



Department of Fire Services
Commonwealth of Massachusetts

Liability Considerations for Fire Departments under the
Massachusetts Tort Claims Act

Quick Reference Guide:

Liability Considerations for Fire Departments under the Massachusetts Tort Claims Act

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Liability Considerations for Fire Departments under the
Massachusetts Tort Claims Act

Table of Contents

I.	INTRODUCTION AND DISCLAIMER.....	3
II.	BACKGROUND	3
III.	EXAMPLES OF POTENTIAL CLAIMS AGAINST AN FD.....	4
IV.	MAKING A CLAIM UNDER THE MTCA.....	4
V.	LIMITS OF LIABILITY	4
VI.	STATUTORY IMMUNITY.....	5
VII.	INDEMNIFICATION OF PUBLIC EMPLOYEES	7



Department of Fire Services Commonwealth of Massachusetts

Liability Considerations for Fire Departments under the Massachusetts Tort Claims Act

I. INTRODUCTION AND DISCLAIMER

This Quick Reference Guide is intended to provide Massachusetts fire departments with a basic overview of liability considerations under Massachusetts General Law Chapter 258, the *Massachusetts Tort Claim Act* (“MTCA”). The information presented below is for informational purposes only and does not, nor is it intended to, constitute legal advice. Use and/or reliance on this document does not create an attorney client relationship with DFS legal. No user of this guide should act, or refrain from acting, based solely on the information in this guide, without first seeking competent legal advice. Only an attorney should review the applicability of Chapter 258 as it pertains to your particular situation.

II. BACKGROUND

Cities or towns are legally liable for injuries and property damage negligently or wrongfully caused by their employees acting within the scope of their public employment.

Historically, government was not liable for its actions or decisions, even if the government or its agents were negligent and their actions (or inactions) resulted in harm. However, pursuant to the MTCA, citizens may bring lawsuits against cities, towns or the Commonwealth in specific situations.

In pertinent part, the MTCA states:

Section 2. Public employers shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual under like circumstances, except that public employers shall not be liable to levy of execution on any real and personal property to satisfy judgment, and shall not be liable for interest prior to judgment or for punitive damages or for any amount in excess of \$100,000.

In other words, under the MTCA, an injured victim could file a liability claim against a city or town for any negligence or wrongful act or failure to act by a firefighter while in the performance of his/her duties while acting in the scope of his/her employment. If the injured party would have the right to bring a lawsuit against a private individual, he or she will be able to file a claim against the city or town.



Department of Fire Services Commonwealth of Massachusetts

Liability Considerations for Fire Departments under the
Massachusetts Tort Claims Act

III. EXAMPLES OF POTENTIAL CLAIMS AGAINST A FIRE DEPARTMENT

Emergency responses and incidents account for the vast majority of claims brought against a fire department under the MTCA. Some examples include, but are not limited to:

- Negligent operation of a government vehicle. Operating a government-owned vehicle negligently or recklessly while rushing to an emergency scene could expose the fire department to liability for a related vehicle accident.
- Dangerous defects or hazards on fire department properties, such as loose steps/handrails, spills on floors, cracked floors or tiles, broken handrails, dangerous wiring, etc., are not immune to safety hazards that may cause serious visitor injuries.
- A fire department could be liable for negligent or reckless treatment of a patient that results in damages/injuries to the patient.
- Negligence or wrongful acts by firefighters/EMS personnel. There may be grounds for a claim against the city or town if a firefighter/first responder committed misconduct, or negligence that led to injuries or losses.

IV. MAKING A CLAIM UNDER THE MTCA

Bringing a liability lawsuit against a government entity in Massachusetts comes with specific rules and requirements, known as presentment requirements.

In Massachusetts, the statute of limitations in which to present a claim against a city or town is two years from the date of injury. The municipality then has six months for the claim to be accepted or rejected. If the claim is rejected, the injured party can then file with the Superior Court in the county in which the claimant resides or the city or town is situated. The court filing deadline is three years from the date of injury. These time limitations of the MTCA are strictly enforced and should not be ignored.

V. LIMITS OF LIABILITY

The full text of the MTCA dictates the liability, as well as the limits of liability, for government entities and employees regarding negligence. Below are just some brief key points:

- **Cap on Damages** – Unlike the unlimited liability of most private employers, the tort liability of public employers, with one exception, is statutorily capped at \$100,000 .G.L.



