

# Employment Practices *Update*

Bringing important information to emergency service organizations

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## Pranks, Hazing & Harassment: *Call It What You Will*

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*Pranks, horseplay and sometimes even hazing have at times been linked to the culture in emergency service organizations (ESOs). However, it can be a fine line between pranks and what may constitute unlawful harassment or discrimination.*

Some may hide behind the terminology—rites of initiation, harmless pranks, or voluntary hazing—which won't protect an ESO if the words or behaviors cross the legal line of harassment or discrimination. Call the behavior what you will, but unlawful harassment is unlawful harassment.

This article examines a notorious fire department's hazing case scenario, and provides guidance on distinguishing between what may be acceptable banter and what is unlawful behavior.

### One Expensive Can of Dog Food

"Tony", a 17-year veteran California firefighter, was allegedly an active part of a work culture of hazing and quid pro quo ("this for that") pranks. Tony was involved, in various degrees, as a voluntary participant in a series of workplace incidents that at the time were characterized as "pranks and jokes," including:

- "Rat-gate" – a dead rat placed in a fellow firefighter's boot.
- A probationary firefighter wrapped and taped in a white sheet on which someone wrote the phrase, "Oy vey! I'm gay!"
- Department members smeared with food condiments and shaving cream as a way to "celebrate" birthdays or other occasions.

This long history of "jokes and pranks" took a turn for the worse in late 2006—a final incident resulting in millions of taxpayer dollars spent and frequent negative headlines over the course of a year. The infamous hazing incident had innocent enough origins. While off-duty, Tony defeated coworkers on the athletic field of play, giving himself the nickname "Big Dog". The following day at work, one of his cohorts decided to surprise Tony by presenting "Big Dog" with a "trophy," an unopened can of wet dog food. The "trophy" was seen as an appropriate prize for the boastful "Big Dog".

Unfortunately for everyone involved, the meal being prepared that fateful day at the fire house was spaghetti with meat sauce. Tony's coworker seized the opportunity for a "bad stunt" and spontaneously and unilaterally opened the "trophy" and mixed the dog food in the meat sauce. Why not serve Big Dog a bite of humility, he reasoned. After all, Tony is one of the biggest pranksters in the fire department, right?

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When Tony became aware that he ate dog food, he became extremely upset and angry. He later claimed the incident was racially motivated because of his minority status. Was Tony targeted because of race, or was the “stupid prank” without racial intent?

In the end, the City settled the racial harassment/discrimination lawsuit as well as a retaliation claim with Tony for \$1.4 million dollars. What lessons can be learned from the case involving the most expensive can of dog food ever produced?

### Lessons To Be Learned

Call it what you will — One of the main lessons that can be learned from the “dog food case” is that ESOs must examine the behavior in question and not get caught up in how conduct is labeled. How should the longstanding pattern of behavior be characterized at the fire department?

- Inappropriate pranks?
- Jokes in poor taste?
- Payback for past horseplay?
- Hazing as a rite of passage?
- Banter without harmful or malicious intent?
- Unlawful harassment or discrimination?

### *Assess the conduct to determine whether a legal line of harassment or discrimination has been crossed.*

How the behavior was labeled or characterized at the time is not determinative. Instead, assess workplace conduct to determine whether a legal line of harassment or discrimination has been crossed.

- **Was the conduct severe or pervasive?** Severe enough that the work environment was significantly altered even though the incident occurred once or rarely? Pervasive or frequent enough that being subjected to the behavior over time has created a hostile work environment, unreasonably interfering with the member’s ability to do his job?
- **Offensive to the complainant?** Under this subjective standard, a complainant should be able to demonstrate the behavior was unwelcome and offensive. In the above case, the complainant argued that he was singled out because of race and forced to unknowingly eat dog food, which was humiliating and offensive. The complainant stressed that past banter he may have participated in didn’t rise to the level of being fed dog food.

- **Offensive to most reasonable people?** Under this objective test, it must be determined whether the conduct would be considered unlawful harassment by most reasonable workers (i.e., potential jurors). It is a safe bet that most reasonable American workers don’t work in environments where employees eat dog food as acceptable pranks, get smeared with food condiments, get taped in sheets and have religious and sexual orientation slurs written on them, or have animal carcasses placed in their shoes. What qualifies as reasonable workplace interactions should be viewed in this light.
- **Subjected to the behavior because of legally protected class status?** It is sometimes difficult to know for sure whether certain inappropriate or harassing conduct is directed at an individual because of protected class status (race, gender, national origin, religion, disability, age, etc). However, by allowing questionable behavior to permeate the work environment, an ESO leaves itself vulnerable to the perception that certain protected groups are subjected to more severe or pervasive conduct that may be discriminatory.

Expectations for Excellence for ESOs – The public expects professionalism and excellence from those in emergency services. In countless polls, Americans place firefighters, EMTs and paramedics at the top of the list for most-admired professions. In contrast, the “dog food case” highlights the disparate perspectives held by some within the department of what behavior should be tolerated as “acceptable banter or pranks”. Part of the problem for the fire department was answering the questions:

- Why was extreme unprofessional behavior tolerated for so long?
- Where was the leadership within that particular fire house?
- In the eyes of those with supervisory authority, what conduct would they have to witness or hear about before stepping in and saying “enough”?
- Why weren’t prompt measures taken to stop questionable harassing behavior and prevent future occurrences?

### Risks with Probationary Members

ESOs face challenges associated with probationary members. Take precautionary measures to ensure probationary personnel are not subjected to behaviors that cross or near the unlawful line of harassment or discrimination. Probationary members may not be confident enough to speak out about questionable behavior that may be part of the traditional “rite of passage”. ESO leaders should monitor and set expectations for a safe and productive work environment free from discrimination and harassment.

### Conclusion

ESOs learn that the antics of a few members can tarnish the reputation of the entire organization. It is possible for ESO leaders to protect against unlawful harassment and discrimination without sterilizing the work environment.