

Manager/Supervisor Risk Management

#53– 5/10/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: WHERE DOES PUBLIC LIABILITY COME FROM?

California public entity liability is based on statute, not common law. The Government Code states that “...except as otherwise provided by statute a public entity is not liable for an injury, whether or not such injury arises out of an act or omission of the public entity or a public employee or any other person.” Therefore a California public entity is immune from liability unless there is a statute that holds them accountable. Unfortunately, from a risk management prospective, there are no shortages of statutes that apply.

The Civil Code, the Vehicle Code (as previously discussed), the Health Code, the Education Code, and the Government Code, to name but a few, all contain statutes that establish public entity liability. While the list is seemingly endless, there are a few sources that dominate YCPARMIA claims:

- The Vehicle Code for auto liability;
- The U.S. Code, section 1983 for civil right/law enforcement liability, and Title VII for EEOC employment actions; and
- The California Government Code for various general liability theories, and DFEH employment actions.

Taking a little more detailed look at statutory liability:

- A statute does not have to explicitly provide that it is applicable to public entities; all that is required is that the legislature intended it to apply.
- Secondly, the term “statute” applies to acts of the State Legislature or United States Congress; this means that a local ordinance cannot create or limit the public entity’s exposure.
- The GC generally does not apply to contractual liabilities (though the claim procedures do apply).
- The GC does not apply to relief other than for money or damages so a claimant seeking an injunction would not have to comply with the GC.
- Most importantly, there are statutory immunities that might apply to potential exposures.
- In addition to possible statutory immunities the public employee is also entitled to any defense that would be “available to the public employee if he were a private person.”

In this generalized training there is no way that we can discuss all of the potential statutory exposures that public entities and their employees face. Earlier in this series we spent a few weeks looking at auto liability. In the coming weeks, in no particular order, we will take similar looks at the most common liability exposures that our members have experienced, and the types of claims they have generated.

Next topic: Dangerous Condition of Public Property