

Traps for the Unwary: Is Oregon's Statute of Limitations for Injury Claims Really Two Years?

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August 2007

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Injured people and their families often ask attorneys to help them identify the applicable deadline for making a claim should they need to do so. Often, they believe the deadline for injury claims in Oregon is two years. ORS 12.110 does provide a two-year statute of limitations that applies to many bodily injury and related tort claims. A number of complications, however, mean that the actual deadline is often shorter than it appears.

180-Day Deadlines

For injury claims in Oregon, the most common "traps for the unwary" are the Tort Claims Act and the Dram Shop Act. The **Tort Claims Act** generally bars claims against a government or public entity unless a proper notice of the claim is provided within 180 days. ORS 30.275. Tort Claims Act issues may arise in unexpected places, including any case where a public employee's conduct is at issue. This could include child abuse by a teacher or coach, or negligence by a bus driver, police officer or a nurse in a public hospital. Even if there is only a small chance that the Tort Claims Act may apply, it may be important for an attorney to send a notice that complies with the requirements of the act in an abundance of caution.

The **Dram Shop Act** applies to claims against bars, taverns and others who serve alcohol to a patron or guest who is visibly intoxicated, and who then injures someone. The statute, ORS 471.565, is complicated, and is important in many drunk driving cases. Much like the Tort Claims Act, the Dram Shop Act generally requires the claimant to provide proper notice to the responsible tavern or bar within 180 days. ORS 471.565(3)(b). Such notice may be advisable even if there is only a small chance that a Dram Shop Act claim will be pursued.

NOTE

180-day deadlines should not be misunderstood as "six month" deadlines. 180 days is several days shorter than six months. As with all statutes of limitations, it is prudent to develop an action plan that includes asserting the claim long in advance of actual statutes of limitations to avoid risks associated with miscalculated dates, overlooked parties, misnamed parties, and defects in service of process.

One Year Deadlines

The Landlord Tenant Act and the Unfair Trade Practices Act both provide one-year deadlines, and are also likely to be overlooked in Oregon injury cases. Injured parties and their attorneys should expect that the one-year deadline applicable to claims under the **Landlord Tenant Act** pursuant to ORS 12.125 could apply to negligence claims and other claims for injuries that occur on the premises of a residential rental property, not just claims filed under ORS Chapter 90. Although it may be possible to argue that the application of the Landlord Tenant Act deadline is more limited, in many cases it will be prudent to file the claim before the deadline passes to ensure that the defendant will not try to avoid responsibility and increase costs by litigating the statute of limitations issue. Attorneys should refer to *Waldner v. Stephens*, 213 Or App 610 (2007) and related cases where the scope of the Landlord Tenant Act statute of limitations is at issue.

The **Unfair Trade Practices Act** (UTPA) may provide a cause of action in injury claims where a corporation or other business is trying to increase its profits by neglecting safety, and people are hurt or killed as a result. For example, if a nursing home is operating with insufficient staffing or otherwise fails to protect a resident's safety, the injured resident or his or her family may have a UTPA claim in addition to other claims such as negligence. The UTPA provides for attorney's fees for the prevailing party. ORS 646.638(3). UTPA claims are subject to a one-year deadline. ORS 646.638(6).

Do Children Get Extra Time?

Although certain deadlines are extended up to five years for injured children pursuant to ORS 12.160, a major exception is often overlooked: a claim to recover for the injured child's medical bills is generally not extended. This result follows from the legal principle that the obligation to pay the medical bills belongs to the child's parent or guardian. Insurance companies often tell the parents of an injured child that the child's deadline to pursue a claim is longer than two years pursuant to ORS 12.160. As a practical matter, however, a major part of a family's claim may be lost if a claim, including a claim for medical bills incurred by the parents, is not made within two years or the other shorter deadlines that may apply.

Be Careful!

Any discussion of statutes of limitations is incomplete without strong cautionary words. There are many deadlines that could apply to a particular case that are not discussed here. For example, claims involving death, sexual abuse, asbestos exposure, breast implant defects, other defective products all have special rules that apply. The process of determining which deadline applies to a claim is not easy. Multiple laws, even laws of several states, are often involved. In addition, deadlines change frequently. Even when the legislature does not change a deadline, a new court decision can affect when and how the deadline applies. For all these reasons, it is essential in every case for an attorney to complete a case-specific analysis to determine the deadlines that apply. Regardless of ultimate deadlines, most cases are strongest when an attorney is able to depose witnesses, obtain documents, and present evidence to a court or jury as promptly as possible.

Resources

Many, but not all, of Oregon's statutes of limitations are contained in ORS Chapter 12. The remainder are dispersed among other statutes, regulations and case law. As a starting point for any statute of limitations analysis, Oregon Attorneys should refer to "Oregon Statutory Time Limitations," also known as the "red book." The volume is a compilation of statutes of limitations organized by area of law. It is published by and available from the Oregon State Bar Professional Liability Fund.

About the Author

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