

Physical Fitness in Public Safety

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Physical Fitness in Public Safety

Reference Number: MTAS-1210

Cities are not required by federal or state laws to administer pre-employment medical examinations or physical ability tests for firefighters or police officers. Even the Occupational Safety and Health Administration Respiratory Protection Standard does not require a complete medical examination for firefighters, but does require a medical questionnaire, medical screening, and fit test to determine if a firefighter can wear a respirator. Cities may administer medical examinations or physical ability tests so long as the tests do not have an adverse impact on a protected class (42 U.S.C., Section 2000 e-(h)). A protected class would be persons protected by the Federal Civil Rights Act by virtue of their age, race, color, religion, sex, or national origin or the Americans with Disabilities Act.

The National Fire Protection Association (NFPA) develops consensus standards relating to aspects of the fire service. These consensus standards are not law but they are a nationally recognized standard that outline best practices. More specifically, NFPA 1582 Standard on Comprehensive Occupational Medical Program for Fire Departments sets a framework for pre-hire and incumbent members of the fire service.

NFPA 1582 Chapter I of the standard addresses the administration of the standard. Chapter I specifies that this standard is applicable to public, governmental, military, private, and industrial fire department organizations providing rescue, fire suppression, emergency medical services, hazardous materials mitigation, special operations, and other emergency services.

NFPA 1582 Chapter 6 of the standard addresses Medical Evaluations of Candidates. The standard specifies that a medical evaluation of a candidate shall be conducted prior to the candidate being placed in training programs or fire department emergency response activities.

NFPA 1582 Chapter 7 of the standard addresses the Occupational Medical Evaluation of Members (incumbent). The standard specifies that medical evaluations shall be conducted as a baseline for surveillance and annually thereafter.

Physical Agility versus Ability

Reference Number: MTAS-1211

The terms physical ability and physical agility are commonly used interchangeably. Webster's Dictionary defines agile, or agility, as being able to move quickly and easily; nimble; mentally alert. Physical ability, on the other hand, is defined as the physical, mental, financial, or legal power to perform; a natural or acquired skill or talent. This report uses physical ability in conjunction with physical fitness for a firefighter and physical agility for testing police officers, where moving quickly or easily may be more job task related.

Need for Physical Ability Testing

Reference Number: MTAS-1212

Physical fitness in public safety is a concern for city governments. Much of a police officer's and a firefighter's shift is filled with driving, report writing, and other duties that do not routinely require a great deal of physical exercise. In emergency situations, the sedentary work environment of the officer or firefighter changes immediately to one of high stress, requiring tremendous physical exertion that often results in exhaustion. In a Tennessee city, a highly respected police officer suffered a fatal heart attack while engaging in foot pursuit of a suspect. This incident is not unique to that city and should make all cities more aware of the need to protect the public's safety as well as the lives of police and firefighters.

Physical ability is important for police officers and firefighters because they need sufficient strength, endurance and aerobic capacity. Many studies have shown that the more physically fit officers and firefighters are and feel, the more self-assured and happy they are with themselves. By continuing a physical fitness training program, an officer or firefighter can sustain job enthusiasm, improved

self-control, and total performance. Pre-employment health screening reduces new hire injuries by as much as one-third. It is estimated that current employee health screening also results in a one-third reduction in injuries. While a city's primary concern should always be the health and safety of the public and the firefighter or police officer, policies that can significantly reduce worker's compensation claims and expense should also be of great concern for cities.

Cities should promote a culture of physical fitness for police officers and firefighters, encouraging them to stay fit and exercise regularly. Many cities provide incentives for officers and firefighters, such as providing free weights and workout/exercise machines in locker rooms or providing free memberships to local gyms or athletic centers. Many fire departments allow firefighters to engage in physical fitness activities while on-duty. The Insurance Services Office (ISO), the agency that rates community fire protection, will allow training credit for physical fitness activities under Section 580B, company training, of the Fire Suppression Rating Schedule.

