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C.R.S. 24-10-109

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The Colorado Constitution and Titles 3, 4, 21, and 41 have been updated and are current through all laws passed during the 2020 Legislative Session, subject to review by the Colorado Office of Legislative Legal Services. Other statutory titles are current through all laws passed during the 2019 Legislative Session and are in the process of being updated.

CO - Colorado Revised Statutes Annotated TITLE 24. GOVERNMENT - STATE ADMINISTRATION ARTICLE 10. GOVERNMENTAL IMMUNITY

24-10-109. Notice required - contents - to whom given - limitations

(1) Any person claiming to have suffered an injury by a public entity or by an employee thereof while in the course of such employment, whether or not by a willful and wanton act or omission, shall file a written notice as provided in this section within one hundred eighty-two days after the date of the discovery of the injury, regardless of whether the person then knew all of the elements of a claim or of a cause of action for such injury. Compliance with the provisions of this section shall be a jurisdictional prerequisite to any action brought under the provisions of this article, and failure of compliance shall forever bar any such action.

(2) The notice shall contain the following:

(a) The name and address of the claimant and the name and address of his attorney, if any;

(b) A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;

(c) The name and address of any public employee involved, if known;

(d) A concise statement of the nature and the extent of the injury claimed to have been suffered;

(e) A statement of the amount of monetary damages that is being requested.

(3) (a) If the claim is against the state or an employee thereof, the notice shall be filed with the attorney general. If the claim is against any other public entity or an employee thereof, the notice shall be filed with the governing body of the public entity or the attorney representing the

public entity. Such notice shall be effective upon mailing by registered or certified mail, return receipt requested, or upon personal service.

(b) A notice required under this section that is properly filed with a public entity's agent listed in the inventory of local governmental entities pursuant to section 24-32-116, is deemed to satisfy the requirements of this section.

(4) When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin of the deceased.

(5) Any action brought pursuant to this article shall be commenced within the time period provided for that type of action in articles 80 and 81 of title 13, C.R.S., relating to limitation of actions, or it shall be forever barred; except that, if compliance with the provisions of subsection (6) of this section would otherwise result in the barring of an action, such time period shall be extended by the time period required for compliance with the provisions of subsection (6) of this section.

(6) No action brought pursuant to this article shall be commenced until after the claimant who has filed timely notice pursuant to subsection (1) of this section has received notice from the public entity that the public entity has denied the claim or until after ninety days has passed following the filing of the notice of claim required by this section, whichever occurs first.

History

Source: L. 71: p. 1207, § 1. **C.R.S. 1963:** § 130-11-9. **L. 79:** (1) amended, p. 862, § 2, effective July 1. **L. 86:** (1), (2)(b), (3), and (5) amended and (6) added, p. 877, § 9, effective July 1. **L. 92:** (1) amended, p. 1117, § 4, effective July 1. **L. 2009:** (3) amended, (HB 09-1248), ch. 252, p. 1136, § 21, effective May 14. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 881, § 145, effective July 1; (3) amended, (HB 12-1244), ch. 172, p. 616, § 1, effective August 8.

Annotations

Case Notes

ANNOTATION

I. General Consideration.

II. Applicability.

III. Purpose of Notice Requirement.

IV. Compliance.

V. Time Periods.

I. GENERAL CONSIDERATION.

Law reviews. For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1790 (1988). For article, "Substantial Compliance With Governmental Immunity Act Notice Requirements," see 21 Colo. Law. 471 (1992). For article, "Asserting Governmental Immunity by Attacking Subject Matter Jurisdiction", see 22 Colo. Law. 2551

(1993). For article, "Discovery: A Prerequisite to the Running of the Governmental Notice Period", see 24 Colo. Law. 2381 (1995).

Annotator's note. Since § 24-10-109 is similar to repealed C.R.S. 1963, § 139-35-1, relevant cases construing that provision have been included in annotations to this section.

Section does not violate the equal protection clauses of either the Colorado or United States Constitution. Fritz v. Regents of Univ. of Colo., 196 Colo. 335, 586 P.2d 23 (1978); Uberoi v. Univ. of Colo., 713 P.2d 894 (Colo. 1986).

Although section establishes two classes. This section results in the establishment of two different classes: persons damaged by a tort committed by a public entity and persons damaged by a tort committed by a private person. Fritz v. Regents of Univ. of Colo., 196 Colo. 335, 586 P.2d 23 (1978).

Section controls over more stringent city ordinance. To the extent that a city ordinance governing the notice of claim imposes more stringent requirements than those imposed by this section, this section controls. State Comp. Ins. Fund v. City of Colo. Springs, 43 Colo. App. 112, 602 P.2d 881 (1979).

Effect of a nonclaim statute is to bar substantive claims. Barnhill v. Pub. Serv. Co., 649 P.2d 716 (Colo. App. 1982), aff'd, 690 P.2d 1248 (Colo. 1984).

Limitations for § 1983 actions. While actions under 42 U.S.C. § 1983 are governed by state statutes of limitation, the applicable state statute of limitations is former § 13-80-106 (now § 13-80-103) and not the time limit found in this act. Mucci v. Falcon Sch. Dist. No. 49, 655 P.2d 422 (Colo. App. 1982) (decided prior to 1986 enactment of § 24-10-119).

Notice issues arising under the Colorado Governmental Immunity Act (CGIA) must be decided pursuant to C.R.C.P. 12(b)(1), rather than by summary judgment and, depending on the case, the trial court may allow limited discovery and conduct an evidentiary hearing before deciding the notice issue. Capra v. Tucker, 857 P.2d 1346 (Colo. App. 1993); Lafitte v. State Hwy. Dept., 885 P.2d 338 (Colo. App. 1994); Armstead v. Mem'l Hosp., 892 P.2d 450 (Colo. App. 1995); Miller v. Campbell, 971 P.2d 261 (Colo. App. 1998).

A plaintiff's failure to meet the 180-day notice requirement is a jurisdictional defect that may be raised by the defendant or the court at any time, but a plaintiff's failure to meet the notice requirement of subsection (3) is not jurisdictional and merely gives rise to an affirmative defense that must be timely raised by the defendant. Brock v. Nyland, 955 P.2d 1037 (Colo. 1998).

Compliance with the 180-day notice requirement is a jurisdictional prerequisite to suit. Water Dist. v. Bd. of Land Comm'rs, 968 P.2d 168 (Colo. App. 1998); Bird v. Pioneers Hosp., 121 F. Supp. 2d 1321 (D. Colo. 2000).

A challenge to the contents of a notice of claim raises an issue of "sovereign immunity" for purposes of § 24-10-118 (2.5); the trial court's ruling in this case was a "final judgment" subject to interlocutory appeal. Bresciani v. Haragan, 968 P.2d 153 (Colo. App. 1998).

