

Manager/Supervisor Risk Management

#83– 8/23/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: LAW ENFORCEMENT LIABILITY

While not applicable to most supervisors, law enforcement is an exposure that is too important to leave out of this training. Over 40% of YCPARMIA's claims are made against the police and/or sheriff departments. As you work through the description of the law outlined below, keep a classic factual scenario in mind: a police officer is accused of excessive force while wrongfully arresting a suspect.

A law enforcement agency faces all of the risks that the rest of the public entity faces under state law, including those found in the California Government Code and the Vehicle Code. It also faces unique risks that grow out of its actions under the federal Civil Rights Act of 1871. 42 U.S.C section 1983 provides that a person, who, acting under color of state law, violates an individual's rights protected by the federal Constitution or laws of the United States, shall be liable to that person in an action at law, suit in equity, or other proper proceeding. There are elements that must be met:

- There was a violation of a federal right or law;
- That the injury was caused by an official or person acting on behalf of government;
- That the person was acting under color of state law – i.e abused the position given to him by his governmental employer (county or city); and
- The conduct proximately caused the constitutional violation.

Section 1983 does not create a right; it is a means of recovery for the violation of a right. There are a number of Constitutional violations, federal laws and regulations that are actionable under section 1983, but the one that we see alleged most often is the Fourteenth Amendment's protection against depriving a person of life, liberty, or property without due process of law, or depriving the person of the equal protection of the law. A potential defense for the individual is qualified immunity which holds that there is no liability for violating a constitutional or statutory right that is not clearly established – would a reasonable officer/deputy know the current state of the applicable legal standard that they were expected to meet? It is the uncertainty of the law, not the ignorance that creates the immunity.

Acting under the color of state law simply means that the defendant was acting in an official capacity exercising authority that was conferred by the government entity employing him or her. The person accused of the conduct is obviously a potential defendant in a 1983 suit, but their conduct does not create liability for the employer. The public entity may be liable only for a constitutional violation caused by its policy, custom or practice – this is called a "Monell" action. Of course the entity's lack of liability does not relieve it of its duty to defend and indemnify its accused employee.

A 1983 action is based on federal law so the immunities, claim requirements, and time frames that impact state tort claims do not apply. There is a two year statute of limitations for filing suit, and the case can be brought in either federal or state court without filing a state tort claim.

Next topic: Law Enforcement – Exposures