENCE THAT THE EMPLOYER OR THE FIREFIGHTER
13 BELIEVES SHOULD NOT BE DISCLOSED PURSUANT TO SUBSECTION B OF THIS SECTION
14 BECAUSE THE RISK OF HARM INVOLVED IN DISCLOSURE OUTWEIGHS ANY USEFULNESS
15 OF THE DISCLOSURE IN THE HEARING. IN DETERMINING WHETHER EVIDENCE WILL BE
16 DISCLOSED, THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
17 MAY PERFORM AN IN CAMERA REVIEW OF THE EVIDENCE AND MAY DISCLOSE THE
18 MATERIAL SUBJECT TO ANY RESTRICTION ON THE DISCLOSURE, INCLUDING THE
19 CLOSING OF THE HEARING OR THE SEALING OF THE RECORDS, THAT THE HEARING
20 OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD FINDS NECESSARY UNDER
21 THE CIRCUMSTANCES.

22 G. IN ANY APPEAL OF A DISCIPLINARY ACTION BY A FIREFIGHTER IN WHICH
23 A SINGLE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE HAS BEEN APPOINTED TO
24 CONDUCT THE APPEAL HEARING, THE FIREFIGHTER, WITHIN TEN CALENDAR DAYS
25 AFTER THE APPOINTMENT OF THE HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE,
26 MAY REQUEST A CHANGE OF HEARING OFFICER OR ADMINISTRATIVE LAW JUDGE.

27 H. THE EMPLOYER HAS THE BURDEN OF PROOF IN AN APPEAL OF A
28 DISCIPLINARY ACTION BY A FIREFIGHTER.

29 I. THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
30 SHOULD TAKE INTO CONSIDERATION VIOLATIONS OF THIS ARTICLE AS MITIGATION IN
31 DETERMINING DISCIPLINE.

32 J. EXCEPT WHERE A STATUTE, RULE OR ORDINANCE MAKES THE
33 ADMINISTRATIVE EVIDENTIARY HEARING THE FINAL ADMINISTRATIVE DETERMINATION
34 AND AFTER A HEARING IN WHICH THE FIREFIGHTER AND THE EMPLOYER HAVE BEEN
35 EQUALLY ALLOWED TO CALL AND EXAMINE WITNESSES, CROSS-EXAMINE WITNESSES,
36 PROVIDE DOCUMENTARY EVIDENCE AND OTHERWISE FULLY PARTICIPATE IN THE
37 HEARING, AN EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER MAY
38 AMEND, MODIFY, REJECT OR REVERSE THE PORTION OF A DECISION MADE BY A
39 HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD THAT WAS
40 ARBITRARY OR WITHOUT REASONABLE JUSTIFICATION. THE EMPLOYER OR PERSON
41 ACTING ON BEHALF OF THE EMPLOYER SHALL STATE THE REASON FOR THE AMENDMENT,
42 MODIFICATION, REJECTION OR REVERSAL.

43 K. A FIREFIGHTER WHO PREVAILS IN AN APPEAL WHERE A TERMINATION HAS
44 BEEN REVERSED SHALL BE AWARDED RETROACTIVE COMPENSATION FROM THE DATE OF
45 THE FIREFIGHTER'S SEPARATION TO THE DATE OF REINSTATEMENT. THE HEARING

1 OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD HEARING THE APPEAL WILL
2 DETERMINE THE AMOUNT OF RETROACTIVE COMPENSATION AWARDED, ACCOUNTING FOR
3 ANY REDUCTION DUE TO THE FOLLOWING:

4 1. IF THERE IS UNDUE DELAY IN SETTING OR CONDUCTING A HEARING
5 CAUSED BY THE FIREFIGHTER OR THE FIREFIGHTER'S REPRESENTATIVE.

6 2. IF THERE EXISTS A PERIOD BETWEEN SEPARATION AND REINSTATEMENT
7 THAT THE FIREFIGHTER WOULD HAVE BEEN UNABLE TO PERFORM THE DUTIES OF A
8 FIREFIGHTER.