Whether the notice of claim sufficiently complied with the requirements of subsection (2) is an issue of law which is to be reviewed de novo. Bresciani v.

Haragan, 968 P.2d 153 (Colo. App. 1998).

An equitable defense such as estoppel is inapplicable to this section and is not a defense to a claimant's failure to file written notice. A school district cannot by its own conduct excuse a claimant's failure to comply with the written notice requirements of this section and thereby confer upon the trial court subject-matter jurisdiction to hear claimant's claim. Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000).

The university of Colorado is the "state" for purposes of the subsection (3) notice provision. Schmidt v. Harken, 42 P.3d 34 (Colo. App. 2001).

Applied in Roderick v. City of Colo. Springs, 193 Colo. 104, 563 P.2d 3 (1977); Lipira v. City of Thornton, 41 Colo. App. 401, 585 P.2d 932 (1978); Srb v. Bd. of County Comm'rs, 43 Colo. App. 14, 601 P.2d 1082 (1979); Reussow v. Eddington, 483 F. Supp. 739 (D. Colo. 1980); In re Estate of Daigle, 634 P.2d 71 (Colo. 1981); Forrest v. County Comm'rs, 629 P.2d 1105 (Colo. App. 1981); Carroll v. Reg'l Transp. Dist., 638 P.2d 816 (Colo. App. 1981); Martinez v. El Paso County, 673 F. Supp. 1030 (D. Colo. 1987).

II. APPLICABILITY.

It is only where a plaintiff has stated a federal claim that a notice of claim provision may be struck down based on supremacy because allowing a federal claim to be limited by state law would defeat the objective of the federal law. King v. United States, 53 F. Supp. 2d 1056 (D. Colo. 1999), rev'd on other grounds, 301 F.3d 1270 (10th Cir. 2002), cert. denied, 539 U.S. 926, 123 S. Ct. 2572, 156 L. Ed. 2d 602 (2003).

Section applies to all actions which lie in tort, whether recognized at common law or created by statute. State Pers. Bd. v. Lloyd, 752 P.2d 559 (Colo. 1988).

But section does not apply to claims for prospective relief to prevent future injury, and therefore did not bar cross-claims for promissory estoppel and a declaratory judgment that a city-issued rooming and boarding permit allowing use of property for transitional housing would remain valid when the entity that had purchased the property filed the cross-claims during a legal proceeding challenging the validity of the permit. Because the permit was still valid when the entity filed the cross-claims, the entity had not yet suffered an injury triggering the notice requirements of this section. Open Door Ministries v. Lipschuetz, 2016 CO 37M, 373 P.3d 575.

Section relates to matters which have arisen when city is performing proprietary functions, as well as to any other actions which might be brought as a result of negligence for which a city may be responsible. Jacob v. City of Colo. Springs, 175 Colo. 102, 485 P.2d 889 (1971).

Claims arising under the provisions of the Colorado constitution are not authorized in the CGIA and Colorado law requires that causes of action for constitutional violations may be allowed only if there is a specific statutory authority for them. Connolly v. Beckett, 863 F. Supp. 1379 (D. Colo. 1994).

Section does not require a person contracting with state to file requests for payment with the claims commission (since abolished) where money has been previously appropriated therefor and the contract itself provides for the method of payment. Ace

Flying Serv., Inc. v. Colo. Dept. of Agric., 136 Colo. 19, 314 P.2d 278 (1957) (decided under former CRS 53, § 130-2-1).

Claim that lawfully seized vehicle was unlawfully retained, could lie in tort and therefore failure to give required notice pursuant to the CGIA required that the action be dismissed. Denver v. Desert Truck Sales, Inc., 837 P.2d 759 (Colo. 1992).

Notice not required where claims arise out of breach of tenure contract. Where the plaintiff's claims arise out of a breach of the contract created by the statutory tenure provisions, the violation is a contractual one and is not covered by this article. Therefore, the plaintiff is not required to give the notice provided for in this section. Ebke v. Julesburg Sch. Dist. No. RE-1, 37 Colo. App. 349, 550 P.2d 355 (1976), aff'd, 193 Colo. 40, 562 P.2d 419 (1977).

A claim for loss of consortium constitutes an injury under the CGIA, and gives rise to a separate and individual right of recovery on behalf of the spouse claiming loss of consortium. A spouse may not maintain a claim for loss of consortium unless the spouse submits his or her own written notice of claim in accordance with the act. Smith v. Winter, 934 P.2d 885 (Colo. App. 1997).

Notice-of-claim provisions were meant to apply to suits against state employees in their individual capacities for willful and wanton conduct despite the absence of sovereign immunity. Middleton v. Hartman, 45 P.3d 721 (Colo. 2002).

Section applies to civil actions brought under whistleblower statute, § § 24-50.5-103 and 24-50.5-105. State Pers. Bd. v. Lloyd, 752 P.2d 559 (Colo. 1988).

Section does not apply to contract claims. State Pers. Bd. v. Lloyd, 752 P.2d 559 (Colo. 1988); Barrack v. City of Lafayette, 829 P.2d 424 (Colo. App. 1991).

Section does not apply to claims for civil rights violations. Mucci v. Falcon Sch. Dist., 655 P.2d 422 (Colo. App. 1982); Barrack v. City of Lafayette, 829 P.2d 424 (Colo. App. 1991); Conners v. City of Colo. Springs, 962 P.2d 294 (Colo. App. 1997), aff'd, 993 P.2d 1167 (Colo. 2000).

Compliance with notice provisions required where defendant sought affirmative relief in tort against the plaintiff based on a claim of tortious interference with contract. Water Dist. v. Bd. of Land Comm'rs, 968 P.2d 168 (Colo. App. 1998).

Similarly, where defendant sought affirmative relief for negligent misrepresentation that is different in kind or nature from that claim brought by the plaintiff, such a claim is also subject to the notice of claim requirements under the CGIA; however, if the defendant's counterclaim for negligent misrepresentation is viewed in part as a request to be restored to the position it was in before, in the event the contract is declared void, notice is not required. Water Dist. v. Bd. of Land Comm'rs, 968 P.2d 168 (Colo. App. 1998).

Examples of other situations in which this section does not apply are listed in Conners v. City of Colo. Springs, 962 P.2d 294 (Colo. App. 1997), aff'd, 993 P.2d 1167 (Colo. 2000).

Section does not apply where there was no actual or constructive notice to potential patients that a doctor and his assistants were functioning as public employees. Raicevich v. Plum Creek Med. P.C., 819 F. Supp. 929 (D. Colo. 1993).

