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2024 Public Sector Conference

California Tort Claims and More: What You Need to Know Before You Sue the Government!

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Speakers:

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Conference Reference Materials

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Government Tort Claim Basics

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- If the government, or an employee or agency of the government, is responsible for your injury, the law generally requires you follow certain procedural requirements prior to filing a civil lawsuit.
- Governed by Gov't Code §§ 810-996.6

Purpose

- “The purpose of the Government Claims Act is ‘to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.’ ” (*Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1231.)
- “As the purpose of the claim is to give the government entity notice sufficient for it to investigate and evaluate the claim, not to eliminate meritorious actions....[]...the claims statute ‘should not be applied to snare the unwary where its purpose has been satisfied.’” (*Plata v. City of San Jose* (2022) 74 Cal.App.5th 736, 748, *review denied* (May 11, 2022.))
- Governed by Gov’t Code §§ 810-996.6, see especially § 910.

Public Entities covered by the Tort Claims Act include:

- State of California (§§ 900.2, 900.6; must file with the Department of General Services per § 905.2)
- Local government entities (§ 900.4; CCP § 394)
- Judicial branch entities (§ 905.7)
- School districts
- Community College districts
- California State University per § 905.9 (but not against the University of California per §§ 905.6, 943.)
- Joint Powers Agencies (§§ 6506-6507)

Major highlights: what claims are covered?

- **Must comply with the government tort claims act except when you don't. Government Code § 905. Exceptions to the tort claims act:**
 - Claims subject to workers' compensation
 - Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances
 - Claims brought under the Fair Employment and Housing Act
 - Claims brought under 42 U.S.C. § 1983

The Scope of Tort Claims

- **Generally, before suing a public entity in court for “money or damages,” an individual must first present a government claim (“tort claim”) to the public entity. (Gov. Code § 905).**
 - It applies to all civil liability claims for money or damages.
 - For example, claims for damages under the Unruh Civil Rights Act are subject to the Tort Claims Act. (*Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744.), as are claims under Labor Code § 1102.5, the Labor Code’s whistleblower protection statute. (*LeMere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 245-246.)
 - Contract claims, as well as claims for personal injury, property damage, torts and other claims for monetary relief are subject to the Act. (*City of Stockton v. Sup. Ct.* (2007) 42 Cal.4th 730.)
 - In other words, it covers everything from negligence cases, nuisance, and intentional wrongs.

Major highlights: what constitutes a valid claim?

○ **Content of the Claim**

- Should be a form provided by the specific government agency.
- Government Code § 910
 - name and address
 - date, place, and circumstances of the occurrence(s) which give rise to the claim
 - general description of injury or damages
 - the name(s) of the public employee(s) causing the injury, damage, or loss, if know

○ **Delivery of the Claim**

- Government Code § 915(a)
- Personal or mail delivery to clerk, secretary, or auditor of the governing body

What constitutes a valid claim?

- The claim must include all of the information specified in Gov. Code § 910, and if an agency has a particular form, that form should be used.
- However, Courts will recognize a claim as valid if it “substantially complies” with all the statutory requirements. (*Olson v. Manhattan Beach Unified Sch. Dist.* (2017) 17 Cal.App.5th 1052, 1060 (Olson).) The doctrine “is based on the premise that substantial compliance fulfills the purpose of the claims statutes, namely, to give the public entity timely notice of the nature of the claim so that it may investigate and settle those having merit without litigation.” (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456-457 (City of San Jose).)

What constitutes a valid claim?

- A threat of possible legal action does not substantially comply with the Claims Act if the “gravamen” of the letter is to demand reinstatement of the employee’s position and does not claim “money damages” or estimate “the amount of any prospective injury, damage or loss.” (*Loehr*, supra, 147 Cal.App.3d at p. 1083; *Dilts*, supra, 189 Cal.App.3d at pp. 36-38 [letter threatening possible litigation did not substantially comply with the Act where the mention of litigation was for the purpose of negotiating a settlement, not a claim].)

