

Liability Trends and Traps: Hot Topics for 2020



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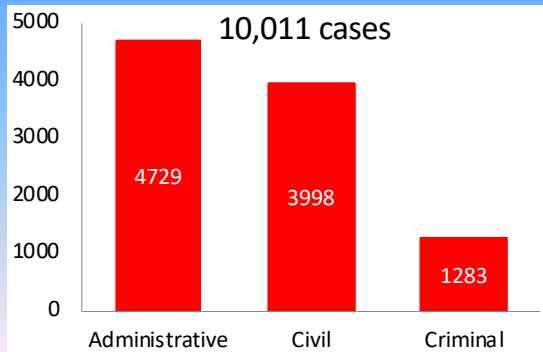
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Fire Service Litigation Database

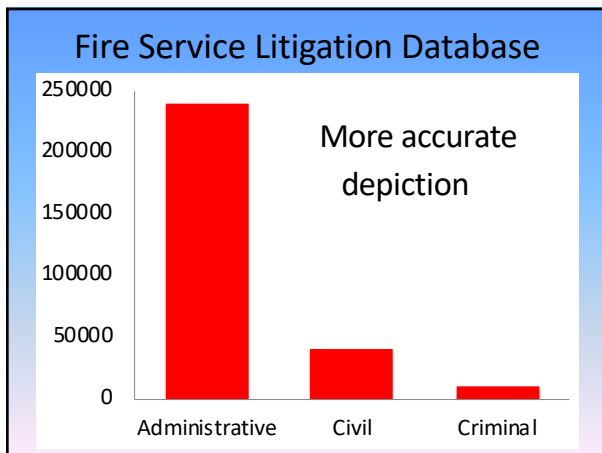
- Started in 2010
- Includes all legal proceedings involving FDs, EMS providers, & fire service personnel
- 3 categories of cases
 - Administrative, Civil and Criminal
 - Excludes most workers comp cases
- As of February 7, 2020: **10,011 cases**

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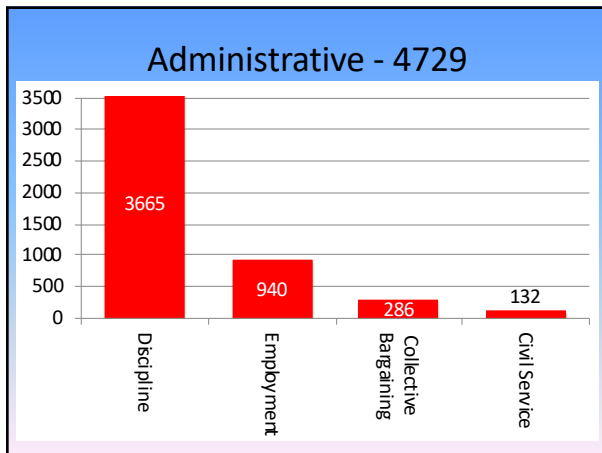
Fire Service Litigation Database



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Discipline - 3665

1. Sexual misconduct	498	↑ 13.6% (was 11%)
2. Alcohol involved	308	↓ 8.4% (was 10%)
3. Larceny	304	8.3%
4. Social media	262	↑ 7.1% (was 4%)
5. Arson	248	6.8%
6. Drugs	195	5.3%
7. Photo/imagery	165	↑ 4.5% (was 3%)

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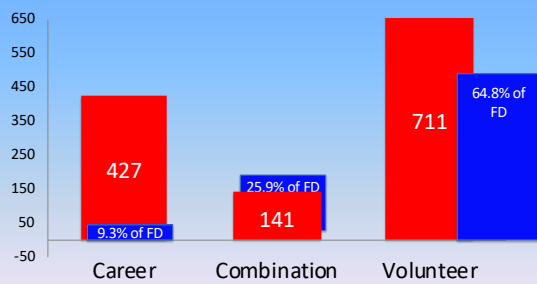
NFPA Fire Department Profile 2017

TYPE	Total	%
Career:	2,785	9.3%
Mostly Career:	2,316	7.8%
Mostly Volunteer:	5,404	18.1%
All Volunteer:	19,313	64.8%