9 3. IF THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS
10 BOARD FINDS THAT THE FIREFIGHTER'S ACTIONS WARRANT SUSPENSION OR DEMOTION.

11 L. WITHIN THIRTY DAYS AFTER TAKING FINAL ACTION IN AN APPEAL, THE
12 ADMINISTRATIVE LAW JUDGE, HEARING OFFICER OR PRESIDING AUTHORITY MUST
13 PROVIDE A FINAL DISPOSITION REPORT TO THE EMPLOYER THAT INITIATED OR
14 IMPOSED THE DISCIPLINE THAT INCLUDES A STATEMENT OF WHETHER JUST CAUSE
15 EXISTED FOR THE DISCIPLINARY ACTION, THE FINAL DECISION AS TO THE
16 DISCIPLINARY ACTION, ALL FINDINGS OF FACT AND CONCLUSIONS OF LAW
17 SUPPORTING THE DECISION AND ANY AWARD OF BACK PAY.

18 M. AN EMPLOYER THAT RECEIVES A FINAL DISPOSITION REPORT SHALL
19 INCLUDE THE FINAL DISPOSITION REPORT IN THE EMPLOYER'S ORIGINAL
20 INVESTIGATION RECORD.

21 38-1187. Superior court review hearing; remedy

22 A. IF A FIREFIGHTER IS DEMOTED OR TERMINATED AS THE RESULT OF AN
23 EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER REVERSING THE
24 DECISION OR RECOMMENDATION OF A HEARING OFFICER, ADMINISTRATIVE LAW JUDGE
25 OR APPEALS BOARD WHERE THE FINDING STATES THAT THERE WAS NO JUST CAUSE FOR
26 THE DEMOTION OR TERMINATION, THE FIREFIGHTER MAY BRING AN ACTION IN
27 SUPERIOR COURT FOR A HEARING DE NOVO ON THE DEMOTION OR TERMINATION.

28 B. IF A FIREFIGHTER IS DEMOTED OR TERMINATED BY AN EMPLOYER OR A
29 PERSON ACTING ON BEHALF OF AN EMPLOYER WHERE THERE IS NO HEARING OFFICER,
30 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD TO REVIEW THE DEMOTION OR
31 TERMINATION, THE FIREFIGHTER MAY BRING AN ACTION IN SUPERIOR COURT TO
32 REVIEW THE EMPLOYER'S FILE. IF THE COURT FINDS FROM A REVIEW OF THE FILE
33 THAT THERE WAS NO JUST CAUSE FOR THE DEMOTION OR TERMINATION, THE
34 FIREFIGHTER IS ENTITLED TO A HEARING DE NOVO ON THE DEMOTION OR
35 TERMINATION.

36 C. IF THE SUPERIOR COURT FINDS THAT JUST CAUSE FOR A DEMOTION OR
37 TERMINATION DID NOT EXIST, THE COURT SHALL ORDER THE FIREFIGHTER
38 REINSTATED TO THE FIREFIGHTER'S PREVIOUS POSITION WITH THE EMPLOYER AND
39 SHALL AWARD MONETARY DAMAGES NOT TO EXCEED THE FIREFIGHTER'S COMBINED
40 TOTAL OF WAGES AND BENEFITS DURING THE PERIOD OF IMPOSED DISCIPLINARY
41 ACTION.

42 D. AN ACTION PURSUANT TO SUBSECTION A OR B OF THIS SECTION SHALL BE
43 COMMENCED WITHIN THIRTY-FIVE CALENDAR DAYS AFTER A COPY OF THE DECISION
44 SOUGHT TO BE REVIEWED IS SERVED ON THE FIREFIGHTER.

