

## ***No Time to Waste—California’s Rules for Claims Against Public Entities***

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California’s tort claim rules can be a trap for the unwary. At precisely the time when injured persons, particularly those who suffer significant physical injuries, are consumed by urgent medical, employment, or caretaking issues, a very short and not very well-known six-month deadline is running on their claims. Although personal injury claimants generally have two years to file a lawsuit for money or damages against a private tortfeasor (Cal. Code Civ. Proc. § 335.1), the California Tort Claims Act (CTCA) significantly shortens this period for those harmed by state or local entities. The CTCA requires claimants to file claims with the state or public entity before going to court and to do so usually within six months, depending on the nature of the claim.

The stated purpose of the CTCA is to give public entities early notice of potentially dangerous conditions, to permit the public entity to investigate claims when there is fresh evidence, to foster early settlement of claims before costly litigation, and to apprise entities about budgetary planning issues they may encounter as a result of their legal liability. *Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 213; *Westcon Const. Corp v. County of Sacramento* (2007) 152 Cal.App.4th 183, 200-201. Because the CTCA requirements are not well-known, however, the statutory goals often are not met. Instead, claims are simply timed out because even the most diligent claimants often are completely unaware of the claims process, unable to find the necessary claims forms even when they search for them, and harbor the mistaken belief that they have at least a year or more to start any official process or suit.

The disconnect between the purpose of the law and its application suggests that local entities may primarily value the CTCA, not as a tool to receive prompt information as the Legislature intended, but rather as a litigation defense. The consequences of this system for potential plaintiffs can be devastating, leaving people with otherwise valid legal claims without a legal forum to address their injuries and damages.

Some relatively easy and minor fixes could solve these problems.

## The Nuts and Bolts of the “California Tort Claims Act”

Enacted in 1963 after the California Supreme Court eliminated absolute sovereign immunity for governmental entities, the “California Tort Claims Act” currently is codified in Cal. Gov. Code §§ 810, *et seq.* Under the CTCA, persons harmed by the state (or state employees) must file a claim with the California Victim Compensation and Government Claims Board (<http://www.boc.ca.gov>) before filing a lawsuit for money or damages. Persons harmed by “local public entities” (cities, counties, municipalities) must file claims with the “clerk, secretary or auditor thereof.” An injured person has only **six months** to file a claim related to death, injury, or property damage at the hands of a state or local public entity (or their employees). All other claims must be presented within one year. While late claims are permitted under some circumstances, including inadvertence, surprise, excusable neglect (as long as the public entity was not prejudiced), and legal incapacity, pure ignorance of the six-month time period is not an excuse. Gov. Code § 911.6; *Harrison v. County of Del Norte* (1985) 168 Cal.App.3d 1. The claim itself must include the claimant’s name, address, preferred address for notices related to the claim, a general description of the injury, including the time and place it occurred, the damage it caused, the names of any public employees involved, and a computation of damages if less than \$10,000.

In addition to the basic requirements, there are numerous potential pitfalls awaiting victims and their attorneys with respect to the content of claims and the specificity required. For instance, every person who suffers an injury must file a claim even if multiple people were harmed together. Courts also may dismiss causes of actions or damage claims from suits if they were not specifically alleged in the claim. It follows that anyone filing a claim or counseling some one to file a claim needs to read the CTCA, current case law, and relevant practice guides. *See, e.g.,* Haning et al., *Cal. Practice Guide: Personal Injury* (The Rutter Group 2009) Ch. 5-A; Hersh and Smith, *Cal. Civil Practice Torts* (Thomas Reuters 2009) Ch. 30.

The state or the local entity must act on the claim within 45 days. If the entity fails to respond to the claim, it is deemed denied on the 45th day and the claimant has two years from the date the injury occurred, or was discovered, to file suit. If the entity denies the claim after the 45th day (which it almost always does), however, the claimant has only six months from

the actual rejection (not two years). *Katellaris v. County of Orange* (2001) 92 Cal.App.4th 1211, 1216, fn. 4; Gov. Code § 945.6.

As a practical matter, and assuming timely compliance with the claims statute in the first place, this means that personal injury claimants who typically have two or more years to file a lawsuit for their injuries now have less than a year to do so if a public entity caused the harm.

### **Practice Pointers for Practitioners**

The reality of the CTCA for many plaintiff-side practitioners is that the six-month period within which to file a claim often has lapsed by the time an injured person contacts an attorney. It is essential, therefore, for all plaintiffs' attorneys and law firms to include a warning about the CTCA as a standard part of intake procedures and communications. This may include warnings about the CTCA during intake calls, on firm websites, or in letters declining representation.

If you take on a client who has missed the CTCA deadline, there are several ways to try to resuscitate the claim. First, file a late claim. If the public entity fails to respond with a notice of untimeliness within 45 days, the entity will have waived any defense as to the time limit for presenting the claim. Gov. Code § 911.3(b). Second, submit an application to present a late claim pursuant to Gov. Code § 911.4 and state the facts that qualify for one of the exceptions for late filing. Third, check the secretary of state's website to ensure that the public entity has complied with Gov. Code § 53051. If it has not, it cannot enforce any part of the CTCA. Gov. Code § 946.4; *Wilson v. San Francisco Redevelopment Agency* (1977) 19 Cal.3d 555.

If these strategies fail, consider filing a lawsuit in federal court based solely on federal claims, such as a claim pursuant to 42 U.S.C. § 1983 for violation of federal rights, or under a federal statute that has its own private right of action, such as the Americans with Disabilities Act. As a matter of federal supremacy, the CTCA does not bar federal claims because states are prohibited from imposing "outcome-determinative" rules of procedure on legal claims under federal law. *Felder v. Casey* (1988) 487 U.S. 131, 141.

Counsel for public entity defendants should also take steps to comply with the CTCA's requirements, including the creation of a tracking system for response dates and notices of insufficiency. If a denied claim results in litigation, lack of compliance with the CTCA is an affirmative defense that must be raised or will be waived.

### **Proposed Reforms**

Some minor revisions to the CTCA could resolve the inconsistency between the CTCA's purpose, to provide prompt information to public entities, and its application, which primarily is litigation defense. First, all local entities should be required to include the CTCA on their websites and to make forms readily available online, and possibly on a centralized statewide web-bank of all CTCA forms. Although the CTCA already mandates a state claim form (and the state voluntarily provides the form online), no such mandate exists for local entities. Second, injured persons should be given at least a year to comply with the CTCA for claims of death, personal injury or property damage. The six-month deadline is too short for injured parties, many of whom are still addressing more urgent concerns than a possible lawsuit in the months immediately following an injury. Increasing the deadline to a year still would require sufficiently prompt notice to public entities, while bringing the overall deadline to file suit closer to comparable statutes of limitations for suits against non-public entity defendants.