

FEDERAL TORT CLAIMS ACT

PRESENTATION

By:

TRIBAL FIRST

Indian Self-Determination and Education assistance Act, as amended

- Amended by Congress in 1988 and 1994 to include coverage of the Federal Tort Claims Act to all DOI and HIS funded contracts (Title I) and Annual Funding Agreements (Titles IV and V)
- Tribal employees acting under the provisions of P.L. 93-638 are considered Federal employees for the purposes of torts arising out of damage to the public by tribal employees.

What's the Purpose of FTCA?

The coverage of the FTCA was designed to:

- Provide tribes with coverage arising out of the performance of medical-related functions under Self-Determination contracts; and
- Provide tribes with coverage of claims arising out of the performance of non-medical-related functions under Self-Determination contracts and compacts
- FTCA coverage is designed to take the place of other insurance a tribe might have to cover claims for damages against a member of the public or public property resulting from activities within an employee's scope of work in a Self-Determination agreement.
- It does not cover claims where the tribe might be damaged by a member of the general public.

Programs Typically Funded Under P.L. 93-638 – Self-Governance Compact

- | | |
|-----------------------------------|--------------------------------|
| ➤ Social Services Administration | Facilities Maintenance |
| ➤ Social Services – Welfare Asst. | Roads Maintenance |
| ➤ Welfare Assistance Grants | Indian Reservation Roads |
| ➤ Group Homes | Transportation Planning |
| ➤ Tribal Courts | Detention Services |
| ➤ Law Enforcement Services | Detention Center Transition |
| ➤ Job Placement and Training | Probate & Real Estate Services |
| ➤ Housing Improvement Program | Realty Management |
| ➤ Fire – Pre-Suppression | Facilities |
| ➤ Self-Governance | |

Programs Funded Under P.L 93-638 – Contract

- Alcohol Programs
- Physician Services
- Pharmacy
- Health Education
- Community Health Representatives

Deadlines for Filing

- All claims under FTCA must be filed within two (2) years of the claims accrual.
- The Federal Government has six (6) months after a claim is received to process it before a lawsuit may be filed.

Notification of Claim to Include

- Names and addresses, time and exact place of the accident or incident
- Names and addresses of tribal and/or Federal employees involved as participants or witnesses
- Names and addresses of all other eyewitnesses
- Accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any
- A statement as to whether any person involved was cited for violating a Federal, State or tribal law, ordinance or regulation
- The tribes determination as to whether any of its employees or Federal employees assigned to the claim were involved in the incident and that they were acting within the scope of their employment in carrying out the job at the time the incident occurred.
- Copies of all relevant documentation, including:
 - Police reports
 - Statements of witnesses
 - Newspaper accounts
 - Weather reports
 - Photographs of the site or damaged property and
 - Insurance coverage information, copies of medical bills, and relevant employment records

Where to send the Claim?

- Using the Standard Form 95 or by submitting a comparable written document with all information, including a definite amount of monetary damages are filed with:

Assistant Solicitor
Procurement and Patents Office
Office of the Solicitor – Room 6511
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Tribe's Cooperation

- The tribe designates an individual to serve as the tort claims liaison with the Federal Government.
- The tribe must notify the appropriate Federal governing in writing of any FTCA claims filed against it, including administrative agencies or courts which might be involved
- The tribe has 60 days after notification of an FTCA claims being filed to notify the Federal Government
- The tribe shall cooperate with and provide assistance to the U.S. Attorney assigned to defend the claim, including, but not limited to:

Case preparation
Discovery, and
Trial

Who is Covered?

- Permanent Employees
- Temporary Employees
- Persons providing services without compensation in carrying out a contract
- Persons required because of their employment by a Self-Determination Tribe
- Federal employees assigned to the contract

FTCA Exclusions

- Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.
- Claims for on-the-job injuries
- Claims for breach of contract and
- Claims resulting from activities outside an employee's scope of employment

What to do in the case of a claim that has been filed in Tribal or State courts

- If we become aware of an FTCA – related claim that has been filed in tribal or state court we must immediately notify the U.S. Attorney so that the claim can be moved to Federal jurisdiction

FOR MORE DETAILED INFORMATION REGARDING FTCA, PLEASE CONTACT
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