

STEP BY STEP GUIDE:
California Government Tort Claims Act
(Gov. Code §§ 810-996.6)

What is a Government Tort Claim?

Before you may sue a public entity, you must first file a claim meeting the requirements of the California Tort Claims Act (Government Code §§ 810-996.6). This law applies to public entities such as state, county, and local government agencies or departments, as well as government employees. With very few exceptions, you cannot sue the government for money damages unless you have filed a written claim within the legally specified time period.

Filing a claim gives the agency the opportunity to settle the claim before a lawsuit is filed, and to investigate the claim so that it can properly defend itself and/or correct the conditions or practices that led to the claim.

The California Tort Claims Act sets out strict guidelines for filing your claim:

How Do I file a Government Tort Claim?

1. Timing

- a. *6 Months from date of incident for:*
 - i. Personal injury
 - ii. Damage to personal property
 - iii. Wrongful death
- b. *1 Year from date of incident:*
 - i. Breach of contract
 - ii. Damage to real property
 - iii. Equitable estoppel
- c. *CAVEAT:* incidents that are ongoing, continuing or repeating re-trigger the time period each time it happens, therefore, base the 6 month or 1 year deadlines from date of last “incident.”

2. What if I do not file within the applicable time period?

- a. *General Rule:* your claim and any subsequent lawsuit are *barred*. YOU WILL NOT BE ABLE TO SUE FOR DAMAGES.
- b. *Exceptions:*
 - i. Mistake, inadvertence, surprise, or excusable neglect.
 - 1. Note: not knowing the law does NOT qualify!
 - ii. Claimant’s minority during the entire 6-month or 12-month period.

1. Note: this will apply to most of you *but we are not going to wait!*
- iii. Physical or mental incapacity of claimant.
 1. Death of claimant.
- c. *Procedure*: file a request for permission to file a late claim within a reasonable time period, not more than 1 year from the date of injury / incident.
 - i. The “reasonableness” of the delay is determined on a case-by-case basis.
 - ii. DO NOT END UP IN THIS CATEGORY IF YOU HAVE A CLAIM FILED TIMELY. ***THIS IS THE POINT OF THIS TRAINING!***

How to I Submit My Claim?

1. Go to agency / entity’s website and search “**tort claim form.**” Sometimes this is also called a “claim form”. If cannot find it, call or email to ask for a copy.
2. If you cannot find it or they do not get it to you right away, you can submit a claim via a **formal letter, as long as it contains all of the necessary information** (below).
 - a. Claimant’s name.
 - i. *This will be you on behalf of your child as long as your child is a minor. If you have been harmed in addition to your child (e.g. you were harassed or discriminated against) you would submit two forms.*
 - b. Claimant’s physical address.
 - c. Claimant’s mailing address.
 - d. Date, location, and circumstances surrounding the incident.
 - e. General description of your injuries and harm.
 - f. Name of the employee(s) who caused the injury, if known.
 - g. Why the governmental agency is responsible for your harm.
 - h. Damages – out of pocket expenses, *no* punitive damages:
 - i. If you are asking for less than \$10,000.00, you must itemize each damage and how it was calculated.
 - ii. If you are asking for more than \$10,000.00, you do *not* need to itemize each damage and how it was calculated, but you must state whether your lawsuit will be a “**limited civil case**” (seeking more than \$10,000.00, but less than \$25,000.00 and *not* seeking damages other than money), or “**unlimited civil case**” (seeking more than \$25,000.00, and/or seeking damages other than money).
 - i. File your claim directly with the entity’s governing board or clerk. Many departments and agencies have their own claim form.
 - j. State of California agencies and employees: File your claim with the **California Department of General Services, Office of Risk Management**, at

What Happens after I Submit My Claim?

1. The agency will typically conduct an investigation of your claim.
2. The agency has 45 days after receiving your claim to take action.
 - a. 5 days more if you are mailing within CA.
 - b. 10 days more if you are mailing in US, but outside of CA.
 - c. 20 days more if you are mailing outside of US.
3. If their findings support your allegations, the agency will attempt to settle with you.
4. If the agency finds you did not provide sufficient information, they will ask for more and you will have **15 days** to provide more information.
5. If the agency does not believe your allegations or harm, they may
 - a. Reject your claim in writing and notify you of your **6 month window to sue**.
 - i. *You have 6 months from the date of that letter to file your lawsuit.*
 - b. Reject your claim in writing, and *not* notify you of your 6 month window to sue.
 - i. *You have 2 years from the date of that letter to file suit.*
 - c. Do / say nothing.
 - d. *You have 2 years from the date of that letter to file suit.*
6. **Contact us once you get here.** We will help you file suit or find someone who can.