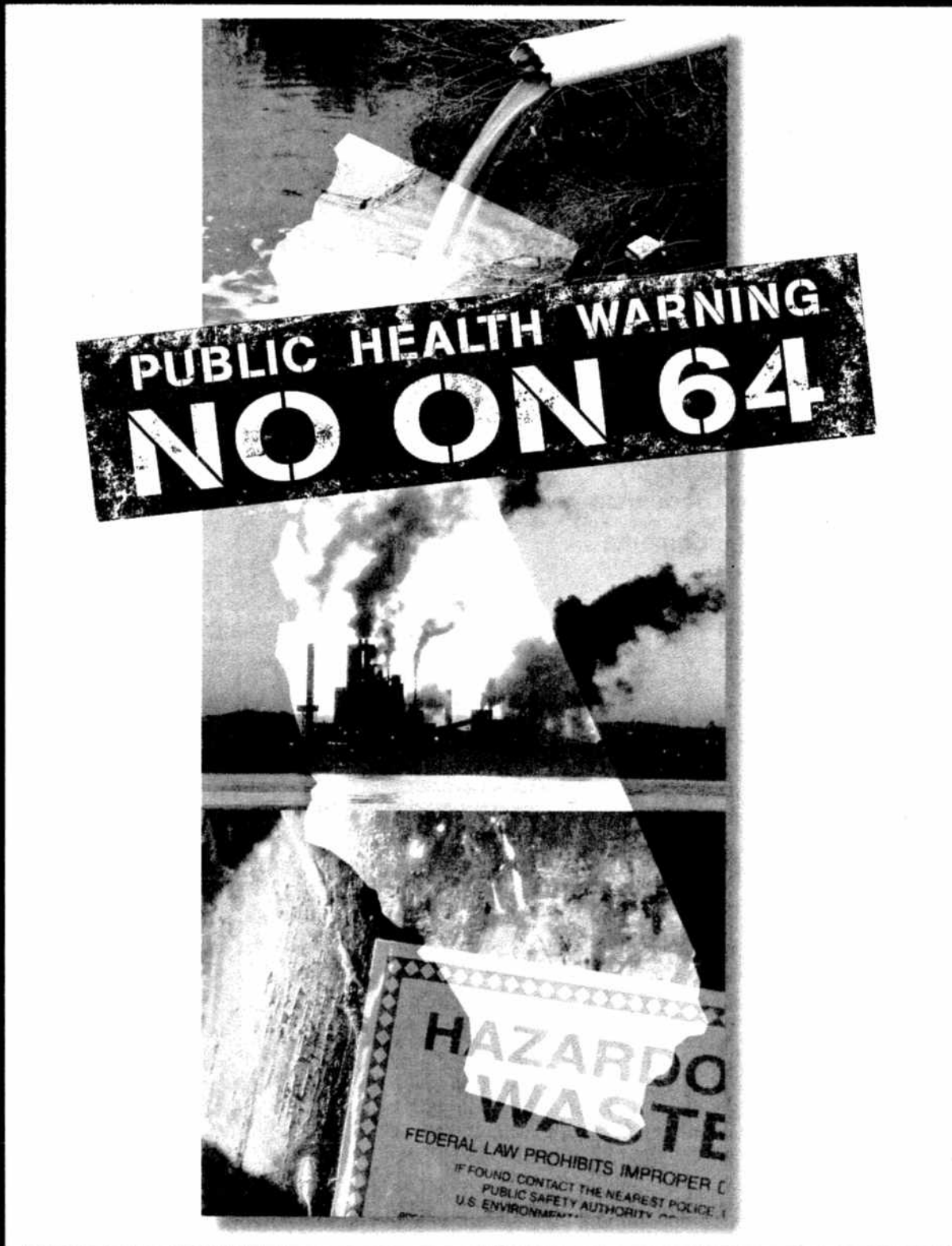


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# Navigating the California Tort Claims Act

By Shaana A. Rahman

This article explores the procedural rules for filing suit against government entities, beginning with the presentation of a timely claim pursuant to the California Tort Claims Act set forth in Government Code section 810 et seq. The claims process in cases involving government entities is crucial since, generally, no suit for money or damages can be brought against a government entity unless a timely claim has been presented.

## Overview of the California Tort Claims Act

The Tort Claims Act ("Act") provides that state and local public entities (and their employees) may be held liable for injuries in the following limited circumstances: 1) public entities may be held liable for injuries caused by the acts or omissions of their employees acting within the scope of their employment (Govt. Code § 815.2); 2) public entities and their employees may be held liable for injuries caused by a dangerous condition on public property (Govt. Code §§ 835, 840-840.6); and 3) an employee of a public entity may be held liable to the same extent as a private person for acts or omissions that cause injury. (Govt. Code § 820.)

