



Personal injury late-claim applications

THREE STEPS TO KNOW BEFORE SUING A GOVERNMENT ENTITY

Although the statute of limitations for filing a personal-injury cause of action against a tortfeasor is usually two years, filing a tort action against a *public entity* can have three time-limit steps: (1) claim notice, (2) late-claim, and (3) court petitions. The most troubling time limits concern late-claims and court petitions.

Three time-limit steps

In dealing with the government claims statutes, three steps should be recognized:

- **Step one – the claim application:** The initial “written” claim must be presented and served on the government entity alleged to have committed harm within six months of the occurrence. In essence, “[N]o suit for money or damages may be brought against a public agency on a cause of action for which a claim is required to be presented . . . to the public entity and has been acted upon by the board” or rejected by the board. (Gov. Code, § 945.4 and § 911.2)
- **Step two – late-claim application:** The formal application for presenting a late-claim that is (1) presented beyond the six-month time for presenting a claim application or (2) after the government entity board denies a claim for being delinquent presented. (Gov. Code, § 911.4.); and
- **Step three – court petition:** A petition to the superior court is necessary to seek court approval to file a lawsuit after a public entity board denies or ignores a late-claim request. (Gov. Code, § 946.6.)

Step one: Presenting the claim application

The Government Claims Statute (GCS), Government Code section 810 et seq., with some exceptions, provides that no suit for damages may be maintained against a public entity unless a timely written claim has first been presented to it. “As a general rule, a plaintiff must present a public entity with a timely written claim for damages before filing suit against it.” (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208.)

Section 905 of the act is entitled “Claims for money or damages against local public entities.” It requires notification of a claim from the time the incident arises to a potentially liable government agency. It does not matter that most tort statutes of limitation deadlines exceed the notice time limits required by the GCS.

In essence, claim-notification time limits are divided by the type of action. (Gov. Code, § 911.2.) They are:

- For a claim of a *tortious* injury, the code requires claim notification to a public entity board not later than *six months* after the occurrence; and
- Most other claims require claim notification not later than *one year* after the accrual of the cause of action.

Exempt actions: Actions *exempt* from complying with claim statute requirements include [not exclusive]:

- California Fair Employment Housing Act (FEHA). (Gov. Code, § 12900 et seq.);



- Federal Civil Rights Act. (42 U.S.C. § 1983.);
- Childhood sexual assault. (Code Civ. Proc., § 340.1, subd. (q); also see *Rubenstein v. Doe No.1* (2017) 3 Cal.5th 903 and *Coats v. New Haven Unified School District* (2020) 46 Cal.App.5th 415.) The latter case limits the claim to the injured minor.
- Regents of the University of California. (Gov. Code, § 905.6.); [For claims against the California State University system, see Government Code section 905.9.];
- California Whistleblower Act. (Gov. Code, § 905.2, subd. (h).);
- Declaratory relief. See *Stronghold Engineering Inc. v. City of Monterey* (2023) 96 Cal.App.5th 1203 for a discussion of declaratory relief as an exemption to serving a claim application;
- Injunctive relief for return of seized property. See *Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, holding the code applies only to “money or damages.”
- Estoppel when a government agency employee misleads a claimant about a claim presentation. (*John R., a Minor v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438.)
- A myriad of exclusions is set out in Government Code section 905. They include tax claim issues, liens, public employee compensation claims, workers’ compensation, public assistance, public retirement/pension, government indebtedness, property assessments, intergovernmental claims, unemployment benefits, forfeitures, and others.

Claim-application form requirements: A public entity “may sue and be sued.” (Gov. Code, § 945.) Generally, California’s civil procedure rules apply to actions regarding public entities. (Gov. Code, § 945.2.)

To proceed with an action against a government entity, a *written* claim application must first be presented to a public entity board and acted upon by the board (or deemed denied). (Gov. Code, § 945.4.) The claim application is deemed denied when the public entity board “fails or refuses” to act on the claim application within 45 days unless the parties agree to extend the time to act. (Gov. Code, § 911.6, subd. (c).)

Claim form: Most public entities have preprinted claim-application forms available for submitting a claim. The forms are

not standardized, but they all require an explanation of the claim. The claim “shall show” the required information in Government Code section 910 and be “signed by the claimant or some person on his behalf.” (Gov. Code, § 910.2.)

