

811 SW Naito Parkway
Suite 420
Portland, OR 97204
tel 503.445.2100
fax 503.445.2120
www.vangelisti.com

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

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By Scott F. Kocher

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 review the case law to confirm that the one-year deadline applicable to claims under the **Landlord Tenant Act** pursuant to ORS 12.125 does not 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. Of particular note, the Oregon Supreme Court in *Waldner v. Stephens*, ___ Or ___, ___ P3d ___, (No. SC S055351, Dec. 31, 2008) reversed the 2007 Court of Appeals opinion in that case, and held that the one-year statute of limitations does not apply to a common law negligence claim for

personal injury. The court concluded: “We read the one-year limitations period at ORS 12.125 as applying only to claims that are directly authorized by the ORLTA, *i.e.*, claims that seek damages or injunctive relief *as provided in the ORLTA* for a violation of either the rental agreement or some requirement imposed on landlords or tenants only by a provision of the ORLTA.” (Emphasis in original.) Until the dust settles on this issue, practitioners should pay close attention.

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?

Most deadlines for injured children are extended up to five years pursuant to ORS 12.160. A significant exception applies to causes of action that arose before January 1, 2008: claims to recover for the injured child’s medical bills were generally not extended. Different deadlines for the child’s injury claim and a parent’s claim for medical expenses follow from the legal principle that the obligation to pay the medical bills belongs to the child’s parent or guardian. The parents’ claim for medical expenses is often made a part of the child’s personal injury case pursuant to a consent filed with and accepted by the Court pursuant to ORS 31.700. Effective January 1, 2008, legislation added language including subsection (5) to ORS 12.160 such that parents’ claims for medical expenses now benefit from the same tolling as the child’s injury claim. The legislation, however, made the tolling of the parents’ claim apply “only to causes of action arising on or after the effective date of this 2007 Act.” HB 2366 (2007). The effective date of the Act was January 1, 2008. See Chapter 285, (2007 Laws).

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, for claims arising before January 1, 2008, 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 not to rely on secondary sources, and instead to complete a case-specific analysis of the statutes to determine the deadlines that apply. Claimants should act as quickly as possible, and not fail to contact an attorney merely because it appears that one or more deadlines may have passed. 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

Scott F. Kocher is a trial lawyer representing individuals and families in personal injury, wrongful death and other plaintiff-side civil matters in Oregon and Washington. He holds degrees from Harvard Law School (J.D. 2001) and Harvard College (A.B. *magna cum laude* 1997). He is a partner in Vangelisti Kocher LLP, 811 SW Naito Parkway, Ste. 420, Portland, Oregon 97204. Mr. Kocher can be reached on the internet at www.vangelisti.com or by telephone at 503-445-2100.