Before filing a lawsuit for money or damages, however, a potential plaintiff must first submit a timely written claim to the appropriate public entity. (See Govt. Code § 945.4) Although there have been many constitutional challenges to the claim filing requirements on "equal protection" and "due process" grounds, California courts have rejected such challenges, finding the claims statute to have a fair and substantial relation to the object of the Tort Claims Act. The courts have also found that the statute promotes several

state interests. These include: providing public entities with sufficient information to enable them to investigate the merits of claims while the evidence is still fresh; preventing public funds from being consumed in needless litigation by allowing public entities an opportunity to settle claims before incurring litigation expenses; and giving public entities an opportunity to correct conditions giving rise to the claims. (See *Tammen v. County of San Diego* (1967) 66 Cal.2d 468, 481.)

From the practical perspective of a plaintiff, the claims requirement acts as its own statute of limitations which may decrease the time for filing a complaint that would otherwise have been afforded to a plaintiff suing a non-public entity.

## Identifying a Public Entity

Oftentimes, one of the most difficult problems is knowing that your defendant is a public entity in the first place. Hospitals may be part of a governmentally-controlled hospital district. Medical clinics for low-income people may be government-run. Joint powers agencies may be considered public entities. Thus, it is critical to think about whether the defendant is a public entity. Fortunately, you may be excused from filing a tort claim if the public agency failed to comply with Government Code section 53051, which requires every public entity to file identifying information with the Secretary of State and County Clerk. The easiest thing to do then, is to run your defendant's name through those sources to determine if it has filed. If it has, you then have the information you need to file a claim and if it has not, you are relieved of the filing requirement.



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## Filing and Presenting a Claim

A claim against a public entity for personal injury or death or for damage to personal property or crops must be presented to the governmental entity within six months of accrual of the cause of action. All other claims must be presented to the governmental entity within one year. (Govt. Code § 911.2.) The date of accrual of a cause of action in personal injury actions is identified as the date of injury. (Code Civ. Proc. § 335.1.) However, some actions, such as medical malpractice actions, accrue only when the injury is discovered. (See Code Civ. Proc. § 340.5.)

A claim must be in writing and must be signed by the claimant or someone on the claimant's behalf. Government Code § 910 outlines the required contents of a claim which includes the name and address of the claimant, the date, place and other circumstances of the incident giving rise to the claim, a general description of the injury and/or damage incurred, the names of public employees causing the claimed injury and/or damage and the amount claimed, if less than ten thousand dollars. If the potential liability of the public entity and its employees is the same, a separate claim for damages does not need to be presented as to the employees. Moreover, if an issue arises as to an independent contractor working for a public entity, the

independent contractor can be sued without filing a formal claim against the hiring entity as independent contractors are specifically excluded from the Act. (Govt. Code § 810.2.) A recent change to the Act now requires that claims be completed on the public entities' designated forms. (Govt. Code § 910.4.)

It is important to articulate all relevant theories and facts within the claim form. However, technical defects in the content of a claim will not invalidate the claim if it "substantially complies" with the statutory requirements, i.e., if sufficient information has been disclosed to allow a public entity to investigate and evaluate the claim to determine if settlement is appropriate. (*Phillips v. Desert Hosp. Dist.* (1989) 49 Cal.3d 699, 706-707.)

It is important to note that many claim forms request not only information as set forth in Section 910 but also may request additional information not required in the statute, including witness information. However, several courts have held that a claim is satisfactory as long as it provides the statutorily required information, even if it excludes information requested on the claim form which is not required by the statute. (*Blair v. Superior Ct.* (1990) 218 Cal.App.3d 221, 225.)

Once completed, a claim form must also be mailed or presented to the proper entity. If the proper entity is not served, a claim may not be in "substantial compliance" with the statutory requirements. (*Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692.) For instance, claims against the state must be delivered or mailed to an office of the Victim Compensation and Government Claims Board. Claims against local governmental entities must be delivered or mailed to the clerk, secretary, auditor or governing body of such entity, at its principal office. (Govt. Code § 915.) A claim against judicial branch entities are subject to special filing requirements. (Govt. Code § 915(c).)

After a claim is properly presented, the public entity has 45 days in which to accept or reject the claim, unless this time is extended by the claimant through a stipulation.<sup>1</sup> The public entity also may notify the claimant within twenty days that the claim fails to substantially comply with the claim filing requirements. If the public entity takes no action within the

delineated time frame, the claim is deemed rejected and the public entity effectively waives any defense based on untimeliness. (Govt. Code § 913, 911.3(b).) If the public entity sends a written notice of its rejection or inaction, the notice must warn the claimant of the 6-month statute of limitations for filing suit after rejection. (Govt. Code § 913(b).)

### When a Claim is Not Required

Government Code § 905 et seq. expressly excludes some types of claims from the claims requirement. For example, a plaintiff can institute an action against the University of California Regents without submitting a claim first. (Govt. Code § 905.6.) Other such exempt claims include those for tax refunds, salary due, retirement benefits, bond payments and unemployment benefits. The exclusions set forth in Section 905 are not exclusive, as other exceptions have been recognized by case law. (For a discussion regarding exemptions, see also, Rutter Group, *Civil Procedure Before Trial*, Par 1:658, p. 1-150.)