25.9%

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US Fire Departments



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Criminal - 1283

THEFT: 489

- Larceny 362
- Embezzlement 229
- Fraud 160
- Forgery 52

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Career Theft - 141

- Theft from FF Union – 39
 - *Embezzlement*
 - Theft - union related charity/activity - 6
- Theft of drugs - 42
- Theft from FD – 53
 - Overtime scams
 - Stealing equipment/selling

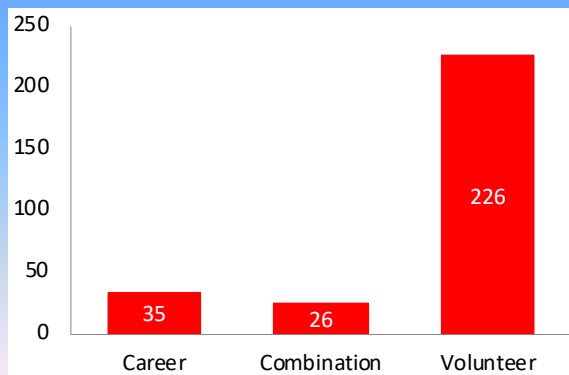
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Criminal - 1283

- Arson 287 cases
 - 226 volunteer FD cases
 - 140 (62%) involve multiple fires
 - 72 (32%) involve multiple parties
 - 35 Career
 - 8 (23%) involve multiple fires
 - Only 2 involve multiple parties
 - 26 Combination

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287 - Arson




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Arson Trends Career v. Volunteer	
35 Career	226 Volunteer
– 14 structure (40%)	– 158 structure fire (70%)
– 9 vehicle (26%)	– 14 vehicle (6%)
– 9 wildland (26%)	– 66 wildland (29%)
– 2 trash (6%)	– 11 trash (5%)
– 8 Multiple Fires (23%)	– 140 Multiple Fires (62%)
– 2 Multiple Arsonists (6%)	– 72 Multiple Arsonist (32%)

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Other Criminal Charges	
• Assault	174
• Sexual Assault	103
• Traffic related	86
• Sexual Assault of a Minor	56
• DWI (on duty)	46
• Involuntary Manslaughter	43
• Conspiracy	32

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Questions on Criminal Cases?

Next up: Civil Cases

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Civil Suits
 3998 total suits

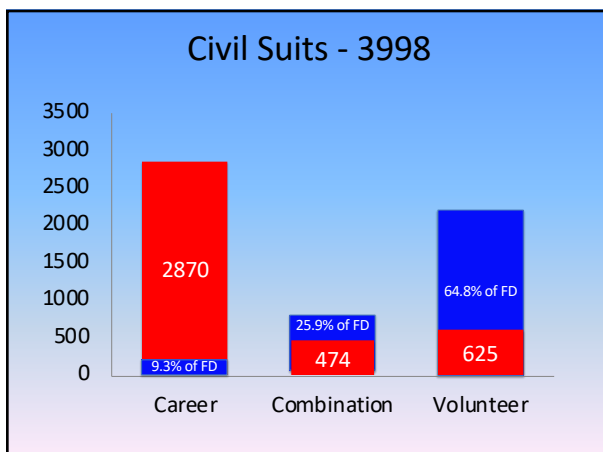
What type of fire department gets sued more often, career, combination or volunteer?

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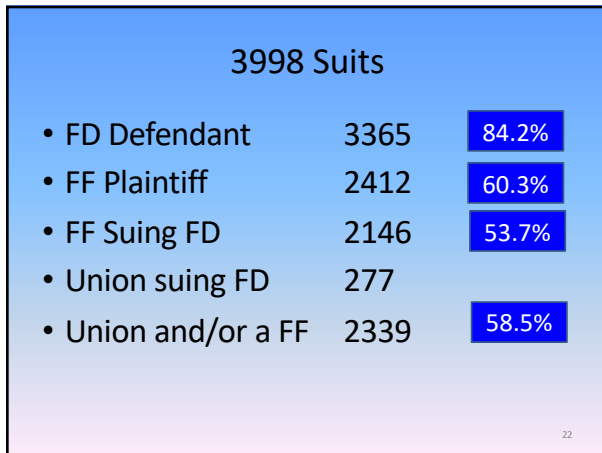
Civil Suits