Physical Testing for Fire

Reference Number: MTAS-1215

The fire management consultants with the UT Municipal Technical Advisory Service (MTAS), have noted that one of the biggest problems in fire service today is that in too many instances firefighters are allowed to remain on the job even when they are medically and physically unable to perform the essential functions of the job. The same can be said for police officers who may be physically unable to perform the essential functions of their jobs.

Municipalities and fire departments have NFPA 1583: *Standard on Health-Related Fitness Programs for Fire Department Members* [1] to use as a guide for establishing a physical fitness program. NFPA 1583 establishes the minimum requirements for the development, implementation, and management of a health-related fitness program (HRFP) for members of the fire department involved in emergency operations.

It should be a matter of public policy that every police and fire department takes appropriate measures to significantly reduce deaths that may be related to stressful occupations. It also should be obvious to every local government decision maker that a physically able firefighter or officer is the best way to protect the health and safety of the public and the life of the firefighter or officer sworn to carry out his public safety responsibilities. Let us take a look at the reluctance of many cities to deal with physical ability for police and firefighters.

Expense of Physical Ability/Agility Testing

Reference Number: MTAS-1216

Unfortunately many local decision makers look at the expense of physical ability testing in terms of the number of police and firefighters serving the city times the individual cost of administering a medical examination. As an example, a police department with 20 officers times \$400 each for medical examinations represents an expenditure of \$8,000 annually, and an equal number of firefighters would represent another \$8,000 annually, for a total of \$16,000 for medical examinations. It is "penny wise and pound foolish" to view this expense as \$18,000 for the examinations and their is no cost for not administering the examinations. The long-term cost for not administering the examinations may be added expense for insurance premiums, adverse court decisions costing much more than the cost of administering tests, increased worker's compensation, increased overtime pay, and perhaps long-term disability or death of its valuable employees.

Fitness and Training Used to Purge Old Timers

Reference Number: MTAS-1217

Police officers with lengthy service often express the opinion that a physical ability program is nothing more than an effort to replace the old timers with younger officers. This criticism may be well founded in some cities, when a local elected official begins to look around and notices fit and trim young officers as

well as older officers, who may be overweight and exhibit a sedentary life style. A little talk around city hall expressing this criticism will almost certainly make it back to the subjects of the criticism, and then the policy issue has been reduced to a "they are out to get us issue."

It is natural that an officer who has considerable years of service, maybe 20+ years with the department, and who needs 30 years of service to retire with full benefits, would feel uneasy about an effort to begin requiring that all officers be required to undergo an annual medical examination and demonstrate that they can run a mile or mile and one-half in a certain time period, do sit ups, pull ups, and other types of physical ability tests. Failure to pass the ability test may result in the officer losing his/her job. It should be recognized that a long time police officer, who is 52 years of age is not expected to be as physically fit as a 31-year-old officer. The older officer should, however, be able to perform the essential functions of the job.

A major obstacle to physical testing and training is to convince police officers and firefighters, who may have considerable political influence with the elected officials, that physical fitness and physical training is about protecting the health and safety of the public and the lives of the officers and firefighters and not about unreasonably terminating an employee because he/she cannot pass a medical exam or physical ability test. One way to overcome this concern is to develop a physical ability program that requires the participation of every officer and firefighter, a program that provides an individualized fitness program tailored to each officer or firefighter, and then give a reasonable time frame to meet basic physical ability requirements. In large departments, officers may be transferred to desk jobs where they are not required to respond to emergencies. In smaller departments this is much more difficult, because there are not many desk jobs in small departments. There is, however, the opportunity to transfer officers, who cannot meet the basic physical ability requirements of the job, to another department of the city. Employees who cannot perform the physical requirements of the job should be given reasonable time and assistance to improve their physical capabilities so they can perform the physical requirements of the job and pass the test.

