

Most Common Sources of Police Liability/Injuries

Liability

Stops

Arrests

Searches

Forced entries

Use of force

Pursuit/Emergency

Driving

Injuries

Assaults (attacks, fights)

Car accidents (driving, seat belts)

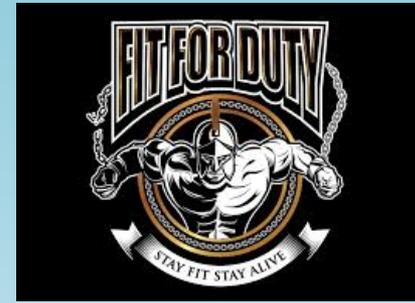
Over-exertion (fitness)

Stress (fitness)

Officer (UN)Fitness



Why it matters?



A law enforcement officer who is unfit and has an additional risk factor has a 6.6% higher probability of developing coronary disease.

Average cost to a City of an in-service heart attack is between \$400,000 and \$700,000.

For every \$1 invested in a fitness/wellness program, the return ranges from \$2 to \$5 in the form of reduced injuries, lost time, etc.

Smith, J.E., and G. G. Tooker. 2005 "Health and Fitness in Law Enforcement: A voluntary model program response to a critical issue." CALEA Update Magazine 87.

Of the 23 officers who have died in the line of duty from a heart attack so far in 2015 and 2016, only 5 were over the age of 50.

Municipal Liability?

Parker v DC (1988) 850 F.2d 708 (DC Circuit), cert denied.

Officer shot Parker, who was breaking into a car, in the back because he could not physically subdue him. Parker survived but was paralyzed.

Officer had not had physical fitness training in 4 years.

MSJ Denied.

Municipal Liability?

“Given the officer’s physical condition it is not hard to fathom that his most effective means of subduing the objects of his pursuits would be the use of a firearm as opposed to the application of physical force. Officer Hayes was simply not in adequate shape. This condition posed a foreseeable risk to others. A fair minded jury could have concluded that Officer Hayes’ conduct was the result of the deliberate indifference on the part of the District with respect to the physical training of its police officers”.

Fitness Programs

Considerations for developing a fitness program

1. Mandatory vs. Voluntary

(caution – voluntary programs with incentives such as pay can be viewed as punitive)

2. Gender/age norming





Judge Rules FBI Fitness Test Biased Against Men Suburban Man Sued After Failing Test To Become Special Agent By Single Pushup

Chicago Tribune - June 14, 2014

Jay Bauer, 40, an intelligence analyst for the FBI in Chicago, sued the agency in 2012. The Northwestern University graduate had passed an initial fitness test and scored at or near the top of his class during new-agent training in Quantico, Va., according to the lawsuit.

But the Mount Prospect man failed a final fitness exam at the FBI Academy, completing 29 of the required 30 untimed pushups. Female trainees are required to do at least 14 untimed pushups, according to the lawsuit.

Attorneys for the FBI had argued that the test was not discriminatory and simply reflected physiological differences between men and women. U.S. District Judge T.S. Ellis III in Virginia wrote last week that despite obvious gender differences, the FBI had failed to prove that the fitness test was an adequate measure of job skills, such as the ability to restrain a fleeing suspect.

Bauer v. Holder, 25 F. Supp. 3d 842

Overtured by the 4th Circuit, September 15, 2015

UNFIT for DUTY?





BIG STORY AT 6:00

TRAINING TAPES



KETV



Best Practices

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1. Identify what abilities are essential to do the job.
INCLUDE THIS INFORMATION IN JOB DESCRIPTIONS.
2. Ensure your fitness assessment assesses those essential abilities. Don't just count push ups. If those standards cannot be met, allow for skills testing.
3. Set the baseline for passing at that minimum level that everyone has to meet.
4. Incentivize higher levels of fitness.



What about the Americans With Disabilities Act?

“The ADA does not require an employer to relieve an employee of any essential function of his or her job, modify those duties, reassign existing employees to perform those jobs, or hire new employees to do so”.

EEOC v. LHC Group Inc., 773 F.3d 688,698 (5th Cir. 2014)

Officer Suicide



On average 143 police officers commit suicide every year.

Suicide rate for police officers is consistently 17/100,000 vs. 11/100,000 for general population.

New research contributes increased suicide rate to PTSD. PTSD does not necessarily only result from one big traumatic event. Research now shows that exposure to multiple traumatic events over time has a cumulative effect.

“In some ways, a cop’s work may be even more traumatic than that of a soldier sent into a war zone. The police officer’s job over many years, exposes and re-exposes them to traumatic events that would make anybody recoil in horror.”

Officer Suicide

What can be done?

1. Encourage voluntary, confidential, annual “mental health checks”. This includes everyone from the Chief down. Utilize EAP services.
2. Make sure your critical incident debriefing or counseling is available for a range of traumatic events, not just officer involved shootings.
3. Use mandatory EAP referrals to avoid the escalation of mental health issues. Avoid fit for duty assessments.



TEXAS COMMISSION ON LAW ENFORCEMENT

Texas Commission on Law Enforcement Officer Standards and Education

§211.29. Responsibilities of Agency Chief Administrators.

(g) An agency chief administrator has an obligation to determine that all appointees are able to safely and effectively perform the essential job functions. An agency chief administrator may require a fit for duty review upon identifying factors that indicate an appointee may no longer be able to perform job-related functions safely and effectively. These factors should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical or psychological condition or impairment.

More information?