Answer: Career... by a factor of at least 4

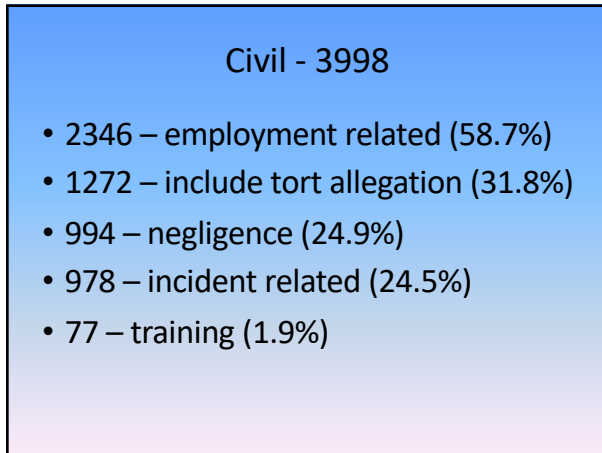
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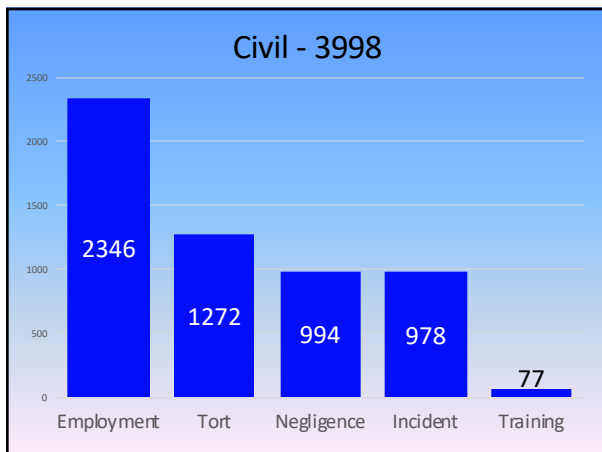
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What is the most likely type of employment related suit?

• Discrimination	1319	56.2%
– 32.9% of all civil		
• Termination challenge	753	32.1%
• Retaliation	588	25.1%
• Collective Bargaining	293	12.5%

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Termination Challenge Breakdown

• Termination challenge	753
– Discipline related termination	549
– Constructive termination	159
– Medically related termination	75
– Competency based termination	36

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What type of discrimination is most common?

Gender has replaced race discrimination as most common

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1319 Discrimination Cases

Gender Cases - 479

- Sex discrimination 414
- Sexual Harassment 340
- Sexual Orientation 19

19 Quid Pro Quo

Race Cases - 421

- Race by minority 302
- Race – reverse discrim 119

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302 Protected Classes Besides Gender

- Black 250
- Hispanic 54
- National origin 48
- Asian 7
- Middle Eastern 5
- Native American 3
- Jewish 3

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1319 Discrimination Cases

- Disability 159
 - Psych: 31
 - Vision: 12
 - Diabetes: 9
 - Heart: 8
 - Seizures 8
 - Back: 8
 - Lung: 7

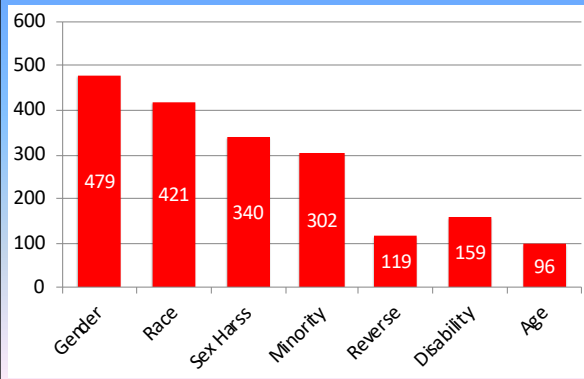
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1319 Discrimination Cases

- Age 96
- Political retaliation 46
- Religion 41
- Military service (USERRA) 32
- Pregnancy 22

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1319 Discrimination



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Other Employment Cases

- Due Process 334
 - FLSA 258
 - 1st Amendment 253
 - Whistleblower 161
 - FMLA 26
 - HIPAA 5
- Note: HIPAA total is 17
- 5 employment & 12 from patients
 - 17/3998 = 0.4%
- Over \$425M in damages to FDs from FLSA suits

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1272 Tort Suits

Includes employment & incident related

- Negligence 994
 - *Gross negligence* 385
 - *Recklessness* 265
- Wrongful death 343
- IISED 193
- Defamation 135
- Assault/Battery 108
- False imprisonment/arrest 53
- Invasion of privacy 49
- Abandonment 14

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Questions before we get into
incident related suits?

