

Guidelines for Initial Handling of Claims or Lawsuits

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How a claim or lawsuit is handled when it is initially received has important implications for the defense of the claim or lawsuit. Similarly, such treatment may impact whether the municipality's insurance carrier will provide a defense for and indemnify the municipality. What constitutes a "claim" for these purposes, therefore, should be defined broadly by a municipality to include all demands or written complaints that request, or the resolution of which could result, in the payment of monetary damages. Such "claims" may include written demand letters made pursuant to G.L. c. 93A, or written presentment letters under G.L. c. 258 and G.L. c. 84, and may also include complaints by a municipal employee of discrimination written by the employee or the employee's counsel.

Notice to Insurer: All such claims should be forwarded to the municipality's insurance carrier at the time of receipt because most insurance policies require an insured to promptly provide them with notice of any such claims. If such notice is not provided when received, and an actual lawsuit is later filed in court or with an administrative agency, an insurer may decline to provide a defense and insurance coverage for the municipality due to late notice or because the claim was made prior to the policy period.

Documenting Receipt of Claim: In addition to providing notice of a claim or lawsuit to the insurance carrier, it is important to document when a claim or lawsuit is received, as well as the name of the office and individual who received the complaint. Statutes such as G.L. c. 258 require that presentment be made on specific individuals and provide a time period in which a notice of claim must be brought.

Timeline for Response to Claim: Documenting when a notice of claim or lawsuit is received is important in determining the deadline by which a municipality must respond. For example, demand letters sent pursuant to G.L. c. 93A require that a municipality respond within thirty days of receipt. Most complaints filed with state administrative agencies or in court require that a response be filed within 20 days from the date the complaint is served. The time periods for responding to a complaint may be even shorter when injunctive relief is sought and a short order of notice is issued with a specific date for a court hearing. Thus, it is essential that the municipality have a clear policy requiring that any municipal employee, or board and commission member served with a complaint immediately provide a copy to the Mayor, City or Town Manager, Town Administrator, or other individual designated by the municipality to receive such complaints. Such action preserves the municipality's ability to properly handle the complaint, ensure it is sent timely to the insurer and also to counsel for the municipality for review.

Even if there is no deadline set by statute for responding to a claim, a prompt response may nevertheless be required. For example, if a municipal employee complains of harassment or discrimination, the municipality is well advised to immediately determine the scope of any investigation into the allegations and what if any action is required not only to remediate the issue if the complaint is substantiated. Additionally, timeliness

of response will potentially be a factor in the event a lawsuit is brought, i.e., that once the municipality learned of the allegations, the municipality took prompt remedial action.

Summary: When a complaint, claim or lawsuit is received, best practices dictate that the following actions be taken:

- Forward claim or lawsuit to insurance carrier;
- Document name of recipient, date of receipt, and manner of delivery;
- Note deadline for responding to claim or lawsuit;
- Forward claim or lawsuit to Mayor, City or Town Manager, Town Administrator, or other individual designated by the municipality; and
- Forward claim or lawsuit to municipal counsel for review.

Please contact Attorney Janelle M. Austin (jaustin@k-plaw.com), Attorney Deborah I. Ecker (decker@k-plaw.com) or any other attorney at the firm at 617-556-0007 with any further questions concerning the process for handling receipt of complaints, claims, lawsuits, and the like.

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