

Municipal Immunity

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Issue

Summarize the statutes addressing civil liability immunity for municipalities and their employees and officers.

Summary

Municipalities have no sovereign immunity from lawsuits (“sovereign immunity” provides the government general protection from lawsuits, unless it consents to be sued), but there are several limitations and exceptions to municipal liability. For example, when they act in performance of a governmental duty, they have limited immunity from liability, such as immunity for discretionary actions (i.e., any action involving judgment or policy making, subject to certain exceptions) and for acts or omissions by employees that constitute criminal conduct or willful misconduct.

Municipal officers or employees also have immunity for discretionary actions while acting within the scope of their authority. However, municipal officers and employees can be held personally liable for:

1. negligence in performing a ministerial act (i.e., one that is performed in a prescribed manner without the exercise of judgment or discretion);
2. negligence in executing a governmental act where imminent injury to a specific individual was foreseeable; and
3. wanton, willful, or malicious misconduct (i.e., acts manifesting a reckless disregard of the consequences or rights and safety of others).

The statutes require municipalities to indemnify or reimburse their employees for financial loss arising out of legal proceedings in certain circumstances when the employee acted in the discharge of his or her duties. Also, municipalities can purchase insurance to protect themselves and municipal officials who are sued because of actions they took in their official capacity.

Municipalities

Municipalities generally are liable for damages to persons or property caused by: (1) their negligence or the negligence of their employees, officers, or agents acting within the scope of their employment or official duties; (2) negligence in the performance of functions that result in profit or financial gain (for example, a municipal parking garage that charges a fee for parking); and (3) acts constituting the creation or participation in the creation of a nuisance ([CGS § 52-557n\(a\)\(1\)](#), as amended by [PA 23-83](#)). However, this liability is significantly limited by several exceptions.

One notable exception is that municipalities are not liable for negligent acts or omissions requiring the exercise of judgment or discretion as an official function of authority granted by law.

Municipalities are also not liable for acts or omissions by employees, officers, or agents that constitute criminal conduct, fraud, actual malice, or willful misconduct ([CGS § 52-557n\(a\)\(2\)](#), as amended by [PA 23-83](#)).

[PA 23-83](#) eliminated the governmental immunity (i.e., sovereign immunity) defense in a civil action for damages to a person or property caused by any negligent operation of a motor vehicle owned by a political subdivision. (Presumably, this change applies only to motor vehicles operated by an employee, officer, or agent of the political subdivision that owns it.) This act also specified that eliminating this governmental immunity must not be construed as limiting or expanding the rights, duties, and exemptions given to an emergency vehicle operator under existing law.

Municipal Employees and Officers

Municipal employees and officers are allowed wide latitude in performing their governmental duties (i.e., those involving supervisory or discretionary functions that are executed for the public's benefit, not for a specific person to whom a special duty is owed). These employees are generally immune from personal liability for discretionary actions they take or do not take in performing their official duties, unless their actions are wanton, willful, or malicious or they acted negligently when they could have foreseen imminent injury to a specific person.

Conversely, they are given much less latitude in performing ministerial duties (i.e., acts in which the employee must follow specific procedures and make no judgments). Employees may be held liable if they perform ministerial duties negligently.

In addition, municipal employees and officers acting within the scope of their employment or official duties are granted immunity for the following specific types of actions or conditions, as are the municipalities themselves:

1. the condition of natural land or unimproved property;
2. the condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person in a manner that is not reasonably foreseeable;
3. the temporary condition of a road or bridge which results from weather, if the municipality has not received notice and has not had a reasonable opportunity to make the condition safe;
4. the condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreational or scenic area, if the municipality has not received notice and has not had a reasonable opportunity to make the condition safe;
5. starting a judicial or administrative proceeding, unless it was commenced or prosecuted without probable cause or with a malicious intent to vex or trouble;
6. the act or omission of someone other than a municipal employee, officer, or agent;
7. the issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, when this authority is a discretionary function by law, unless the action or referral constitutes a reckless disregard for health or safety;
8. failure to inspect or making an inadequate or negligent inspection of any property, other than property owned or leased by or to the municipality, to determine whether the property complies with or violates any law or contains a hazard to health or safety, unless (a) the municipality had notice of the violation of law or the hazard or (b) the failure to inspect (or the inadequate or negligent inspection) constitutes a reckless disregard for health or safety under all the relevant circumstances;
9. failure to detect or prevent environmental pollution, including groundwater, watercourses, and wells, by individuals or entities other than the municipality; or
10. conditions on land sold or transferred to the municipality by the state when the conditions existed at the time the land was sold or transferred to the municipality ([CGS § 52-557n\(b\)](#), as amended by [PA 23-83](#)).