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Incident related civil suits
What type of incident leads
to more suits?

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978 Incident Related Suits

• Structure fires	402	41%
• EMS	268	27%
• Apparatus accidents	135	14%
• Wildland	69	7%
• Vehicle accident	60	6%
• Dispatch	49	5%
• Hazmat	34	3%
• Slow Response	17	2%

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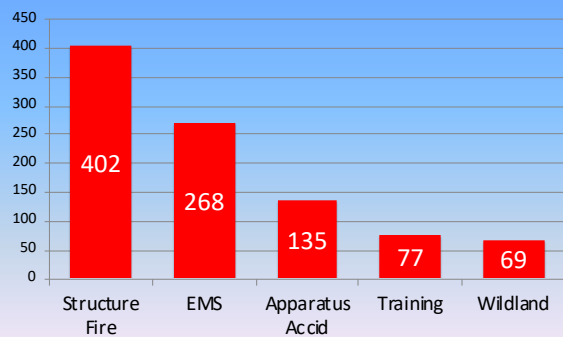
Non-Incident

• Training	77
• Code Enforcement	66
• Fire Inspection	39
• Fire Investigation	25
• Fundraising	11
• Parades	9
• Demonstrations	4

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Incident Related Suits



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Less Common Incident Related

- Inspection 39
- Investigation 25
- Gas leak 16
- Water rescue 14
- POV accident 10
- Wires down 5
- Ice rescue 4
- Dive rescue 3

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- **Patient Abandonment – 19**
 - 1.9% of incident related suits
 - 0.4% of all suits
- **EMS Transport against patient's will – 7**
 - 0.7% of incident related suits
 - 0.18% of all suits
- **Failure/improper refusal/RAMA – 6**
 - 0.6% of incident relates suits
 - 0.15% of all suits

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402 Structure Fire Suits

- Negligence 322 80.4%
- Wrongful death 144 33.8%
- LODD 110 27.8%
- Poor tactics 73 18.3%
- Rekindle fires 18 4.4%
- Subrogation suits 14 3.2%
- Slow Response 5 2.2%

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402 Structure Fire Suits Who is suing Whom

- FD is sued in 310 of 402 77%
- Mrs. Smith sues in 152 of 402 38%
- FD/FF sue Mrs Smith in 126 of 402 31%
- FF sues in 187 of 402 47%
 - FF sues FD 117/187 = 63%
- FD sues in 24 of 402 6%
- FF is sued 79 of 204 20%

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Fire Chief = 53
Chief Officer = 36
Company Officer = 24
FF = 23

44

181 LODD Suits

- | | | | |
|--------------------|-----|----------------|---|
| • Structure fires | 110 | • EMS | 4 |
| • Apparatus accid. | 18 | • Gas Leak | 4 |
| • Wildland | 16 | • Water Rescue | 3 |
| • Training | 15 | • Wires down | 2 |
| • Vehicle accident | 7 | | |
| • Aircraft | 7 | | |

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How often are firefighters of any rank named in a suit ***as a defendant?***

822 cases
20.6% of all cases

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822 Suits Against Firefighters

- How many were brought by other FFs?
– *Other FF sued FF* 472 (57.4%)
- How many were brought by Mrs. Smith?
– *Mrs. Smith named a FF* 199 (24.2%)
– **Reality: 199/3998 = 5.0% of all suits**
- ***Let's dig deeper***

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Suits Against Firefighters:

- Fire Chief 481
- Firefighter 260
- Chief Officer 211
- Company Officer 153

FF Cases: 133 involve driving apparatus
or EMS, leaving 127

48

What does this tell us about our biggest liability?