Fitness Tests Must Be Fair and Job Related

Reference Number: MTAS-1218

In a summer 1999 issue of *Public Personnel Management*, Dan Biddle and Nikki Shepard Sill point out that physical ability tests have undergone much scrutiny in the courts since the 1970's and that a recent survey of court-disputed police and fire physical ability tests showed a successful defense rate of less than 10 percent. With less than a 10 percent success rate, it is not advisable for a city government to set up physical examination and fitness standards arbitrarily, draw a line in the sand, and insist that employees who fail the examination and do not meet the standards must lose their job. It is important to note that cities can develop criteria or standards for medical examinations and physical testing that are job related, and if the testing is task related, the probability of successful defense in the event of a court challenge should be considerably improved.

Since passage of the Americans with Disabilities Act in 1990, medical screening decisions and recommendations must be based on an individual evaluation of the applicant and the actual tasks, physical demands, and working conditions under which the job is performed. It is very difficult to develop and implement a successful physical ability program that is fair to women and minorities. According to Biddle and Sill, physical testing scores that are too lax endanger public safety and those that are too strict may unduly penalize qualified individuals, as well as reduce the payoff to society of having experienced incumbents in these jobs. Setting standards too high could also subject the city to expensive and time-consuming litigation.

Title VII of the Federal Civil Rights Act (42 U.S.C. Section 2000e-2(h)) states that it is not discriminatory employment practice when a professionally developed ability test is administered, as long as that test does not have an adverse impact on a protected class.

The act also prohibits the use of different cut-off scores or any other adjustments based upon race, color, religion, sex or national origin.

Numerous federal regulations have been promulgated to define what is an acceptable ability test. 29 C.F.R. Part 1607, Uniform Guidelines on Employee Selection Procedures provides that if an ability test has a potential for an adverse impact on a protected class, then there must be proof of that test's validity. Physical ability tests must be content validated; it must be demonstrated that the selection

procedure is representative of important aspects of performance on the job, for which the officers are to be evaluated. It should be clear that an individual who takes and passes a physical examination can do the job, and an individual who fails to pass the examination cannot do the job.

A medical examination should be part of a physical fitness test. Normally a city will require police officers and firefighters to undergo a medical examination as part of the initial employment process. The applicant, who has been made a tentative job offer, subject to passing the medical examination, is simply sent to a medical doctor with instructions that he/she is to be given a medical examination. A medical examination that is not job related is not adequate. A pass or fail on a medical examination where the doctor has no idea as to the physical or mental job requirements would be questionable. Some responsible city official—police chief, fire chief, human resources department, city manager/administrator, or mayor—should instruct the medical doctor that the purpose of the medical examination is so the doctor can determine if the applicant has the physical ability to meet the essential functions of the job. These essential functions should be communicated to the medical doctor.

- MTAS does not recommend differentiating test scores among males and females. In other words, a city should not establish 80 as a passing score for males and 60 for females. A male applicant who makes 78 on the test and fails by two points, could not become a police officer or a firefighter. A female could make 60 on the test and would be qualified as a police officer or firefighter. Cities are, however, cautioned that the passing score should relate to business necessity.
- If business necessity requires that police officers and firefighters are required to make a certain score in order to perform the job, then all police officers and firefighters should be required to take the test and achieve the required test score.
- It is not advisable to test new applicants and not test current employees. A strategy that might be successful in developing and implementing physical testing for police and fire would be for cities to form a consortium and contribute financially to employ a reputable testing company to develop physical testing. A highly professional testing company would be more likely to prevail if challenged in court.
- MTAS strongly recommends consulting with your MTAS consultant or city attorney prior to adopting a test or policy on fitness, inasmuch as this area of the law may have highly technical areas that may increase liability for municipalities. Also, contact with the Tennessee Peace Officer Standards and Training Commission (<http://tn.gov/commerce/section/post-peace-officer-standards-training-commission> [2]) may be helpful.

Links:

[1] <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1583>

[2] <http://tn.gov/commerce/section/post-peace-officer-standards-training-commission>

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