1 E. IN AN ACTION PURSUANT TO SUBSECTION A OR B OF THIS SECTION THE
2 COURT MAY AWARD THE SUCCESSFUL PARTY REASONABLE ATTORNEY FEES AS SET FORTH
3 IN SECTION 12-341.01, SUBSECTION B AND SHALL AWARD THE SUCCESSFUL PARTY
4 ALL COSTS PURSUANT TO SECTION 12-341.

5 38-1188. Confidentiality of records

6 A. AN EMPLOYER MAY NOT INCLUDE IN THAT PORTION OF THE PERSONNEL
7 FILE OF A FIREFIGHTER THAT IS AVAILABLE FOR PUBLIC INSPECTION AND COPYING
8 ANY INFORMATION ABOUT AN INVESTIGATION UNTIL THE INVESTIGATION IS COMPLETE
9 OR THE EMPLOYER HAS DISCONTINUED THE INVESTIGATION.

10 B. IF THE FIREFIGHTER HAS TIMELY APPEALED A DISCIPLINARY ACTION,
11 THE INVESTIGATION IS NOT COMPLETE UNTIL THE CONCLUSION OF THE APPEAL
12 PROCESS.

13 38-1189. Time limit on disciplinary action against
14 firefighter; notice of findings; exceptions

15 A. AN EMPLOYER SHALL MAKE A GOOD FAITH EFFORT TO COMPLETE ANY
16 INVESTIGATION OF EMPLOYEE MISCONDUCT WITHIN ONE HUNDRED EIGHTY CALENDAR
17 DAYS AFTER THE EMPLOYER RECEIVES NOTICE OF THE ALLEGATION BY A PERSON
18 AUTHORIZED BY THE EMPLOYER TO INITIATE AN INVESTIGATION OF THE MISCONDUCT.
19 THE INVESTIGATION IS CONSIDERED COMPLETE ON THE DATE THE EMPLOYEE IS
20 SERVED WITH THE NOTICE OF DISCIPLINE OR THE NOTICE OF FINDINGS. THE
21 EMPLOYER MAY CONTINUE THE INVESTIGATION BEYOND THE ONE HUNDRED EIGHTY
22 CALENDAR DAY PERIOD ONLY IF IT IS DEMONSTRATED THAT ADDITIONAL TIME IS
23 NECESSARY TO OBTAIN OR REVIEW EVIDENCE. BEFORE THE EMPLOYER EXCEEDS THE
24 ONE HUNDRED EIGHTY CALENDAR DAY LIMIT, THE EMPLOYER MUST PROVIDE THE
25 EMPLOYEE WITH A WRITTEN EXPLANATION OF THE REASONS THE INVESTIGATION NEEDS
26 TO CONTINUE BEYOND ONE HUNDRED CALENDAR DAYS. EXCEPT AS PROVIDED IN
27 SUBSECTION D OF THIS SECTION, ANY EXTENSION MAY NOT EXCEED ONE HUNDRED
28 EIGHTY CALENDAR DAYS. SUBJECT TO THE CONDITIONS IN SUBSECTION B OF THIS
29 SECTION, IF THE INVESTIGATION IS NOT COMPLETE AT THE CONCLUSION OF THE
30 EXTENSION PERIOD, IT WILL BE DISMISSED.

31 B. THE TIME LIMIT SET FORTH IN SUBSECTION A DOES NOT PRECLUDE THE
32 EMPLOYER FROM INITIATING A NEW INVESTIGATION OF THE EMPLOYEE FOR
33 MISCONDUCT ON NEWLY DISCOVERED MATERIAL EVIDENCE THAT COULD NOT WITH
34 REASONABLE DILIGENCE HAVE BEEN DISCOVERED DURING THE INITIAL ONE HUNDRED
35 CALENDAR DAY LIMIT OR ANY EXTENSION.