Who is doing the suing:

Who is Sued	Total	FF	Mrs. Smith
Fire Department	3365	2146	401
Fire Chief	481	359	60
Chief Officer	211	151	31
Company Officer	153	92	38
Firefighter	260	69	142
	127	54	34

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Who is Suing Whom

	Sued by a Firefighter	Sued By Mrs. Smith
FD	5.4	1
Fire Chief	6.0	1
Chief Officer	4.9	1
Company Officer	2.4	1
Firefighter	1	2.1
- Excluding EMS & driving = 1.6 more likely by FF		

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Questions?

Next Up: 2019 Survey

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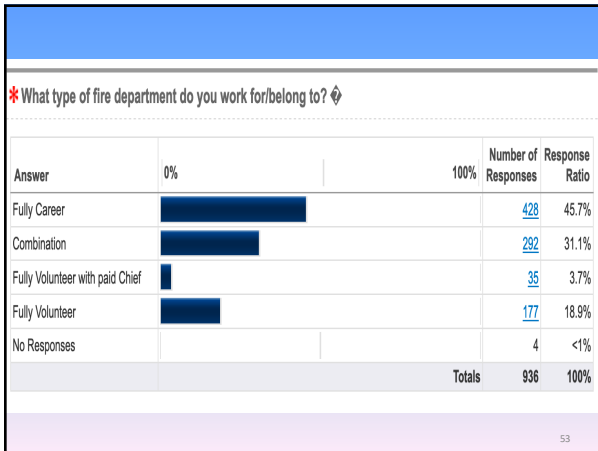
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First Annual Litigation Survey

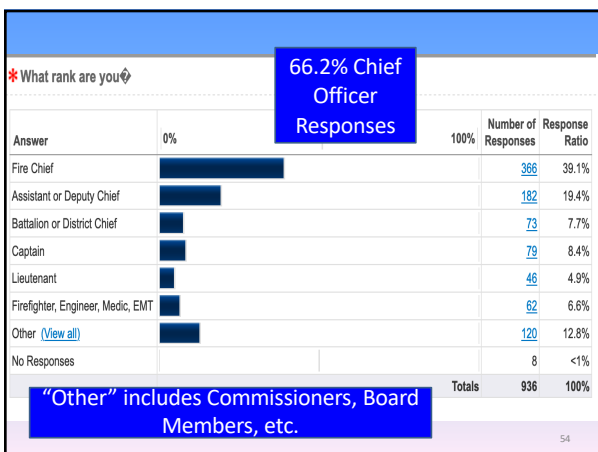
- Sent out as Survey – January 2020 to subscribers of Fire Law
- Posted on Facebook, Twitter & LinkedIn
- 936 responses