Inadequate Claim or Insufficient Claim

- The claims act provides for “notice of insufficiency of claim” when claimants have not provided enough information.
- “If, in the opinion of the board or the person designated by it, a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board or the person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. The notice shall be given in the manner prescribed by Section 915.4. The board may not take action on the claim for a period of 15 days after the notice is given.” (§ 910.8.)
- Failing to provide notice of insufficiency waives any defense as to the sufficiency of the claim.
 - Exception: “[N]o notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.” (§ 911.)

Drafting the Claim: Practice Tips

- Identify All the Correct Public-Entity Defendants
 - Public Hospitals May Be Owed By Healthcare District
 - Look for the Governing Body Meetings – Call the Clerk to Confirm
 - Look for an Online Form
 - CA Secretary of State *Roster of Public Agencies*
 - Not online, so call or do PRA request
 - <https://www.sos.ca.gov/administration/contact-information>
 - CA Secretary of State *Cal Roster* lists some state agencies – then call
 - <https://admin.cdn.sos.ca.gov/ca-roster/2022/complete-roster.pdf>

Drafting the Claim: Practice Tips

- Move Quickly On Investigation of Facts, Claims, Damages
 - State what you can about facts and claims
 - Don't forget to state alleged injuries and damages
 - If full extent of damages is unknown, say so
 - If the agency has a form, use it
 - Thoughts on adding additional narrative or key documents
 - Thoughts on admissibility
- Research submission and confirm receipt

Major highlights: don't blow the deadline!

○ **Timeliness**

- Six months within the date of the incident. In the context of an employment termination – it is the date of the actual termination.
- One year for breach of contract claims
- Government has 45 days to act on the claim. Issue a rejection or deemed denied by not responding within 45 days. If rejected – 6 months from rejection. If no response at all, then 2 years from the date of the injury.
- If not timely presented, written application must be made to present late claim. If denied, petition to the court within 6 months.
 - Government Code § 946.6
 - Some factors that play into whether court will grant petition.
 - ❖ Within a reasonable time and
 - Mistake/inadvertence/surprise/excusable neglect
 - Person is a minor or incapacitated

Timeliness Issues

A person who misses a deadline loses their right to sue the public entity in court. However, they may be able to make an application to present a late claim, and then petition the court if the agency denies the late claim. (§ 911.3-911.8).

- Equitable Estoppel may be a defense to non-compliance with the Tort Claims Act
 - Estoppel may be found where public entity engaged in some calculated conduct or made some representation or concealed facts which induced the plaintiff not to file a claim or bring an action within the statutory time.
 - *Santos v. Los Angeles Unified School District* (2017) 17 Cal.App.5th 1065
 - Plaintiffs presented evidence that LAUSD or its employees misled defense counsel by concealing the fact that the entity named in the complaint was not a separate legal entity but part of LAUSD. Thus, plaintiffs had demonstrated triable issues of facts as to the existence of equitable estoppel, which prevents LAUSD from raising non-compliance with the Tort Claims Act as a defense.

Tolling

The doctrine of equitable tolling may also apply to the limitation periods imposed by the claims statutes. *Addison v. State of California* (1978) 21 Cal.3d 313, 146 Cal.Rptr. 224, 578 P.2d 941.

Equitable tolling may apply when three elements are met:

- 1) timely notice to the defendant against whom the doctrine will apply given at or about the time of seeking the first remedy;
- 2) lack of prejudice to the defendant in gathering evidence and preparing for the second remedy; and
- 3) good faith and reasonable conduct by the plaintiff.

Tolling

- *Addison* recognized “a general policy which favors relieving plaintiff from the bar of a limitations statute when, possessing several legal remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries or damage.”
- In *Addison*, the plaintiffs presented a timely claim. When it was rejected they filed a federal lawsuit, which was eventually dismissed for lack of jurisdiction. In these circumstances, the period for suing in state court was equitably tolled during the pendency of the federal action. The elements of timely notice, lack of prejudice to the defendant, and reasonable good faith conduct by the plaintiffs were satisfied.