The form provided by the government entity should be used when submitting a claim, but the form is not mandatory unless required by the public entity. (Gov. Code, § 910.4.) Some claim-application forms have instructions that need to be followed. Note that a claim-application form *must* be included with a late-claim application. (Gov. Code, § 911.4, subd. (b).) [See Step Two.]

Contents of a claim application: (Gov. Code, § 910, subs. (a)-(f).) The contents of a claim application “shall” include the following:

- Claimant’s name and “post office” address;
- The “post office” address where the notice is to be sent;
- Date, place, and other circumstances of the occurrence or transaction giving rise to the asserted claim;
- A general description of the claimed act known at the time the claim application is presented;
- Known names of the government entity employees causing the facts of the claim;
- If the claim is under \$10,000, an estimate of future damages should be stated. No monetary amount is necessary to be declared when a claim exceeds \$10,000.
- The claim form should state whether it is a limited or unlimited civil case.

Signature: The claimant or an authorized person must sign the claim application. (Gov. Code, § 910.2.)

Amendment to the claim application: The claim application can be amended before the controlling board acts on the application. (Gov. Code, § 910.6.)

Time limitations: Government Code section 911.2 provides:

- **Six-month limitation after accrual of cause of action.** Government Code

section 911.2, subd. (a), has a six-month requirement for the presentation of a claim for death, injury to a person, personal property, or growing crops.

- **One-year limitation after accrual of cause of action:** For “any other cause of action,” other than those required by subdivision (a), “shall” be presented “not later than one year after the accrual of the cause of action.”

Filing fee requirements: A claim application presented to California’s Department of General Services requires a \$25 fee to be paid when the claim-form application is presented. (Gov. Code, § 905.2.)

- The fee is required for personal-injury claims. (Gov. Code, § 905.2, subd. (b)(3).)
- In accordance with Government Code section 905.2, subd. (c), a timely application for presentation of a claim to the Department of General Services is determined by whether
 - ◊ (a) the required \$25 fee is timely paid, or
 - ◊ (b) waiver of the \$25 fee is sought and granted, or
 - ◊ (c) denial of the \$25 fee waiver. Subsequent payment of the \$25 fee is required within ten days of the fee waiver denial.

The code does not require a fee when a claim application is presented to a local board.

Service of the claim application on the public entity: Personal service of the claim application is recommended; however, the code allows service electronically or by mail. Following the code’s requirements is necessary to ensure proper claim presentation. (Gov. Code, § 915.)

Special rules for claims against local public entities: For special rules regarding claims against local public entities, see Government Code section 912.6.

Step two: Late-claim application

If a personal injury claim application was *not* presented to the public entity board within the six-month submission requirement, the injured

party can apply in writing to the public entity for leave to present a “late-claim.” (Gov. Code, § 911.4, subd. (a).) A late-claim application is also necessary when a claim application is *untimely* presented to a board. (Gov. Code, § 911.3.) Most public entities do not have pre-printed late-claim forms.

The primary late-claim Government Code sections are:

- 911.3: A board “may” advise that a late-claim application is necessary when a claim application was presented to the board beyond six months after the incident occurred;
- 911.4: Elements for presenting the late-claim application, computation of filing time, and tolling provisions;
- 911.6: Grant or denial of the late-claim application by the board;
- 911.8: Notice of board action on the application to file a late-claim; and
- 912.2: The claim is deemed presented to the board on the day the application for a late-claim is granted. (Also see explanatory section 912.4.)

Alternatively, the claimant and government entity can stipulate in writing to extend by 45 days the filing date for the initial claim application. The written extension must be agreed upon before the expiration of the six-month limit for the board to grant or deny the claim. (Gov. Code, § 911.6, subd. (a).)

Time limit to present the late-claim application: A late-claim application must be presented within a reasonable time after the six-month claim application filing deadline. However, the time to do so is *not* to exceed one year after the accrual of the cause of action. (Gov. Code, § 911.4, subd. (b) and § 915 et seq.)

The one-year limitation has been held to be jurisdictional, and the courts cannot extend that limit. See *Coble v. Ventura County Health Care Agency* (2021) 73 Cal.App.5th 417, where a woman with a legitimate claim exceeded the court’s jurisdiction when she sought a court order beyond one year from the date of the alleged incident.

For a minor, the time during an injured minor’s minority is to be counted,

but time calculation for a mentally incapacitated person who does not have a guardian or conservator is not counted. (Gov. Code, § 911.4, subd. (c)(1).) For an incarcerated person or a minor dependent of the juvenile court, there is a different counting for when a late-claim application is to be served on the public entity board.