Section inapplicable to bankruptcy proceedings brought against state university to set aside a foreclosure sale as a fraudulent transaction since the university waived whatever immunity it had by filing its proofs of claim. Matter of Windrush Assoc. II, 105 B.R. 195 (Bankr. D. Conn. 1989).

Claims arising under the just compensation or due process clauses of the Colorado Constitution are excluded from coverage under the CGIA. Thus, section does not apply. Desert Truck Sales v. City of Denver, 821 P.2d 860 (Colo. App. 1991).

In the case of a federal claim, the court must address the issue of preemption and determine whether applicable federal law preempts the application of the notice-of-claim provisions pursuant to this section. Middleton v. Hartman, 45 P.3d 721 (Colo. 2002).

Section not applicable to federal Fair Labor Standards Act (FLSA), 29 U.S.C. § 215, retaliation claim against state employees in their individual capacities. FLSA preempts the notice-of-claim provisions in this section, because the requirements of this section stand as an obstacle to the accomplishment and execution of the full objective of congress in enacting the FLSA. Middleton v. Hartman, 45 P.3d 721 (Colo. 2002).

Section not applicable to federal civil rights claim. To require notice as a condition precedent to suit would unduly interfere with the federal action. Miami Intern. Realty v. Town of Mt. Crested Butte, 579 F. Supp. 68 (D. Colo. 1984); Chacon v. Zahorka, 663 F. Supp. 90 (D. Colo. 1987).

Section not applicable to federal Emergency Medical and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, claim. EMTALA preempts the CGIA's notice requirement because the state statute is potentially in direct conflict with EMTALA's statute of limitations. The state procedural requirement stands as an obstacle to the accomplishments and execution of Congress's objectives in enacting EMTALA. Bird v. Pioneers Hosp., 121 F. Supp. 2d 1321 (D. Colo. 2000).

Section not applicable in inverse condemnation action. Since an inverse condemnation action does not arise under this article, the notice of claims provision (this section) does not apply in such an action. Hayden v. Bd. of County Comm'rs, 41 Colo. App. 102, 580 P.2d 830 (1978).

In indemnity action, this section should not be applied in same precise manner it is applied when an injured party is seeking damages against a municipality for alleged negligence. Brady v. City & County of Denver, 181 Colo. 218, 508 P.2d 1254 (1973).

Section 29-5-111 and this section are not to be read together. The requirements of the governmental immunity provisions are extraneous to a town's liability under the liability of peace officers provisions. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

The secondary liability of a governmental entity as an indemnitor under § 29-5-111 is different and distinct from the direct liability imposed by this article. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975); Brown v. Gray, 227 F.3d 1278 (10th Cir. 2000).

Therefore, claims against peace officers not limited by notice provision. The liability of a municipality's police has traditionally existed despite the doctrine of sovereign immunity. Hence, the Colorado supreme court's prospective abrogation of the doctrine and

the general assembly's enactment of this article was without effect on a peace officer's vulnerability to liability. Therefore, claims against the peace officers are not limited by the notice provision of this article. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

Limitations in § 24-10-114 (1) operate independently of the amount of damages requested under this section. Pyles-Knutzen v. Bd. of County Comm'rs, 781 P.2d 164 (Colo. App. 1989).

III. PURPOSE OF NOTICE REQUIREMENT.

Purpose of requirement is to give authorities prompt notice of need to investigate the matter, to allow for immediate abatement of dangerous conditions, to foster prompt settlement of meritorious claims, as well as to allow a knowledgeable compliance with the statutory requirements for budgeting and tax levies. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975); Jefferson County Health Svcs. Ass'n v. Feeney, 974 P.2d 1001 (Colo. 1998).

The purposes of the notice requirement are to permit a public entity to conduct a prompt investigation of the claim, to remedy any dangerous condition, to make adequate fiscal arrangements to meet any potential liability, and to prepare a defense to the claim. Barham v. Scalia, 928 P.2d 1381 (Colo. App. 1996); Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000); Gallagher v. Univ. of N. Colo., 18 P.3d 837 (Colo. App. 2000), rev'd on other grounds, 54 P.3d 386 (Colo. 2002); Awad v. Breeze, 129 P.3d 1039 (Colo. App. 2005).

The purpose of the notice requirement, among other things, is to give the municipal authority prompt notice of the need to investigate an accident. State Comp. Ins. Fund v. City of Colo. Springs, 43 Colo. App. 112, 602 P.2d 881 (1979).

The purpose of a nonclaim statute is to impose a condition precedent, namely, filing notice within the time specified, to the enforcement of the right of action for the benefit of the party against whom the claim is made. Barnhill v. Pub. Serv. Co., 649 P.2d 716 (Colo. App. 1982), aff'd, 690 P.2d 1248 (Colo. 1984).

The purpose of the notice requirement in subsection (3) is to ensure that the governing body or attorney of a public entity be directly involved, advised, and notified of potential litigation. Brock v. Nyland, 955 P.2d 1037 (Colo. 1998).

Allowing public entities to mislead plaintiffs about how to meet the requirements of the notice provision, and then to assert the affirmative defense of noncompliance, is beyond the legitimate purposes of the notice provision. Therefore, interpretations of the statute should not permit public entities to manipulate the notice provision to dodge otherwise proper suits. Finnie v. Jefferson County Sch. Dist. R-1, 79 P.3d 1253 (Colo. 2003).

IV. COMPLIANCE.

Notice provision of the governmental immunity article stands as a condition precedent to the commencement of an action against a public entity. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975); Jones v. Kristensen, 38 Colo. App. 513, 563 P.2d 959 (1977), aff'd, 195 Colo. 122, 575 P.2d 854 (1978); Fritz v. Regents of Univ. of Colo., 196 Colo. 335, 586 P.2d 23 (1978); Sussman v. Univ. of Colo. Health

Sciences Ctr., 706 P.2d 443 (Colo. App. 1985); Lloyd v. State Pers. Bd., 710 P.2d 1177 (Colo. App. 1985), rev'd on other grounds, 752 P.2d 559 (Colo. 1988); Mtn. Gravel & Const. v. Cortez, 721 P.2d 698 (Colo. App. 1986); McMahon v. Denver Water Bd., 780 P.2d 28 (Colo. App. 1989); Brown v. Teitelbaum, 830 P.2d 1081 (Colo. App. 1991); City of Lafayette v. Barrack, 847 P.2d 136 (Colo. 1993).

However, the provision of subsection (3) that the notice shall be effective upon mailing by registered mail or by personal service is a technical filing requirement and is not a jurisdictional prerequisite to suit. Such provision does not require that notice be filed by registered mail. Therefore, mailing of notice by regular mail satisfied the requirements of this section. Blue v. Boss, 781 P.2d 128 (Colo. App. 1989); Woodsmall v. Reg'l Transp. Dist., 800 P.2d 63 (Colo. 1990).