Liability of Uncompensated Municipal Officials

Under the law, individuals who serve as a member of any municipal board, commission, committee, or agency and who are not compensated on a salary or prorated equivalent basis are immune from civil liability for damage or injury resulting from any act, error, or omission made in the exercise of their policy or decision-making responsibilities if they were:

1. acting in good faith and within the scope of their official functions and duties and
2. not violating (a) any state, municipal, or professional code of ethics regulating the person's conduct; (b) their duty to generally prepare and print a concise explanatory text of local proposals or questions approved for submission to the electors of a municipality at a referendum as required by law; or (c) the law prohibiting public officials from denying access to public records or meetings.

This immunity applies to negligence on the part of a public official in their decision-making capacity. But it does not apply to damages or injuries caused by their reckless, willful, or wanton misconduct ([CGS § 52-557n\(c\)](#), as amended by [PA 23-83](#)).

Indemnification and Reimbursement for Municipal Officials

The law requires each municipality to indemnify any elected or appointed municipal official or any municipal employee from financial loss and expense, including legal fees and costs, arising out of any claim, demand, suit, or judgment for negligence or infringement of civil rights by the official or employee while acting in the discharge of his or her duties ([CGS § 7-101a\(a\)](#)).

It also requires each municipality to indemnify municipal officials and employees from financial loss and expense, including legal fees and costs arising out of any claim, demand, or suit instituted against them by reason of an alleged malicious, wanton, or willful act, or any act beyond the scope of their authority while acting in the discharge of their duties. But an official or employee who has a judgment entered against him or her for a malicious, wanton, or willful act must reimburse the municipality for expenses it incurred in providing this defense and the municipality may not be held liable to the official or employee for any financial loss or expense resulting from the act ([CGS § 7-101a\(b\)](#)).

This duty to indemnify only applies if (1) the lawsuit is initiated within two years after the cause of action arose and (2) written notice of the intention to sue and of the time and place where the damages were incurred or sustained has been filed with the municipality's clerk within six months after the cause of action has accrued ([CGS § 7-101a\(d\)](#)).

The law authorizes each municipality to insure against the duty to indemnify or elect to act as self-insurer of the liability ([CGS § 7-101a\(c\)](#)).

Assumption of Liability and Joint Liability

Assumption of Liability. A separate statute generally requires municipalities to indemnify municipal employees for all amounts the employees must pay for damages awarded for infringing

anyone's civil rights or for physical damages to person or property. This applies if the (1) employees, at the time of the occurrence, accident, physical injury, or damages complained of, were acting in the performance of their duties and within the scope of their employment and (2) occurrence, accident, physical injury, or damage was not the result of their willful or wanton act. This statute specifies that a municipality may arrange for and maintain appropriate insurance or may elect to act as a self-insurer to maintain protection for lawsuits filed against it under these statute's provisions ([CGS § 7-465](#)).

Exceptions. This indemnification requirement does not apply to:

1. libel or slander proceedings brought against an employee or
2. physical injury to an employee caused by another employee while both are engaged in the scope of their employment for the municipality, if the injured employee (or his or her dependent) has a right to workers' compensation benefits or compensation ([CGS § 7-465](#)).

Joint Liability. No action for personal physical injuries or damages to real or personal property may be maintained against the municipality and employee jointly unless (1) the lawsuit is commenced within two years after the cause of action arose and (2) written notice of the intention to commence the action and of the time and place where the damages were incurred or sustained has been filed with the clerk of the municipality within six months after the cause of action accrued ([CGS § 7-465](#)).

Defense. This statute specifies that the doctrine of governmental immunity (i.e., sovereign immunity) is not a defense in any lawsuit filed under its provisions ([CGS § 7-465](#)).

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