### How to File a Late or Amended Claim

If a claim is filed late, the public entity must send a notice to the claimant within 45 days of the presentation of the claim indicating that the claim is late. If no such notice is given, the public entity waives the untimeliness defense. (Govt. Code §§ 911.3(a), 911.3(b).) A claimant may apply in writing to the public entity for permission to file a late claim up to one year after accrual of the cause of action. Any such application must state the reason for the delay and include a copy of the proposed claim. (Govt. Code § 911.4.)

The public entity must grant a timely application for leave to file a late claim if there is a showing of mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced by the delay; the claimant was a minor during the time for filing; the claimant was physically or mentally incapacitated during the claims-filing period and as a result could not present a timely claim; or the claimant died during the claims-filing period. (Govt. Code § 911.6.) If the public entity denies

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the application to file a late claim, the claimant may petition the court for relief within six months after the application was denied. (Govt. Code § 946.6(b).) If the court then grants the petition for relief, claimant must file suit on the claim within 30 days after the order granting the petition. (Govt. Code § 946.6(f).)

In addition, a claimant may file an amendment to cure a defect in the claim to include additional or corrected information at any time prior to the expiration of the period for presentation of claims or before the entity acts on the claim, whichever is later. However, the amended claim must relate to the same transaction or occurrence that gave rise to the original claim. (Govt. Code § 910.6.)

### Commencing Suit

If the public entity properly gives the claimant notice of its rejection, the claimant must file suit within six months after delivery or mailing of the notice of rejection. (Govt. Code § 945.6(a)(2).)<sup>2</sup> The Section 945.6 six-month period has been interpreted to allow the claimant six calendar months or 182 days, whichever is longer, within which to sue. (*Gonzales v. County of Los Angeles* (1988) 199 Cal.App.3d 601, 605-606.) If the public entity does not give notice or gives improper notice, the time is extended to two years from the accrual of the cause of action. (Govt. Code § 945.6(a)(1).)

The six-month filing period generally supersedes other applicable statutes of limitation. This means that if a claimant does not file within the six month period, the claim is barred even if the statute of limitation on the claim has not yet run.<sup>3</sup> However, in a personal injury action, not

involving the negligence of a health care provider, compliance with the provisions of the Act exempt a claimant from the provisions of the statute of limitations. (*Schmidt v. Southern Calif. Rapid Transit Dis.* (1993) 14 Cal.App.4th 23, 30.)

### Special Procedures for Claims Involving Medical Malpractice and Employment Issues

Before filing an action for medical malpractice, the potential defendant must be given at least 90 days notice of intent to commence suit pursuant to Code of Civil Procedure § 364. Thus, the action cannot be filed until the 90-day notice period has expired. However, if the health care provider is a public entity or an employee of a public entity, the claimant must comply with the Tort Claims Act and the section 364 "notice of intent to sue" requirement. However, a claimant may file a Tort Claims Act claim and a section 364 notice contemporaneously in the same or separate documents. (*Wurts v. County of Fresno* (1996) 44 Cal.App.4th 380, 386-387.)

If the section 364 notice is properly served during the last 90 days of the applicable limitations period, the statute of limitations is tolled for 90 days. (*Russell v. Stanford Hosp.* (1997) 15 Cal.4th 783, 788-791.) This 90-day tolling period applies to the section 945.6 six-month filing period.

With respect to employment cases, there are state law administrative filing requirements, including a mandatory filing with the Department of Fair Employment and Housing within a year of the "bad act," such as a termination. After filing with the administrative agency, the

agency may issue a "right to sue" letter after which a claimant has one year from the date of the letter to file for the statutory claims. However, this does not extend the time for filing on common-law claims as to which a claimant still must comply with the Tort Claims Act. Employment discrimination claims against a public entity brought under the California Fair Employment and Housing Act (FEHA) are not subject to the claims filing requirements as FEHA has its own procedures for notice to the public entity. (*Snipes v. City of Bakersfield* (1983) 145 Cal.App.3d 861, 865.)

Similarly, claims against a public entity based on the Federal Civil Rights Act do not need to be presented to the public entity via a claim prior to filing suit.

### Conclusion

The process by which a plaintiff may file suit against a government entity is fraught with traps for the unwary. However, the Tort Claims Act provides a comprehensive, step-by-step guide through the claims stage. ■

<sup>1</sup> If the claim is presented by mail, Government Code section 915.2 provides the public entity 5 additional days if mailed within California, 10 days if from another state, and 20 days if from another country.

<sup>2</sup> The time for filing is not extended if the rejection is sent by mail under Code of Civil Procedure section 1013. (*Cole v. Los Angeles Unified School Dist.* (1986) 177 Cal.App.3d 1.) The six-month statute of limitations is also not extended for minors.

<sup>3</sup> The six-month deadline applies only to claims based on state law, not claims based on federal law.

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