

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: GOVERNMENT CODE -- CLAIM PROCEDURES

When discussing Workers' Compensation we were dealing with benefit claims by injured employees. We are now moving to an area where third parties (generally non-employees) are making tort claims for damages grounded on a YCPARMIA member's legal liability. "Tort" law involves one person seeking damages from another for some sort of wrong doing or breach of duty.

Historically, a governmental entity was immune from tort liability – you can't sue the King – unless a constitutional or statutory law created an exception. About 50 years ago the California Supreme Court abolished governmental immunity, and the legislature enacted the Government Claims Act. The Act applies to all California public entities and their employees, and lays out the basis for a claimant to pursue damages. An important part of the Government Claims Act is the claims presentation requirements – the procedures a claimant must follow to make a claim for money damages.

The Government Code (GC) requires the presentation of a written claim for "money or damages" to a public entity as a prerequisite for pursuing damages against the public entity or its employees. The GC claim requirements are time sensitive:

- 6 months: a claim for death or injury to a person, personal property, or growing crops must be presented within 6 months of the occurrence.
 - A claimant can present an application for leave to present a late claim "within a reasonable time not to exceed a year" after the occurrence. A public entity must allow a late claim when the claimant is a minor for the entire 6 month period, when the claimant is physically or mentally incapacitated for the entire 6 month period, or when the claimant dies during the 6 month period. A public entity has the discretion to allow a late claim when the claimant proves "mistake, inadvertence or excusable neglect."
- 1 year: claims for everything else (including damage to real property and contracts) must be presented with a year.
 - There is no provision for allowing late claims on these matters.

If a timely claim is not filed with the public entity, the claimant is barred from recovery. Liability/payment is predicated on an entity's "legal liability." If the claims process is not followed there can be no legal liability, and therefore any payments could be considered a gift of public funds.

The GC claims requirements mean that anytime any employee is contacted by a potential claimant they should tell the claimant that they must present a written claim to the entity. Over the years we have had claimants look for relief from the claims requirements by stating that an entity employee told them that the entity would take care of their damages/injuries. This potential conflict and claim waiver can be avoided by always directing the claimant to their entity's claims processor.

Next topic: GC Claim Requirements