Contents of the late-claim application: The late-claim application must state the reason for the delay in presenting a timely claim. (Gov. Code, § 911.4, subd. (b).) A claim application must be attached to the late-claim application. (Gov. Code, § 911.4, subd. (b).) The time to present a late-claim is not satisfied by a party filing a court complaint before a claim is rejected. (*Lowry v. Port San Luis Harbor Dist.* (2020) 56 Cal.App.5th 211.) When a late-claim application is presented to the Department of General Services, the \$25 fee and a claim application must be attached.

Service of a late-claim application: A written late-claim application to the appropriate public entity board is to be served on the board no later than one year from the date of the cause of action. Personal service is recommended; however, the code allows electronic or mail service. It is necessary to follow the code's requirements to ensure proper presentation of the late-claim. (Gov. Code, §§ 915 and 915.2.)

Granting leave to file a late-claim: Government Code section 911.6 sets out the requirements for a board to grant leave to file a late-claim. They are:

- The failure to file a timely claim within six months was due to mistake, inadvertence, surprise, or excusable neglect, and the failure did not prejudice the public entity. (Subd. (b)(1).)
- The injured party was a minor during the six months required to serve the claim application. (Subd. (b)(2).)
- Limitations apply when the minor turns 18. (Subd. (b)(3).)
- Physical or mental incapacity prevented filing a timely claim. (Subd. (b)(4).)

- Limitations apply when the physically or mentally incapacitated person is no longer incapacitated. (Subd. (b)(5).)
- Death of the injured person within six months after the injury prevents filing a timely claim. (Subd. (b)(6).)

Denial of late-claim application: A late-claim application is (a) denied, (b) deemed denied under Government Code section 911.6, (c) denied according to Government Code section 911.6, subd. (c), or (d) upon granting a court petition relieving the claimant from complying with the requirements of Government Code section 945.4.

A board's timely failure or refusal to act on the late-claim application is deemed a denial of the late-claim application on the 45th day after presentation or on the last day of an agreement to extend the time for the board to act. (Gov. Code, § 911.6, subd. (c).)

Step three: Court petition

If a public entity board denies a party's late-claim application or the board fails to act, Government Code section 946.6 authorizes the claimant to petition the superior court for relief from the claim-filing requirements. The court reviews the facts presented that seek relief from the court.

Time limit to file the court petition: Government Code section 946.6, subd. (b) is direct: "The [court] petition shall be presented within six months after the [late-claim] application to the board is denied or deemed to be denied pursuant to Section 911.6." (Brackets added for clarity.)

No notice to the claimant is required when a board fails to respond to a late-claim application. The late-claim is deemed denied on the 45th day after the late-claim was presented to the board. (Gov. Code, § 911.6, subd. (c).)

The procedure for determining the merit of a late claim application after 45 days of entity inaction is provided in section 646.6(b). The applicant has six months to seek relief in court "after the application to the [entity] is denied or deemed to be denied." The six-month

period "operates as a statute of limitations. It is mandatory, not discretionary. [Italics omitted.] *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 653 and fn. 7. [Author's comment: read the *J.M.* case.]

Contents of the court petition (Gov. Code, § 946.6): Government Code section 946.6, subdivision (b), requires a court petition to "show" each of the following:

- A timely late-claim application (Gov. Code, § 911.4) was (i) denied by the board (Gov. Code, § 911.6) or (ii) deemed denied because the board failed or refused to act on a late-claim application within the required time. (Gov. Code, § 911.6 subd. (c).);
- The reason for failing to timely present the claim application to the governing board in accordance with Government Code section 911.2; and
- The contents of a claim application required by Government Code section 910 must be stated in the court petition. The content required by section 910 includes:

- ◇ Claimant's name and "post office" address;
- ◇ The "post office" address where the notice is to be sent;
- ◇ Date, place, and other circumstances of the occurrence or transaction giving rise to the asserted claim;
- ◇ A general description of the claimed act known at the time the claim application is made;
- ◇ Known names of the government entity employees causing the facts of the claim;
- ◇ If the claim is under \$10,000, an estimate of future damages should be stated. No monetary amount is necessary to be stated when a claim exceeds \$10,000.
- ◇ The claim form should state whether it is a limited or unlimited civil case.

