

Information Paper

SUBJECT: How to File a Claim Against the Army

1. Purpose: To provide guidance on filing under the Federal Tort Claims Act and address frequently raised issues.
2. Authority: FTCA, 28 USC §§ 2671-2680; AR 27-20, Claims, and DA Pam 27-162, Claims Procedures.
3. Discussion

a. Introduction: Before filing a claim against the government, you should first determine which federal agency employs the tortfeasor and verify with that agency's legal office that you have found the correct agency. All agencies' legal offices are authorized to provide guidance on how to process a claim. You should file with the specific agency legal office that handles claims for the place where your injury occurred. This office handles negligence claims against the U.S. Army and Department of Defense arising in Michigan, Indiana, Ohio, and the eastern 2/3s of Kentucky. Next, we recommend reviewing the FTCA and AR 27-20. The regulation is available online at <https://armypubs.army.mil/ProductMaps/PubForm/AR.aspx>. Finally, you should confirm that the government could be liable for the injury or damage in your specific case. Under the FTCA, the government is *only* liable for: 1) Money damages for injury or loss of property or personal injury or death; 2) Caused by the negligent or wrongful act or omission of an employee of the government; 3) While acting in the scope of his office or employment. If all these requirements apply to your claim, you should follow the specific prerequisites and procedures detailed in this paper. You should not attempt to sue the individual employee unless the negligent act was outside the government employee's scope of employment.

b. Where to Start. The first requirement to file a claim against the Army is to file an administrative claim (not a lawsuit) with the appropriate Army Claims office. You may not go directly to any court for redress – not state, not federal. Additionally, the administrative claim must be filed within the two-year statute of limitations under the FTCA, *not* the statute of limitations that may apply to that tort under local state law. Failure to file the administrative claim within two years from when you knew or should have known about the incident will *permanently bar your claim*.

c. What to File. You should file the claim using the standard government form SF 95, available online through <https://armypubs.army.mil> and on the Fort Knox claims website. The form must be 1) Signed by the claimant, or if signed by a lawyer, accompanied by a signed representation agreement; 2) Demand specific monetary compensation (a sum certain, not an estimate) and; 3) Provide the factual basis for the claim in the form of written statements, documentary evidence, or other evidence to establish a reasonable basis for the claim. Please note that you must claim specific monetary damages based on the evaluation of those compensable items of damage that are recognized by the state in which the injury occurred. The FTCA does not authorize punitive damages.

d. The Two (2) Six-Month Rules. The first six-month rule is that once you have submitted an administrative claim, you may not file suit in federal district court until the agency has had six months to investigate the claim and to settle or deny it. Six months after filing, you may file suit but are not required to if the claim is still pending after six months. The second six-month rule is

triggered by final administrative action (in writing) on your claim. If the agency denies your claim in writing or makes a final offer that is unacceptable to you, you only have six months to file suit in the appropriate federal district court (where the injury occurred). Failure to file suit within six months after final administrative action will *permanently bar your claim*. Please note: you may not file in state court even though the law of the state in which the incident occurred will apply.

e. Other Frequent Issues.

1. Attorney Fees. The FTCA limits lawyer fees to 25% if the suit is filed in district court and there is a settlement or judgement for the plaintiff. Alternatively, if a claim is settled during the administrative phase, those fees are limited to 20%. Excess fees may be subject to criminal sanctions.

2. Claims by Servicemembers. Under most circumstances, military members may not file claims under the FTCA. The US Supreme Court established the “Feres Doctrine” which bars claims or suits by military members when the injury is sustained when the member was performing assigned duties. Retired servicemembers and military dependents are not similarly barred. Claims by military members are usually limited to the Military Claims Act and to Personnel Claims filed under AR 27-20, Chapter 11.

3. Subrogation Claims. Insurers may file subrogation claims with the federal agency by utilizing the same process described in this paper. The injured party may also file a claim even if their insurer has also filed, but their recovery will be limited to their out-of-pocket and uncompensated expenses.

4. Substantive Law. Tort law varies from state to state. The substantive law that controls your case is that of the state where the incident occurred. The FTCA still preempts state law with respect to the procedures required to file a claim and for statutes of limitation.

5. Government Contractors. Frequently, an incident will occur on a military installation that is the result of the negligence or wrongful act of a government contractor. Government contractors *are not* considered government employees under the FTCA. For the Army, only military members, DA and DoD civilians, and MWR employees are considered government employees. If one of those categories do not apply to the person who caused your injury, you should file any claim for damages with the responsible contractor.

3. Conclusion. Potential claimants must meet the requirements of the FTCA and follow the procedures set forth in that statute in order to recover damages from a federal agency. The Fort Knox Claims Office handles all claims against the US Army and Department of Defense in Michigan, Indiana, Ohio, and most counties in Kentucky. To file a claim against the Army arising out of one of these states, follow the guidelines in the SF 95 Instruction Packet available on our website (<http://www.knox.army.mil/Garrison/supportoffices/sja/papers.aspx#claim>) and e-mail the completed, signed form to usarmy.knox.usacc.mbx.sja-claims@mail.mil and mail an original copy to:

Office of the Staff Judge Advocate
ATTN: Tort Claims (Suite 322)
50 Third Avenue, Bldg 1310
Fort Knox, KY 40121.

Approved By: Division Chief