Exemptions from the Tort Claims Act

- The Tort Claims Act exempts certain types of claims, including those for unpaid wages, pension benefit, and recovery of damages for sexual assault. (§§ 905(c), (f), and (m)). However, under § 935(a), a public entity may enact a charter, ordinance, or regulation that brings such claims under the umbrella of the Tort Claims Act, so long as the deadline for presentation is one year, not six months. (§ 925(c).)
- Claims under FEHA, Gov. Code § 11135, 42 U.S.C. § 1983, and similar statutes are exempt from the Tort Claims Act.

Exemptions from the Tort Claims Act

- FEHA claims: *Rojo v. Kliger* (1990) 52 Cal.3d 65, 80, citing *Snipes v. City of Bakersfield* (1983) 245 Cal.App.3d 861, 868-69. (If a person has filed an administrative complaints with DFEH under a statute that permits, but does not require exhaustion (i.e., the Unruh Act), out of an abundance of caution, it is recommended that they also present a timely tort claim, if possible, prior to commencing a civil action in court.)
- Gov. Code § 11135 actions: § 11135 does not provide for monetary damages. Remedies are limited to declaratory and injunctive relief and the loss of state funding. Statutory attorneys' fees are available, but claims for attorneys' fees are subject to the Tort Claim Act because attorneys' fees are considered costs, not money or damages. (*Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139.)

Exemptions from the Tort Claims Act

- 42 U.S.C. § 1983 actions: *Felder v. Casey* (1988) 487 U.S. 131.
- 20 U.S.C. §§ 1400-1485 (Individuals with Disabilities Education Act): *Hacienda La Puente Unified School Dist. v. Honig* (9th Cir. 1992) 976 F.2d 487.)
- California Whistleblower Protection Act (CWPA), Gov. Code §§ 8547-8547.15: Claims brought by state employees under the CWPA are expressly exempt from presentation procedures under Gov. Code § 905.2(h). See also, *Cornejo v. Lightbourne* (2013) 220 Cal.App.4th 932, 938.

Exemptions from the Tort Claims Act

- The Tort Claims Act exempts claims for which monetary damages are merely “incidental” to equitable relief, i.e., a request for injunctive or declaratory relief, hiring, reinstatement, or other equitable relief. (*Eureka Teachers Assn. v. Board of Education* (1988) 202 Cal.App.3d 469, 475; *Murray v. Oceanside Unified School District* (2000) 79 Cal.App.4th 1338; *Williams v. Housing Authority of Los Angeles* (2004) 121 Cal.App.4th 708.

However, courts will closely scrutinize whether damages really are “incidental” to other relief sought, and may well dismiss a civil action for failure to present a tort claim. (See, e.g., *TrafficSchoolOnline, Inc. v. Clarke* (2003) 112 Cal.App.4th 736.)

Common Employment Claims and the Government Claims Act

- Employment claims are brought under the FEHA are not subject to the Tort Claims Act
 - Must file with California Civil Rights Department within three years. Obtain right to sue – file lawsuit within one year
- Employment Claims Brought under Labor Code § 1102.5 are subject to the Tort Claims Act
- Whistleblower Protection Act not subject to the Tort Claims Act. Must file with state personnel board
- 42 U.S.C. § 1983 claims, i.e., First Amendment Retaliation, not subject to Tort Claims Act

Exhaustion

- Those making claims against a public entity must exhaust administrative remedies as well as filing the torts claim.
- If the statute provides administrative remedy, relief must be sought from the administrative body before the courts will act.
 - Example: filing with the EEOC/California Civil Rights Act
- Other administrative remedies include internal grievance procedures and any other remedies provided by county civil service rules.

Immunities

Government Code § 815(a)

- Public entity not liable unless provided by statute
 - Cannot bring a general negligence claim against a public entity
 - Cannot bring a common law claim for wrongful termination in violation of public policy against a public entity
- In general, the government code immunities do not come into play all that much in typical discrimination, harassment, and retaliation type claims against public entities under the FEHA or the Labor Code.
- Some specific immunities
 - Discretionary immunity § 820.2
 - Entity not liable for injury where the act or omission was result of the exercise of discretion
 - Punitive damages immunity § 818

Case Studies