The court's deliberation: The superior court's decision is an "independent determination" based upon the contents of the petition, affidavits in

support or opposition, and additional relevant evidence. (Gov. Code, § 946.6, subd. (e).) Trial courts should consider facts most favorable to the claimant and grant relief from technical rules whenever possible. (*Bettencourt v. Los Rios Community College District* (1986) 42 Cal.3d 270, 275-276.)

The court's order: Under Government Code section 946.6, subd. (c),

the court either rejects the petition or allows the claimant/petitioner to file a complaint against the public entity without further review by the particular public entity board. "The [superior] court shall relieve the petitioner from the requirements of Section 945.4 [the requirement for a written claim application] . . ." (brackets added for clarification), if the following conditions are met:

- The late-claim application to the public entity was made in a timely manner. (Gov. Code, § 911.4.);
- The board denied the late-claim application, or the late-claim is *deemed denied* when the board *fails to respond* to the late-claim application within 45 days after presentation to the board. (Gov. Code, § 911.6.); and
- Either one or more of the following is applicable. (Gov. Code, § 946.6, subd. (c)(1)-(6).):

◇ Failure to present the claim application was by *mistake, inadvertence, surprise, or excusable neglect* unless the public entity proves prejudice by ruling in favor of the claimant/petitioner. (Subd. (c)(1).) In the seminal case of *Ebersol v. Cowan* (1983) 35 Cal.3d 427, our highest court held the plaintiff's ignorance of her cause of action until she retained an attorney was grounds to excuse her non-filing of a claim or late-claim, and the public entity was estopped from denying her damages claim.

◇ The injured party was a *minor* during the presentation of the late-claim to the board, subject to the minor becoming an adult thereafter.

(Subds. (c)(2) & (3); *J.M. v. Huntington Beach Union High School District* (2017) 2 Cal.5th 648, 652.)

◇ The claimant was *physically or mentally incapacitated* and, therefore, unable to present a claim, subject to a timely recovery. (Subds. (c)(4) & (5).);

◇ The untimely *death* of a claimant before presenting a claim application within six months of the injury date. (Subd. (c)(6).)

Filing the injury complaint for damages after a court's favorable order: Upon the court's order, the claimant need not comply with section 945.4 (a written claim application). However, the claimant must file a court complaint for damages within 30 days after the court's order. (Gov. Code, § 946.6, subd. (f).)

Case holdings: In viewing case decisions where the court denies the petition, the denial is usually based on the inability of the proponent to show "mistake, inadvertence, surprise, or excusable neglect" in not making a timely claim to the public entity. See *N. G. v. County of San Diego* (2020) 59 Cal.App.5th 63, where a female sought to file a late-claim against a public entity for a police officer's unwanted groping. The court held that the woman's tardy late-claim, caused by fear of retaliation that exceeded one year, was not proof of excusable neglect.

For an estoppel holding, see *Doe v. Bakersfield City School District* (2006) 136 Cal.App.4th 556, where an adult male claimed that at 13 years of age and after for eight years, he suffered molestation from a junior-high male guidance counselor. At age 20, he sought to file a late-claim against the school district on the ground that the delay in filing a timely claim was due to his emotional distress caused by the ongoing molestations. The appellate court held the school district was estopped to deny the late-claim due to the plaintiff's years-long emotional state, and his claim was made within one year of the last molestation.

The *Doe* decision relied heavily on *John R. v. Oakland Unified School District* (1989) 48 Cal.3d 438, where our highest

court held the doctrine of equitable estoppel could be applied where proof that a teacher's threats prevented the plaintiff from pursuing his claim within the statutory time limit.

For a more recent discussion of equitable estoppel, see *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 548.

Conclusion

The three steps in this article are merely *stepping stones* to the dizzy patchwork of Government Codes. To better understand each relevant code section, it is wise to read the various Law Commission Revision Comments at the end of each code section. Some content in this article comes from those comments.

Although this article did not discuss problems presenting a claim on an *incorrectly* accused government entity, that important topic may be worthy of a future Advocate article. Until such time, attorneys need to be diligent with investigations and ensure that presentation of government claims and late-claims are served on the correct government board.

Another approach to the topic of this article is to read the two November 2018 Advocate articles entitled "Claims presentation requirements under the Government Claims Act" by Denisse O. Gastélum and "Government tort claims" by Natalie Weatherford.

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