

SUMMARY OF IMMUNITIES APPLICABLE TO EMERGENCY RESPONSE

- California Claims Act (GC §§810-996.6)
 - Immunity for discretionary acts or omissions
 - Interpreted mostly by case law; discretionary means basic policy decisions in which risks and benefits were weighed
 - Employees immune: §820.2
 - Public entity immune: §815.2(b)
 - Scope
 - Distinguish ministerial or mandatory duties, which are not subject to immunity
 - Example: implementing existing policy decisions, planning or operational functions
 - Cases
 - *Johnson v. State (1968) 69 C.2d 782*, followed by *Barner v. Leeds (2000) 24 C.4th 676*, discussing immunity in circumstances unrelated to emergencies
 - *Susman v. City of Los Angeles (1969) 269 Cal.App.2d 803* (Governor's authority to direct national Guard to quell civil disturbance held discretionary)
 - *Odello Brothers v. County of Monterey (1998) 63 Cal.App.4th 778* (county's decisions held immunized as to flood plain and breach of levee; but court found triable issues remained for inverse claims)
 - Lessons: use broader discretionary immunity under Emergency Services Act; tell employees to use their good judgment in accordance with their training and experience
 - Immunity for health and safety inspections of property
 - Employees immune: §821.4
 - Entity immune: §818.6
 - Does the property comply with or violate any enactment or contain or constitute a hazard to health or safety?
 - Immunity is absolute: applies to both discretionary and ministerial acts
 - But: limited to adequacy of inspection or failure to inspect (*Cochran v. Herzog Engraving Co. (1984) 155 Cal.App.3d 405*)

- Immunity for authorized entry on private property
 - Employees immune for entry if expressly or impliedly authorized by law (including statutes, charters, ordinance, decisional law): §821.8
 - Immunizes only the entry, not negligent acts committed on the premises

- Immunity to prevent impending peril from gradual earth movement (§865-867)
 - Legislative body has found based on expert opinion or other reasonable basis that there's an impending peril, determined appropriate remedial action to halt, stabilize, or abate it, and undertaken such remedial action
 - Applies to employees and the entity
 - Doesn't apply to earth movement caused by the entity

- Immunity for issuance or non-issuance of earthquake and volcanic warnings (§955.1(b))
 - Applies to employees and the entity
 - Includes preparatory acts or omissions such as preparing or refusing to prepare hazard maps, evacuation plans

- Immunity for transporting injured persons to doctor or hospital (§850.8)
 - Applies to public employees and public entity
 - No immunity for willful misconduct

- Immunity for injuries resulting from condition of fire protection or firefighting equipment or facilities (§850.4)
 - Applies broadly to all activities fighting fires: driving to the fire, arrival time, operation of fire hydrants and water valves, insufficient water at sprinklers
 - But: may not apply to non-firefighting rescue attempt (*Lewis v. Mendocino Fire Protection District* (1983) 142 Cal.App.3d 345), though contrary authority in earlier case (*Heimberger v. City of Fairfield* (1975) 44 Cal.App.3d 711) holding immunity applies to all activities "within the scope of their employment."
 - Check annotations, as there are lots of cases addressing various before, during and after scenarios
 - Applies to employees and entity

- Other statutes that confer immunity in emergency situations
 - Provision of emergency medical care (Business and Professions Code §§2395-2398,2727.5)
 - Administering emergency CPR (Civil Code §1714.2)
 - Operation of civil defense and first aid stations (Civil Code §1714.5)
 - Nuisance abatement (Civil Code §§3491, 3502)
 - Aquatic rescue efforts (Harbors and Navigation Code §656)
 - Rescue team conduct (Health and Safety Code §§1317, 1799.100-1799.112, VehicleCode §165.5), including dispatching emergency medical services following 911 call
 - Abatement of hazardous spills and discharges (Health and Safety Code §§25400,25505.5)
 - Operators of emergency vehicles (Vehicle Code §§17004, 21055-20156)
 - Transporting injured person on highway (Vehicle Code §20016)
 - Operation or failure of dam or reservoir (Water Code §6028)
 - Communications in proper discharge of official duties (Civil Code §47)
 - Applies to county emergency services officer (*Copp v. Paxton (1996) 45 Cal.App.4th 829*)
 - Immunity is absolute

- Emergency Services Act (CG §§8550-8655)
 - Broad discretionary immunity (§8655)
 - Applies to state and its political subdivisions
 - Defined as city, city/county, county, district, or other local governmentalagency (§8557(b))
 - Covers “any claim based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty”
 - Immunizes employees and volunteers (§8657), medical/vet providers (§8659)
 - Immunity is extraterritorial (§8656)
 - Broader than Tort Claims Act discretionary immunity in §820.2 (*Labadie v. State of California (1989) 208 Cal.App.3d 1366*)
 - Examples:
 - Immunity for reclamation district cut levee to divert floodwaters, resulting in flooding other property (*Thousand Trails, Inc. v. California Reclamation District No. 17 (2004) 124 Cal.App.4th 50*)

- The purpose of the [California Emergency Services] Act is self-explanatory. In situations in which the state must take steps necessary to quell an emergency, it must be able to act with speed and confidence, unhampered by fear of tort liability. A state of emergency imposes severe time constraints, forcing decisions to be made quickly and often without sufficient time to carefully analyze all potential repercussions. Therefore, the immunity granted by the Act is broad and specifically extended to encompass not only discretionary actions, but also the performance of or failure to perform those discretionary actions. (*LaBadie v. State of California* (1989) 208 Cal.App.3d 1366)
- Immunity for spraying to eradicate fruit fly (*Farmers Ins. Exchange v. State* (1985) 175 Cal.App.3d 494)
- BUT: No immunity for intentional misrepresentations about safety of chemicals used for pest eradication (*Adkins v. State of California* (1996) 50 Cal.App.4th 1802)
- Declare an emergency so this immunity will apply