Absent a showing that the plaintiff was incapable of giving the requisite notice, compliance is a condition precedent to plaintiff's tort claim. Lloyd v. State Pers. Bd., 710 P.2d 1177 (Colo. App. 1985), rev'd on other grounds, 752 P.2d 559 (Colo. 1988).

The term "written notice" in this section means notice of a claim, and therefore, any documents on which the plaintiff relies to satisfy the requirements of this section necessarily must assert a claim by including a request or demand that the defendant public entity or employee pay the plaintiff an award of monetary damages. Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000); Aspen Orthopaedics & Sports Med., L.L.C. v. Aspen Valley Hosp. Dist., 353 F.3d 832 (10th Cir. 2003).

The 180-day notice period does not commence until the claimant obtains, or reasonably could have obtained, actual knowledge of the injury. A two-year old child with brain damage cannot appreciate her injury and cannot be charged with such discovery. Cintron v. City of Colo. Springs, 886 P.2d 291 (Colo. App. 1994).

Notice sent by regular mail is not effective upon mailing. The date of mailing by regular mail has no legal significance; it is the date of receipt that governs whether notice sent by regular mail is timely. Reg'l Transp. Dist. v. Lopez, 916 P.2d 1187 (Colo. 1996); Peterson v. Arapahoe County Sheriff, 72 P.3d 440 (Colo. App. 2003).

Notice provision applies only to action brought under this article. Compliance with the notice requirement is a condition precedent only to an action brought under the provisions of this article. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975); Jones v. Ne. Durango Water Dist., 622 P.2d 92 (Colo. App. 1980).

"Compliance" means substantial compliance. The 1986 amendment did not intend to create a standard of absolute or literal compliance with the notice requirement, but rather intended a degree of compliance that was considerably more than minimal but less than absolute. The only fair characterization of such a degree is substantial compliance. Woodsmall v. Reg'l Transp. Dist., 800 P.2d 63 (Colo. 1990); Cassidy v. Reider, 851 P.2d 286 (Colo. App. 1993); Barham v. Scalia, 928 P.2d 1381 (Colo. App. 1996); Dicke v. Mabin, 101 P.3d 1126 (Colo. App. 2004).

Plaintiff must demonstrate strict compliance with the time requirement of the notice, but only substantial compliance with the content requirements. Hamon Contractors, Inc. v. Carter & Burgess, Inc., 229 P.3d 282 (Colo. App. 2009).

The language of the 1986 amendment does not indicate any intent on the part of the general assembly to shorten the 180-day period and thus create a trap for the

unwary, when the 180th day falls on a legal holiday. Matthews v. City & County of Denver, 20 P.3d 1227 (Colo. App. 2000).

Request for payment of monetary damages is the essence of the written notice required by this section and strict compliance is required. The request for payment of monetary damages is what shows that a document is a notice of claim under section (1). Standards of strict compliance must be applied in relation to section (1), rather than other standards of compliance applicable to other subsections of the notice-of-claim statute. Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000).

Whether a claimant has satisfied the requirements of subsection (1) presents a mixed question of law and fact. Peterson v. Arapahoe County Sheriff, 72 P.3d 440 (Colo. App. 2003); Dicke v. Mabin, 101 P.3d 1126 (Colo. App. 2004).

Trial court rather than the jury is the fact finder on the issue of notice under the statute. Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916 (Colo. 1993).

Trial courts must resolve issues of compliance with the notice requirements in this section before trial, regardless of whether the notice requirement is a jurisdictional bar to suit. Finnie v. Jefferson County Sch. Dist. R-1, 79 P.3d 1253 (Colo. 2003).

In determining whether a claimant has substantially complied with the notice requirement, a court may consider whether and to what extent the public entity has been adversely affected in its ability to defend against the claim by reason of any omission or error in the notice. Woodsmall v. Reg'l Transp. Dist., 800 P.2d 63 (Colo. 1990); Cassidy v. Reider, 851 P.2d 286 (Colo. App. 1993); Dicke v. Mabin, 101 P.3d 1126 (Colo. App. 2004); Awad v. Breeze, 129 P.3d 1039 (Colo. App. 2005).

An exact statement of the public entity's official name is not among the required contents of the notice. Cassidy v. Reider, 851 P.2d 286 (Colo. App. 1993).

Plaintiff herself was not required to deliver the notice, nor was it irrelevant that although the public entity was not correctly named in the notice, the notice was delivered to the correct address and the public entity's attorney received a faxed copy the next day. Cassidy v. Reider, 851 P.2d 286 (Colo. App. 1993).

In determining the sufficiency of a notice, a trial court must employ the C.R.C.P. 12(b)(1) standard, under which the plaintiff bears the relatively lenient burden of demonstrating that notice was properly given. If there is no evidentiary dispute, a trial court may rule on the pleadings alone. A court must, however, hold an evidentiary hearing when facts relating to immunity are in dispute. Awad v. Breeze, 129 P.3d 1039 (Colo. App. 2005).

Plaintiff has the relatively lenient burden of demonstrating that it complied with the notice requirements of this section. Tidwell v. City & County of Denver, 83 P.3d 75 (Colo. 2003); Hamon Contractors, Inc. v. Carter & Burgess, Inc., 229 P.3d 282 (Colo. App. 2009).

Where notice sufficiently identified plaintiffs and their addresses and included a concise statement of the factual basis for the claims in question, there was substantial compliance with the notice of claim requirements. Bresciani v. Haragan, 968 P.2d 153 (Colo. App. 1998).

Where notice gave both defendants the information necessary to investigate, remedy any problem, and make adequate financial arrangements to meet any potential

liability, and also included a factual description that was sufficient to apprise both defendants that plaintiffs would seek to hold them liable for willful and wanton conduct, such notice substantially complied with the requirements even though the notice did not specifically use the words "willful and wanton". Carothers v. Archuleta County Sheriff, 159 P.3d 647 (Colo. App. 2006).

Trial court erred in determining that a plaintiff substantially complied with this section where the plaintiff filed notice of claim after 180 days after the date of discovery injuries. The plain language of this section with respect to the 180-day provision requires strict rather than substantial compliance. E. Lakewood Sanitation Dist. v. District Ct., 842 P.2d 233 (Colo. 1992) (holding contrary to Brown v. Teitelbaum, 830 P.2d 1081 (Colo. App. 1991)); Shandy v. Lunceford, 886 P.2d 319 (Colo. App. 1994).

Plaintiff's mailing of documents to the department of health did not amount to substantial compliance with notice provisions of this section. Bauman v. Colo. Dept. of Health, 857 P.2d 499 (Colo. App. 1993), cert. denied, 511 U.S. 1004, 114 S. Ct. 1369, 128 L. Ed. 2d 46 (1994).