36 C. IF, IN THE COURSE OF AN INVESTIGATION INVOLVING MULTIPLE
37 FIREFIGHTERS, EVIDENCE IS DISCOVERED THAT EXONERATES THE FIREFIGHTER OR
38 FAILS TO SUSTAIN ANY WRONGDOING, THE EMPLOYER SHALL ISSUE THE INDIVIDUAL
39 FIREFIGHTER A NOTICE OF FINDINGS. THE EMPLOYER MAY CONTINUE TO ORDER THE
40 FIREFIGHTER NOT TO DISCUSS OR DISCLOSE ANY INFORMATION REGARDING THE
41 INVESTIGATION EXCEPT TO THE FIREFIGHTER'S LEGAL COUNSEL, SPOUSE,
42 REPRESENTATIVE OR MEDICAL PROVIDER.

43 D. THE TIME LIMIT PERIOD ESTABLISHED BY SUBSECTION A OF THIS
44 SECTION:

1 1. IS SUSPENDED DURING THE TIME THAT ANY CRIMINAL INVESTIGATION OR
2 PROSECUTION IS PENDING IN CONNECTION WITH THE ACT, OMISSION OR OTHER
3 ALLEGATION OF MISCONDUCT.

4 2. IS SUSPENDED DURING THE PERIOD OF TIME IN WHICH A FIREFIGHTER
5 WHO IS INVOLVED IN THE INVESTIGATION IS INCAPACITATED OR OTHERWISE
6 UNAVAILABLE.

7 3. MAY BE SUSPENDED FOR A PERIOD PRESCRIBED IN A WRITTEN WAIVER OF
8 THE LIMIT BY THE FIREFIGHTER.

9 4. MAY BE SUSPENDED FOR EMERGENCIES OR NATURAL DISASTERS DURING THE
10 TIME PERIOD IN WHICH THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY WITHIN
11 THE JURISDICTIONAL BOUNDARIES OF THE CONCERNED EMPLOYER.

12 5. IN A MULTIJURISDICTIONAL INVESTIGATION, MAY BE EXTENDED FOR A
13 PERIOD OF TIME REASONABLY NECESSARY TO FACILITATE THE COORDINATION OF THE
14 EMPLOYERS INVOLVED.

15 E. ON AN APPEAL OF DISCIPLINE BY THE EMPLOYEE, A HEARING OFFICER,
16 ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD SHALL DISMISS THE DISCIPLINE IF
17 IT IS DETERMINED THAT THE EMPLOYER DID NOT MAKE A GOOD FAITH EFFORT TO
18 COMPLETE THE INVESTIGATION WITHIN ONE HUNDRED EIGHTY CALENDAR DAYS OR ANY
19 EXTENSION. THE ALLEGATION REGARDING ANY ACT, OMISSION OR OTHER MISCONDUCT
20 MAY BE SUSTAINED AND THE EMPLOYEE'S RECORD SHALL REFLECT THAT THE
21 ALLEGATION WAS SUSTAINED BUT NO DISCIPLINE WAS ADMINISTERED DUE TO THE
22 FINDING OF THE HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD
23 THAT THE EMPLOYER DID NOT MAKE A GOOD FAITH EFFORT TO COMPLETE THE
24 INVESTIGATION IN ONE HUNDRED EIGHTY CALENDAR DAYS OR ANY EXTENSION. THE
25 SUSTAINED DISCIPLINE MAY BE CONSIDERED WHEN DETERMINING DISCIPLINE IN ANY
26 FUTURE SUSTAINED MISCONDUCT ALLEGATION. IF THE EMPLOYER DETERMINES THAT
27 DISCIPLINARY ACTION IS APPROPRIATE, THE EMPLOYER SHALL COMPLETE THE
28 EMPLOYER'S INVESTIGATION AND GIVE NOTICE IN WRITING TO THE FIREFIGHTER OF
29 THE EMPLOYER'S INTENT TO PROCEED WITH DISCIPLINARY ACTION, ALONG WITH A
30 PROPOSAL OF THE SPECIFIC ACTION SOUGHT, INCLUDING LENGTH OF SUSPENSION, IF
31 APPLICABLE.