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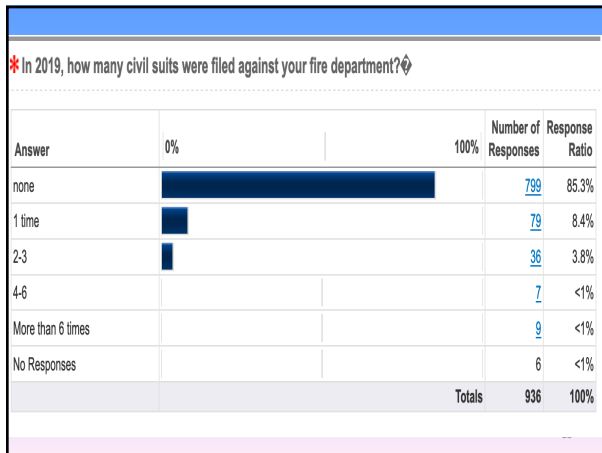
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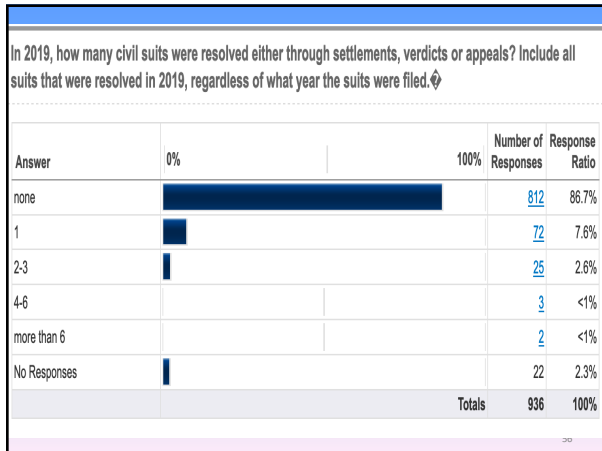
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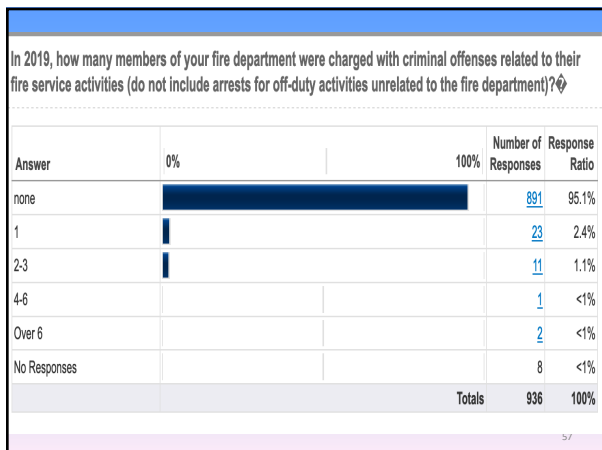
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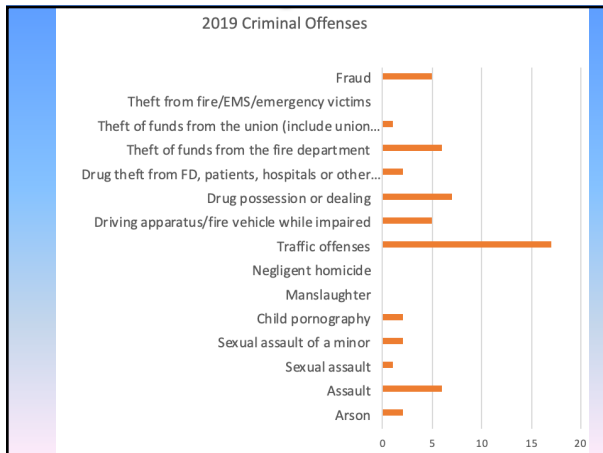
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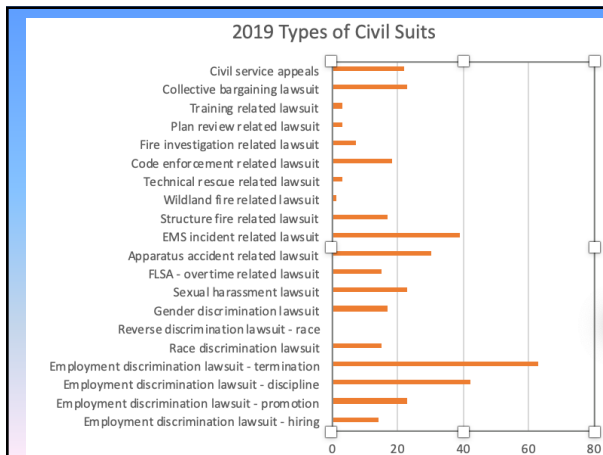
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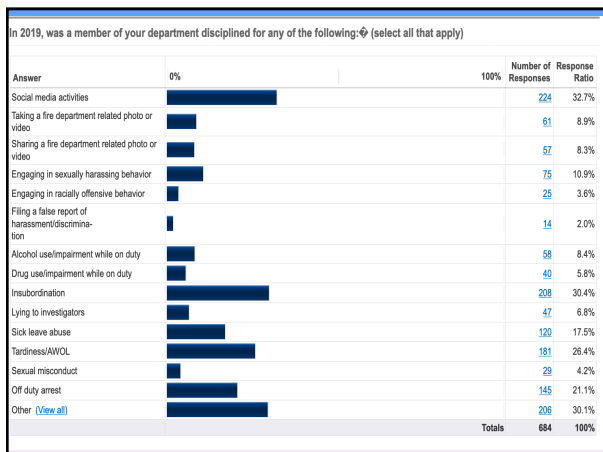
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