

The Change in the Personal Injury Statute of Limitations What Effect Will It Have on California Business?

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A plaintiff wishing to bring a lawsuit must do so in a timely manner. The Legislature has enacted particular deadlines by which a lawsuit shall be filed in court. These enactments are generally referred to as “statutes of limitation.” The rationale for these statutes of limitation is to require plaintiffs to bring suit before the memories of relevant witnesses fade and before the relevant documents are lost or destroyed.

If a plaintiff files a lawsuit after the statute of limitation has expired, the defendant can assert the defense that the statute of limitations has “run” and the lawsuit should be dismissed. A successful statute of limitations defense acts as a complete bar to the action, regardless of the merits of the plaintiff’s claim.

The statute of limitations for bringing a lawsuit based upon a personal injury has been recently expanded from one year to two years.¹ The previous statute of limitation of one year had been in place since 1872. The extension of time in which a plaintiff can bring a lawsuit was accomplished by the motivated lobbying by attorney groups who mainly represent such plaintiffs and to provide the terrorist victims of September 11, 2001 additional time to bring lawsuits in California. Slip and fall cases, actions brought by parties injured by employees during the course of their employment, and actions for injuries caused by defective products are some of the legal claims that are affected by this change in statute.

California businesses should take notice of this change and be aware of its potential effects. Businesses may see a potential increase in their insurance premiums since there is a longer period of time within which to file personal injury lawsuits. Such an increase may require a careful cost analysis of risk management issues.

What can a business do to attempt to minimize its litigation exposure? It should have in place a method for dealing with incidents that could potentially lead to a lawsuit.

First, it is imperative to fix the date of the claimed injury so that there is no doubt about when the statute of limitations begins to run. The claimant should be encouraged to make an immediate report of everything that happened. Company representatives who are witnesses should also make an immediate written report. This can be especially important in the case of a claimed emotional injury which may otherwise be hard to determine with objective standards.

Next, it is important to review the activities that have led to personal injury claims in the past. Investing money in safety upgrades, design improvements or employee training may now be more cost-effective with a longer period during which a lawsuit may be filed.

Finally, this is a good opportunity to review insurance pricing issues. Rates will surely increase, but a considered decision to increase a company's deductible or self-insured retention may be the right move to keep insurance costs down.

Implementing this course of action will assist California businesses in successfully asserting a statute of limitations defense against a potential personal injury plaintiff. It is recommended that businesses respond to this new law armed with full knowledge of the risks and costs, and adjust their policies accordingly.

1 The previous statute of limitation for personal injury was codified in California Code of Civil Procedure §340(3) while the new statute of limitation is now codified in §335.1.