

2009

The Law Offices of **BORTON PETRINI, LLP** Public Entity Law Quick Reference Guide

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CLAIMS STATUTE

Personal injury/property damage causes of action – Six Months

Any other cause of action – One Year (Govt. Code 911.2)

Board has 45 Days from presentment to return untimely claims to preserve time limit defenses. (Govt. Code 911.3)

Application to present late claim – One Year (Govt. Code 911.4)

Claims statute does not apply to employment claims or federal civil rights actions.

Claims statute does not apply to defensive cross complaint for indemnity against public entity.

The date upon which a cause of action for equitable indemnity or partial equitable indemnity accrues shall be the date upon which a defendant is served with the complaint giving rise to the defendant's claim for equitable indemnity or partial equitable indemnity against the public entity.

PUBLIC ENTITY LIABILITY

Public entity liability is dependent on the existence of an authorizing statute or enactment. (Govt. Code 815 (a); 815.6)

The liability of a public entity is subject to any immunity of the public entity provided by statute, and is subject to any defenses that would be available to the public entity if it were a private person. (Govt. Code 815 (b))

A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from the government code provisions, have given rise to a cause of action against that employee or his personal representative. (Govt. Code 815.2 (a))

A public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability. (Govt. Code 815.2 (b))

A public employee is liable for injury caused by his act or omission to the same extent as a private person. (Govt. Code 820)

A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person. (Govt. Code 815.4).

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable

for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty. (Govt. Code 815.6)

DANGEROUS CONDITION LIABILITY

A public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and either:

(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

Under Govt. Code 830.2, a public entity is not liable for a minor, trivial or insignificant risk.

Under Govt. Code 830.6, neither a public entity nor a public employee is liable for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved.

Under Govt. Code 831.2, neither a public entity nor a public employee is liable for an injury caused by a natural condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river or beach.

Under Govt. Code 831.6, neither the State nor an employee of the State is liable under this chapter for any injury caused by a condition of the unimproved and unoccupied portions of:

(a) The ungranted tidelands and submerged lands, and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets and straits, owned by the State.

(b) The unsold portions of the 16th and 36th sections of school lands, the unsold portions of the 500,000 acres granted to the State for school purposes, and the unsold portions of the listed lands selected on the United States in lieu of the 16th and 36th sections and losses to the school grant.

Under Govt. Code 831.7, neither a public entity nor a public

employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that hazardous recreational activity.

PUBLIC ENTITY IMMUNITY

§ 818. Exemplary damages

A public entity is not liable for punitive damages awarded under section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

§ 818.2. Adoption or failure to adopt or enforce enactment

A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

§ 818.4. Issuance, denial, suspension or revocation of permit, license, or similar authorization.

A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

§ 818.6. Failure to inspect, or negligent inspection of, property

A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

§ 818.8. Misrepresentations by employees.

A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional.

§ 820.4. Execution or enforcement of laws; exception.

A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.

§ 820.6. Acting under unconstitutional, invalid or inapplicable enactments

If a public employee acts in good faith, without malice, and under

the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for an injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable.

§ 820.9. Mayors, members of local public entities, boards, commissions and advisory bodies; vicarious liability for injuries caused by public entity.

Members of city councils, mayors, members of boards of supervisors, members of school boards, members of governing boards of other local public entities, members of locally appointed boards and commissions, and members of locally appointed or elected advisory bodies are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official.

§ 821. Adoption or failure to adopt or enforce enactment

A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment.

§ 821.2. Issuance, denial, suspension, or revocation of permit or license.

A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of, or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

§ 821.4. Failure to inspect, or negligent inspection of, property.

A public employee is not liable for injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than the property (as defined in subdivision (c) of Section 830) of the public entity employing the public employee, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

§ 821.6. Institution or prosecution of judicial or administrative proceeding.

A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.

§ 822.2. Misrepresentations.

A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice.

DISCLAIMER: THE INFORMATION PROVIDED IN THIS REFERENCE GUIDE IS NOT A SUBSTITUTE FOR LEGAL ADVICE. READERS SHOULD BE ADVISED THAT IF THEY HAVE QUESTIONS ABOUT THIS OR ANY OTHER AREA OF CALIFORNIA LAW, THEY SHOULD SEEK THE ADVICE OF COMPETENT COUNSEL.

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