

## TOP Labor & Employment Lawyers 2024 Addendum

# Employment claims against the government: *Navigating unclear paths*



**Employment claims against public entities can be especially complex, and certain claims are expressly carved out of the Government Claims Act.**

By JJ Johnston

When an employee has been underpaid, harassed, subjected to discrimination or otherwise treated unfairly in the workplace, the path toward resolution of the claim is generally clear. But when the employer in question is a government agency or other public entity, the path may not be so clear.

Despite being in an employer-employee relationship, public entities may answer to a different set of rules than apply to the rest of the working world.

For public workers seeking redress from their employers, the path to resolution may be both convoluted and frustrating. Understanding the laws applicable to such claims could help smooth out that path.

### GOVERNMENT CLAIMS ACTS

Under both state and federal laws, public entities are treated differently from their private counterparts when it comes to filing claims and establishing liability. The Federal Tort Claims Act (FTCA), enacted in 1946, provides a vehicle for compensating individuals who suffer personal injury, death, or property loss due to the negligent or wrongful acts or omissions of federal employees.

The California Tort Claims Act, Government Code Sections 810 through 996.6, was enacted in 1963 to address claims that might be asserted against state and local agencies or their employees. Now referred to as the Government Claims Act (GCA), the law extends to all types of claims against public entities, not simply torts. It applies to state offices, officers, departments, divisions, bureaus, boards,

commissions and agencies as well as to “local public entities” such as counties, cities, districts, public authorities, public agencies, and other such entities.

These government entities are only subject to liability when there is a specific statutory basis for such liability. Government Code Section 905.8 provides that “Nothing in this part imposes liability upon a public entity unless such liability otherwise exists.”

The GCA sets forth presentation requirements for actions against public entities. Government Code Section 945.4 states as follows: “Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.” Additionally, all lawsuits brought against public entities that are subject to these notice requirements must be commenced within a specified time, as set forth in Government Code Section 945.6.

Despite these clear notice and timing requirements, many claims against the government are subject to different rules. Certain claims are expressly carved out of the GCA; others are exempt because different laws have been found to apply.

### EMPLOYMENT CLAIMS

Employment claims against public entities can be especially complex,

and certain claims are expressly exempt from the GCA. For example, Government Code Section 905.1 carves out claims for money or damages against local public entities if they deal with “fees, salaries, wages, mileage, or other expenses and allowances.” It is important to note, however, that the exemption for salaries and wages applies only to compensation that has already been earned but not paid. (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal. App. 3d 1071, 1080.) Additionally, Government Code Section 905.6 exempts from the GCA all claims against the Regents of the University of California. Other claims may be exempt because they are actually brought under statutes that contain their own claims presentation or administrative exhaustion requirements.

### GCA APPLIES

Claims not subject to carve-out include whistleblower retaliation claims under Labor Code Section 1102.5 that are not based on FEHA violations. In *Le Mere v. Los Angeles Unified School Dist.* ((2019) 35 Cal. App.5th 237), the appellate court found that the plaintiff had not timely presented her claim to the school district and could not correct that omission after filing her lawsuit.

The court cited *J.J. v. County of San Diego*, (223 Cal.App.4th at p. 1219, 167 Cal.Rptr.3d 861), which held that “Timely claim presentation is not merely a procedural requirement, but is a condition precedent to the claimant’s ability to maintain an action against the public entity.” It concluded that “To be clear, retaliation or harassment by a public entity in response to a lawsuit, even one that is procedurally barred, is not acceptable. Nothing in the law suggests, however, that

a public entity’s alleged misconduct serves to lift an existing procedural bar or relieve a plaintiff from following the legislatively prescribed claim procedures.”

### OTHER LAWS APPLY

Had the whistleblower claim been based on a FEHA violation, the court may have ruled differently. Courts have found that FEHA’s procedures ensure adequate notice to the public entity. In *Snipes v. City of Bakersfield* ((1983) 145 Cal.App.3d 861), a Black applicant who was rejected for a position with the Bakersfield Police Department sued the city for race discrimination. The appellate court ruled that his FEHA claims were not subject to the GCA’s claim-presentation requirements. (See also *Garcia v. Los Angeles Unified School Dist.* (1985) 173 Cal.App.3d 701, 710-712.)

In *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074), the appellate court looked at whether a city employee was required to exhaust both his administrative remedy under FEHA and the internal remedy required by a city charter before he could file a disability discrimination claim in court. It ruled that the employee did not need to exhaust both administrative remedies. Receipt of a “right to sue” letter was a sufficient prerequisite to filing a FEHA claim.

Additionally, claims asserted under the Whistleblower Protection Act (Government Code 8547-8547.12) are exempt from the notice and filing requirements of the GCA. In *Cornejo v. Lightbourne* ((2013) 220 Cal.App.4th 932), the appellate court ruled that a plaintiff bringing a claim against the state under the WPA was not required to comply with the GCA in addition to exhausting her WPA administrative remedy with the State Personnel

Board. In a footnote, the court noted, “plaintiff contends the WPA is not subject to the Claims Act because it has a comprehensive administrative procedure that satisfies the purposes of the presentation procedure in the Claims Act. We agree.” That analysis was later codified in Government Code Section 905.2(h), which expressly exempts claims brought under the Whistleblower Protection Act from the claims presentation requirement.

### CONCLUSION

Employment claims against government and other public entities require careful analysis and consideration. Unless a claim is clearly exempted from the statutory presentation requirements, plaintiffs should be prepared to file timely notice and comply with all other requirements outlined in the law. Failure to do so could jeopardize otherwise valid and valuable claims against the government.

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