Accident report form and medical bills and reports received by a school district's manager do not constitute written notice of a claim pursuant to this section. Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000).

An accident report form and medical bills and reports fail to make an explicit demand that the defendant reimburse plaintiff for her medical expenses or otherwise pay monetary damages for her injury. Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000).

Notice of claim inadequate even though defendant knew that plaintiff was asserting a claim for her medical expenses from her oral communications, because this section requires notice of claims against public entities to be in writing. Mesa County Valley Sch. Dist. v. Kelsey, 8 P.3d 1200 (Colo. 2000).

Documents submitted to a public entity by third parties cannot constitute notice under this section where the documents were not authored by a plaintiff or her agent. Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000); Bird v. Pioneers Hosp., 121 F. Supp. 2d 1321 (D. Colo. 2000).

At most, such documents give rise to an inference that the plaintiff could have made a claim for damages against the defendant, but not that the plaintiff was in fact making such a claim. Mesa County Valley Sch. Dist. No. 51 v. Kelsey, 8 P.3d 1200 (Colo. 2000); Bird v. Pioneers Hosp., 121 F. Supp. 2d 1321 (D. Colo. 2000).

Filing of notice with the claims department of the regional transportation district does not satisfy the requirement in subsection (3) that notice be filed with the governing body of a public entity or the attorney representing the public entity. The requirement may only be satisfied by filing notice with the governing board or attorney. Brock v. Nyland, 955 P.2d 1037 (Colo. 1998).

Subsection (3) requires substantial compliance with its terms. Courts should evaluate compliance on a case-by-case basis, considering principles of agency and equity, the purposes of the notice statute, and concerns of preventing governmental entities from misleading plaintiffs. Finnie v. Jefferson County Sch. Dist. R-1, 79 P.3d 1253 (Colo. 2003); Villalpando v. Denver Health & Hosp. Auth., 181 P.3d 357 (Colo. App. 2007).

County board of health, not the board of county commissioners, is the "governing body" of a county health department for purposes of notice under the CGIA. Jefferson County Health Svcs. Ass'n v. Feeney, 974 P.2d 1001 (Colo. 1998).

Knowledge of an accident by the employees of a city does not suffice, as formal notice is required. Jacob v. City of Colo. Springs, 175 Colo. 102, 485 P.2d 889 (1971).

Actual knowledge by the governmental entity of an incident giving rise to a claim, or of the claim itself, does not constitute compliance with the notice requirement as formal notice is required. Lloyd v. State Pers. Bd., 710 P.2d 1177 (Colo. App. 1985), rev'd on other grounds, 752 P.2d 559 (Colo. 1988); Stone Envir. Eng. Serv. v. State Dept. of Health, 762 P.2d 737 (Colo. App. 1988).

Serving a copy of an appeal of a personnel board action with an assistant attorney general does not fulfill the notice requirements of this section. Conde v. State Dept. of Pers., 872 P.2d 1381 (Colo. App. 1994).

The plain meaning of subsection (6) requires a claimant to timely file a notice of claim and properly serve such notice before filing a complaint. Filing and service of the complaint on the defendant or the defendant's attorney does not provide sufficient notice under the CGIA, and the complaint was properly dismissed. Kratzer v. Colo. Intergovernmental Risk Share Agency, 18 P.3d 766 (Colo. App. 2000).

By providing a notice of claim after an amended complaint had been filed, plaintiffs failed to comply with the subsection (6) requirement of waiting at least 90 days from the date of providing written notice of claim before instituting suit on the new claims in the amended complaint. Dicke v. Mabin, 101 P.3d 1126 (Colo. App. 2004).

Actual knowledge of a claim does not take the place of formal notice. Conde v. State Dept. of Pers., 872 P.2d 1381 (Colo. App. 1994).

Because a natural parent has no legal duty to prosecute a personal injury claim on behalf of his or her child, the actual knowledge of the parent with respect to the child's injury cannot be imputed to that child. Cintron v. City of Colo. Springs, 886 P.2d 291 (Colo. App. 1994); Muniz v. Garner, 921 F. Supp. 700 (D. Colo. 1996).

Notice may be given before injury established. This section does not preclude a party from giving notice prior to the date that the fact of injury is established. State Comp. Ins. Fund v. City of Colo. Springs, 43 Colo. App. 112, 602 P.2d 881 (1979).

A claimant must file notice of a claim with the proper authorities within 180 days after the date of discovery of the injury, regardless of whether the claimant knows all of the elements of a cause of action for such injury. Failure to file timely notice of a claim mandates dismissal of the action. Gallagher v. Univ. of N. Colo., 18 P.3d 837 (Colo. App. 2000), rev'd on other grounds, 54 P.3d 386 (Colo. 2002); Aspen Orthopaedics & Sports Med., L.L.C. v. Aspen Valley Hosp. Dist., 353 F.3d 832 (10th Cir. 2003); City & County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

Notice held to contain sufficient information to substantially comply with the provisions of this section. Crouse v. City of Colo. Springs, 766 P.2d 655 (Colo. 1988).

Whistleblower substantially complied with the provisions of this section where the notice contained a concise statement alleging unauthorized communications to persons

outside the state personnel system as the factual basis for her invasion of privacy claim. Therefore, the trial court erred in dismissing her entire whistleblower claim on that basis. Conde v. State Dept. of Pers., 872 P.2d 1381 (Colo. App. 1994).

Compliance with this section is necessary when an employee brings suit under the whistleblower statute seeking relief for injuries covered by § 24-10-103 (2). State Pers. Bd. v. Lloyd, 752 P.2d 559 (Colo. 1988); Gallagher v. Univ. of N. Colo., 18 P.3d 837 (Colo. App. 2000), rev'd on other grounds, 54 P.3d 386 (Colo. 2002).

Because the whistleblower statute was intended to create a non-contractual, statutory action that is tortious in nature, a claim brought under the statute is subject to the notice requirements of the CGIA. Conde v. State Dept. of Pers., 872 P.2d 1381 (Colo. App. 1994).

Notice given by insurer of the person claiming injury, rather than by the claimant, is sufficient to meet the statute's requirement of "substantial compliance." Isbill Assocs. v. City & County of Denver, 666 P.2d 1117 (Colo. App., 1983).

Filing complaint with district court and not serving complaint upon public entity or individual defendants held not to constitute "substantial compliance" with the notice provisions of the act. Uberoi v. Univ. of Colo., 713 P.2d 894 (Colo. 1986).