Department of Fire Services Commonwealth of Massachusetts

Liability Considerations for Fire Departments under the Massachusetts Tort Claims Act

- c. 258, §2. The cap is per plaintiff, not per claim. Therefore, a single plaintiff can recover up to \$100,000, regardless of how many claims have been asserted. Multiple plaintiffs, however, can recover up to \$100,000 each.
- **Punitive Damages/Interest** – A public employer cannot be held liable for punitive damages or for interest prior to the judgment. Public employers are, likewise, immune from liability for post-judgment interest.

VI. STATUTORY IMMUNITY

The MTCA does not apply to ten types of claims that may be brought against a municipality. While not all are applicable to a claim brought against a fire department, the following would likely apply to a fire department.

1. Exercise of Due Care in the Execution of the Law – municipalities are immune from liability for any claim based upon an act or omission of a public employee when such employee was exercising due care in the execution of any statute, regulation, ordinance or by-law, whether such law is valid.
2. Discretionary Functions – municipalities are immune from liability for any claim based on the exercise or performance of a discretionary function, whether or not the discretion is abused. A two-part test must be met for the discretionary function exemption to apply.
 - a. First, it must be determined whether the actor had discretion to take or not take the challenged action. If the actor was required to do what he did, the exemption does not apply.
 - b. Second, if the actor had discretion, it must be determined whether the decision was geared towards policy making and planning or towards the implementation and execution of a previously established policy. The exemption only applies if the decision involved policy making or planning.
3. Intentional Torts – municipalities are immune from liability for any claim arising out of an intentional tort including: assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations. In the case of intentional torts, however, public employees may be held liable in their individual capacities and the municipality may be called on to indemnify such an employee.



Department of Fire Services Commonwealth of Massachusetts

Liability Considerations for Fire Departments under the Massachusetts Tort Claims Act

4. Permits and Licenses – municipalities are immune from liability for any claim based on the issuance, denial, suspension, revocation or the failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization.
5. Inspection of Property – municipalities are immune from liability for any claim based on the failure to inspect or an inadequate negligent inspection of any property, to determine whether the property complies with or violates any law, regulation, ordinance or code, or contains a hazard to health or safety; except as otherwise provided in M.G.L. c. 258 s.10(j)(i).
6. Fire Protection Services – municipalities are immune from liability for any claim based upon the failure to establish a fire department or a particular fire protection service, or if fire protection service is provided, for failure to prevent, suppress or contain a fire, or for any acts or omissions in the suppression or containment of a fire, but not including claims based upon the negligent operation of motor vehicles or as otherwise provided in M.G.L. c. 258 s.10(j)(i).
7. Failure to Prevent Harm – municipalities are immune from liability for any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer. This exclusion shall not apply to:
 - a. any claim based upon explicit and specific assurances of safety or assistance, beyond general representations that investigation or assistance will be or has been undertaken, made to the direct victim or a member of his family or household by a public employee, provided that the injury resulted in part from reliance on those assurances. An explicit assurance of safety is “a spoken or written assurance, not one implied from the conduct of the parties or the situation, and by ‘specific’ the terms must be definite, fixed, and free from ambiguity.”
 - b. any claim based upon the intervention of a public employee which causes injury to the victim or places the victim in a worse position than he was in before the intervention;
 - c. any claim based on negligent maintenance of public property;
 - d. any claim by or on behalf of a patient for negligent medical or other therapeutic treatment received by the patient from a public employee.



Department of Fire Services Commonwealth of Massachusetts

Liability Considerations for Fire Departments under the
Massachusetts Tort Claims Act

VII. INDEMNIFICATION OF PUBLIC EMPLOYEES

A municipality must indemnify public employees from personal financial loss and expenses, including legal fees, arising out of any claim, demand, suit or judgment by reason of any act or omission within the scope of his official duties, IF the municipality has accepted the provisions of G.L. c. 41, §100I prior to July 1, 1978, or the provisions of G.L. c. 258, §13 at any time. The municipality is not required to indemnify a public employee from losses resulting from intentional violations of civil rights.