Whistleblower did not substantially comply with the provisions of this section where the notice contained no references whatsoever to incidents of retaliatory harassment or failure to promote. Conde v. State Dept. of Pers., 872 P.2d 1381 (Colo. App. 1994).

Compliance with the administrative requirements of the Employee Protection Act will not satisfy the purposes of this section's notice provision. State Pers. Bd. v. Lloyd, 752 P.2d 559 (Colo. 1988).

Trial court did not err in determining that plaintiff failed to give the statutory notice in medical malpractice action where plaintiff retained counsel and obtained a set of doctors' and hospital's medical records by December 1985 but filed no notice of claim until August 1987. Brown v. Teitelbaum, 830 P.2d 1081 (Colo. App. 1991).

Notice was insufficient to comply with statute where there was no evidence that the notices of claim sent by regular mail had been received. When a party fails to establish that proper notice was provided in compliance with the 180-day notice requirement, the party's action must be dismissed. Armstead v. Mem'l Hosp., 892 P.2d 450 (Colo. App. 1995).

Failure to file written notice is a complete defense to any action brought by an injured party against those that fall within this article. Roberts v. City of Boulder, 197 Colo. 97, 589 P.2d 934 (1979); Lloyd v. State Pers. Bd., 710 P.2d 1177 (Colo. App. 1985), rev'd on other grounds, 752 P.2d 559 (Colo. 1988); Stone Envir. Eng. Serv. v. State Dept. of Health, 762 P.2d 737 (Colo. App. 1988).

Where the injury to plaintiff's property did not constitute a taking by the county, plaintiff's failure to supply the public entity with written notice that they were bringing an action pursuant to the CGIA resulted in dismissal of the complaint. Kratzenstein v. Bd. of County Comm'rs, 674 P.2d 1009 (Colo. App. 1983).

Failure to comply with provisions of this section provides trial court with basis to bar plaintiff's claim. Deason v. Lewis, 706 P.2d 1283 (Colo. App. 1985); Mtn. Gravel & Const. v. Cortez, 721 P.2d 698 (Colo. App. 1986).

Public entity not liable for judgment against employee. If a claimant fails to give the notice required by this section, a public entity cannot be liable under § 24-10-110 for a judgment against an employee in his individual capacity or for the employee's cost of defense. Kristensen v. Jones, 195 Colo. 122, 575 P.2d 854 (1978).

Proceedings subject to dismissal for failure to allege notice or waiver. By failing to allege compliance with the condition precedent of notice or waiver, a claim is insufficient, cannot be cured by amendment, and is, therefore, subject to dismissal at any stage of the proceedings. Jones v. Ne. Durango Water Dist., 622 P.2d 92 (Colo. App. 1980); Kratzer v. Colo. Intergovernmental Risk Share Agency, 18 P.3d 766 (Colo. App. 2000); Aspen Orthopaedics & Sports Med., L.L.C. v. Aspen Valley Hosp. Dist., 353 F.3d 832 (10th Cir. 2003).

The failure to allege compliance with the notice provision in an original complaint does not require dismissal of the complaint or judgment notwithstanding the verdict so long as the fact of the complying notice was established by the evidence. Morgan v. Bd. of Water Works of Pueblo, 837 P.2d 300 (Colo. App. 1992).

Strict compliance with notice provision is necessary for subject matter jurisdiction. Aetna Casualty & Surety Co. v. Denver Sch. Dist. No. 1, 787 P.2d 206 (Colo. App. 1989); Bauman v. Colo. Dept. of Health, 857 P.2d 499 (Colo. App. 1993); Barham v. Scalia, 928 P.2d 1381 (Colo. App. 1996).

When a plaintiff fails to plead compliance with the CGIA, and a court addresses the case in the context of a motion to dismiss, the court must accept as a matter of "fact" that the plaintiff failed to comply with the notice provisions. This lack of compliance, then, is a jurisdictional issue. Aspen Orthopaedics & Sports Med., L.L.C. v. Aspen Valley Hosp. Dist., 353 F.3d 832 (10th Cir. 2003).

Failure to move for dismissal until trial not waiver of notice. The fact that the defendants do not move for dismissal until the time of trial does not constitute a waiver of the notice requirement. Jones v. Ne. Durango Water Dist., 622 P.2d 92 (Colo. App. 1980).

Public entities may be equitably estopped from asserting bar of this section to prevent manifest injustice. Gray v. Reg'l Transp. Dist., 43 Colo. App. 107, 602 P.2d 879 (1979).

Even if subsection (3) requires notice to the city council as the "governing body," public entities may be equitably estopped from setting up this section as a bar to actions against it. Isbill Assocs. v. City & County of Denver, 666 P.2d 1117 (Colo. App. 1983).

City is not equitably estopped from asserting the notice requirement as a bar to actions against it unless the plaintiffs can show a change of position to their detriment in justifiable reliance on the words or conduct of the city. Morrison v. City of Aurora, 745 P.2d 1042 (Colo. App. 1987).

Notice to the defendant is not required pursuant to this section unless defendant's actions were during the performance of his duties and within the scope of his employment.

Kennedy v. Bd. of County Comm'rs, 776 P.2d 1159 (Colo. App. 1989); Hartman v. Regents of the Univ. of Colo., 22 P.3d 524 (Colo. App. 2000), aff'd, 45 P.3d 721 (Colo. 2002).

The plain language of subsection (3) requires a notice of claim against a public entity other than the state to be filed with the governing body of the public entity or the attorney representing the public entity and the filing of a notice of claim with the regional transportation district's risk manager does not constitute compliance with the requirements of subsection (3). Brock v. Nyland, 955 P.2d 1037 (Colo. 1998); Curlin v. Reg'l Transp. Dist., 983 P.2d 178 (Colo. App. 1999).

Where the attorney general delegated responsibility for handling claims to the university counsel in a memorandum of understanding, a plaintiff who sent notice of a claim to the university complied with the requirements of subsection (3). Booth v. Univ. of Colo., 64 P.3d 926 (Colo. App. 2002), aff'd, 78 P.3d 1098 (Colo. 2003).

Decision of the Colorado supreme court could be applied retroactively where holding that subsection (3) requires a notice of claim against a public entity other than the state to be filed with the governing body of the public entity or the attorney representing the public entity did not establish a new rule of law. Curlin v. Reg'l Transp. Dist., 983 P.2d 178 (Colo. App. 1999).

Compliance with subsection (3) is not a jurisdictional prerequisite to suit, but failure to comply with subsection (3) mandates dismissal of an action absent a showing that a public entity waived or should be estopped from raising the failure to comply as a bar to suit. Curlin v. Reg'l Transp. Dist., 983 P.2d 178 (Colo. App. 1999).

There is no requirement in this section that a notice of claim be provided to a public employee or that employee's attorney. Rather, this section only requires that a notice be sent to the attorney general when the state is involved, or to the governing body of the public entity involved or that entity's attorney. Barham v. Scalia, 928 P.2d 1381 (Colo. App. 1996).

The giving of notice may be excused under proper circumstances of mental and physical incapacity, the question of sufficiency of the circumstances being one for the jury. Jacob v. City of Colo. Springs, 175 Colo. 102, 485 P.2d 889 (1971).

Exception to notice requirement applies where disabled person sues by his legal representative. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

All persons laboring under general forms of disability included in exception. The exception to the notice requirement includes all persons laboring under any of the generally recognized forms of disability as defined in § 13-81-101 (3). Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975).

Compliance not essential for jurisdiction. Compliance with the notice provisions of the CGIA is not essential to the court's jurisdiction. Nowakowski v. District Court, 664 P.2d 709 (Colo. 1983).

Failure to comply with § 24-10-109 notice requirements does not bar federal age discrimination claim. Bauman v. Colo. Dept. of Health, 857 P.2d 499 (Colo. App. 1993), cert. denied, 511 U.S. 1004, 114 S. Ct. 1369, 128 L. Ed. 2d 46 (1994).

Affidavit by parties presented material issue of fact as to satisfaction of notice requirement and as to whether actions of public transit authority estopped it from raising

lack of notice. Coady v. Worrell, 686 P.2d 1375 (Colo. App. 1984).

Substantial compliance with the 180-day notice provision is a condition precedent to any "action" brought under the CGIA, therefore, the time for filing minors' notice is not extended pursuant to the tolling provisions of § 13-81-103 until two years after the minors' legal representative is appointed. Brown v. Teitelbaum, 830 P.2d 1081 (Colo. App. 1991).

Where plaintiffs failed to plead compliance with the notice requirements of the CGIA, the district court should dismiss their complaint without prejudice. Plaintiffs may move for leave to file a second amended complaint and plead compliance with the CGIA notice requirements, if they believe they can cure their insufficient amended complaint. Aspen Orthopaedics & Sports Med., L.L.C. v. Aspen Valley Hosp. Dist., 353 F.3d 832 (10th Cir. 2003).

Merely taking steps to protect the legal interests of a client following initiation of a lawsuit does not qualify as a denial of a claim within the meaning of subsection (6). Treating a defendant's legal response to the complaint as a denial of a claim, when no notice of claim has previously been filed, undermines the very purposes served by the subsection (6) 90-day waiting period, namely, to allow a public entity to investigate and remedy dangerous conditions, to settle meritorious claims without incurring the expenses associated with litigation, to make necessary fiscal arrangements to cover potential liability, and to prepare for the defense of claims. Dicke v. Mabin, 101 P.3d 1126 (Colo. App. 2004).

Applied in Clark v. Tinnin, 731 F. Supp. 998 (D. Colo. 1990); Cikraji v. Snowberger, 2015 COA 66, 410 P.3d 561.

V. TIME PERIODS.

"Discovery of the injury" construed. The phrase "discovery of the injury" implicitly encompasses the discovery of the basis of the claim. Young v. State, 642 P.2d 18 (Colo. App. 1981), aff'd, 665 P.2d 108 (Colo. 1983).

"Injury" triggering notice requirement includes a decrease in the value of property, where such decrease results from government's announcement of intent to take action physically affecting property at some time in the future. City of Lafayette v. Barrack, 847 P.2d 136 (Colo. 1993).

The start of the notice period for injuries begins when an injury and its cause are discovered. Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916 (Colo. 1993); Miller v. Campbell, 971 P.2d 261 (Colo. App. 1998); City & County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

The trigger for the 180 days in cases of death is the same as in all injuries; the period starts to run when the death and its cause are discovered. Miller v. Campbell, 971 P.2d 261 (Colo. App. 1998).

Claimant must have opportunity to discover underlying facts. There must be a reasonable opportunity for a claimant to discover the basic and material facts underlying a claim before she is duty-bound to give the statutory notice required by subsection (1). State v. Young, 665 P.2d 108 (Colo. 1983); Brown v. Teitelbaum, 830 P.2d 1081 (Colo. App. 1991).

In medical malpractice claims, patients who rely on their physicians' diagnosis of permanent injury should not be barred from suit because their trust in the physicians prevented earlier discovery of the injury. Nor should patients be compelled to file suit before they are aware of the physician's wrongful conduct. Smith v. Winter, 934 P.2d 885 (Colo. App. 1997); Miller v. Campbell, 971 P.2d 261 (Colo. App. 1998).

The CGIA's notice period places the burden on the injured party to determine the cause of the injury, to ascertain whether a governmental entity or public employee is the cause, and to notify the governmental entity within 180 days from the time when the injury is discovered. Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916 (Colo. 1993); Grossman v. City & County of Denver, 878 P.2d 125 (Colo. App. 1994); Miller v. Campbell, 971 P.2d 261 (Colo. App. 1998); City & County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

A claimant has a duty of reasonable diligence to determine the basic and material facts underlying a potential claim against a governmental entity. Therefore, a claimant building owner who allowed four months to pass before hiring an engineer or take other appropriate steps to investigate the cause of the building's cracking foundation failed to prove the statute was unconstitutional as applied to it. Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916 (Colo. 1993).

Action against city barred where there was reasonable opportunity to discover the underlying facts and the notice was not amended nor replaced. Miller v. Mtn. Valley Ambul. Serv., 694 P.2d 362 (Colo. App. 1984).

Notice period begins to run in indemnity action when tort-feasor knows of injury. The running of the 90 (now 180) days as provided in this section should not begin to run in an indemnity action until such time as the alleged tort-feasor receives knowledge of the occurrence of a secondary injury. Brady v. City & County of Denver, 181 Colo. 218, 508 P.2d 1254 (1973).

Notice period is triggered when claimants discover or should have discovered they have been wrongfully injured. Smith v. Winter, 934 P.2d 885 (Colo. App. 1997).

And at conclusion of disability for disabled person. A disabled person is relieved from the statutory duty of giving notice until the removal of his disability. At the conclusion of the disability, the 90-day (180-day) notice requirement commences and runs as it would against any other claimant. Antonopoulos v. Town of Telluride, 187 Colo. 392, 532 P.2d 346 (1975); Fritz v. Regents of Univ. of Colo., 196 Colo. 335, 586 P.2d 23 (1978).

Notice period does not begin to run until appointment of legal representation where plaintiff was rendered incapacitated as a result of the incident that gave rise to the claim. Plaintiff suffered severe permanent brain injury and could not know, or reasonably be expected to know, of her injuries. No formal adjudication of incapacity is needed to find that 180-day period had not commenced as a result of a disability. Visser ex rel. Eder v. Mahan, 111 P.3d 575 (Colo. App. 2005).

The notice period does not begin to run until the plaintiff discovers his or her injury. Where the plaintiff was rendered unconscious as a result of the accident that gave rise to the claim and subsequently suffered memory loss due to anesthesia and the injuries suffered, the 180-day notice period did not begin to run until the plaintiff recovered his memory and thereby discovered his injury. Since the notice was filed within

171 days after plaintiff recovered his memory, the filing was timely. Bryant v. City of Lafayette, 946 P.2d 499 (Colo. App. 1997).

Premature filing of action not fatal. Dismissal with prejudice is too harsh a sanction for the filing of an action before expiration of the response period set forth in subsection (6). Lopez v. Reg'l Transp. Dist., 899 P.2d 254 (Colo. App. 1994), aff'd on other grounds, 916 P.2d 1187 (Colo. 1996).

Contrary to the plain language of subsection (1), the premature filing of a complaint prior to the expiration of the 90-day period set forth in subsection (6) was not a jurisdictional defect mandating dismissal of the action. Dicke v. Mabin, 101 P.3d 1126 (Colo. App. 2004).

Section 24-10-118 (1)(a) does not make compliance with subsection (6) of this section a jurisdictional prerequisite for suing public employees. Dicke v. Mabin, 101 P.3d 1126 (Colo. App. 2004).

Party may not wait until all elements of claim mature. Once the underlying basis of the claim is discovered, or should have been discovered, the aggrieved party may not wait until all elements of the claim mature. Young v. State, 642 P.2d 18 (Colo. App. 1981), aff'd, 605 P.2d 108 (Colo. 1983); Mtn. Gravel & Const. v. Cortez, 721 P.2d 698 (Colo. App. 1986); Morrison v. City of Aurora, 745 P.2d 1042 (Colo. App. 1987); City of Lafayette v. Barrack, 847 P.2d 136 (Colo. 1993); Abrahamson v. City of Montrose, 77 P.3d 819 (Colo. App. 2003).

Injuries from a false arrest or false imprisonment do not result from learning that the charges underlying the arrest and imprisonment were inadequate; the injuries are inherent in the acts themselves. Just as claims for false arrest and false imprisonment presumptively accrue for the purposes of a statute of limitations when the wrongful acts occur, necessarily, they presumptively accrue for purposes of filing a CGIA notice of claim no later than those dates. Masters v. Castrodale, 121 P.3d 362 (Colo. App. 2005).

A plaintiff may not invoke the continuing violation doctrine to relate his notice of a claim to conduct that caused injury more than 180 days before he filed the notice. Application of such doctrine would have the effect of allowing the plaintiff to accumulate his damages before requiring him to give notice of claim as required by this section, thereby defeating the purpose of the notice claim statute. Gallagher v. Univ. of N. Colo., 18 P.3d 837 (Colo. App. 2000), aff'd in part and rev'd in part on other grounds, 54 P.3d 386 (Colo. 2002).

Trial court erred in not granting defendant's motion to the extent it sought dismissal of any claim for damages that arose from conduct occurring more than 180 days prior to filing notice of claim. Gallagher v. Univ. of N. Colo., 18 P.3d 837 (Colo. App. 2000), rev'd on other grounds, 54 P.3d 386 (Colo. 2002); City & County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

The CGIA requires timely notice of claim. The CGIA notice of claim provision is both a condition precedent and a jurisdictional prerequisite to suit under the CGIA and must be strictly applied and failure to comply with it is an absolute bar to suit. City & County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

Claimant must demonstrate that he or she filed a timely notice of claim within 180 days from when the claimant discovered the injury due to an occurrence. City & County of

Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

The recurrence of symptoms outside of the 180-day period does not excuse failure to timely file under the CGIA's notice requirement. City & County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

Tolling of the statute of limitations does not occur under subsection (5) if the 90-day waiting period expires prior to the expiration of the two-year statute of limitations. Cochran v. W. Glenwood Springs Sanitation Dist., 223 P.3d 123 (Colo. App. 2009).

Since plaintiffs failed to establish a separate and discrete occurrence, recurring symptoms from an injury first discovered outside the 180-day notice period does not excuse failure to timely file written notice of injury. City & County of Denver v. Crandall, 161 P.3d 627 (Colo. 2007).

Notice held to be timely. Nat'l Cas. Co. v. Great Sw. Ins., 833 P.2d 741 (Colo. 1992).

C.R.C.P. 6(a) and § 24-11-110 apply to this section. C.R.C.P. 6(a) and § 24-11-110 which allow an extra time period for document filing when a document is required to be filed "on any day when the public office is closed", is applicable to this section. Austin v. Weld County, 702 P.2d 293 (Colo. App. 1985).

The proper inquiry is whether sufficient evidence existed to cause a reasonable person to know that a toilet overflow that caused a fall was not merely an isolated household occurrence, but resulted from the city capping plaintiff's sewer line, an abnormal plumbing problem. Grossman v. City & County of Denver, 878 P.2d 125 (Colo. App. 1994).

Notice requirements of this article may be modified prospectively without violating the provisions of § 2-4-303. Adams County Sch. Dist. No. 1 v. District Court, 199 Colo. 284, 611 P.2d 963 (1980).

And were so modified for those under disability of minority. All applicable statutes of limitation and notice requirements began to run for those who attained the age of 18 as of the effective date of the 1977 amendment to § 13-81-101 (3), changing the age of legal disability from 21 to 18. Adams County Sch. Dist. No. 1 v. District Court, 199 Colo. 284, 611 P.2d 963 (1980).

Plaintiff's minority did not prevent the mandatory 180-day notice period from commencing to run since there was no showing that plaintiff was incapable of discovering his injury within 180 days and 1986 amendment to subsection (1) made it a "non-claim statute" that prohibits the initiation of litigation after a specified time regardless of disability. Hergenreter v. Morgan County Sch. Dist., 888 P.2d 346 (Colo. App. 1994).

A loss of consortium claim does not necessarily arise at the same time as the underlying claim. Therefore, in appropriate cases, the trial court should make a factual determination when such a claim arose in order to decide if notice of the loss of consortium claim was timely. Smith v. Winter, 934 P.2d 885 (Colo. App. 1997).

Notice, which was delayed due to lack of sufficient postage until after 180 days after discovery of injury when notice was originally mailed before end of 180-day period, but returned and re-mailed, substantially complied with notice provision. Lafitte v. State

Hwy. Dept., 885 P.2d 338 (Colo. App. 1994), overruled in Reg'l Transp. Dist. v. Lopez, 916 P.2d 1187 (Colo. 1996).

The 180-day filing period pursuant to this section may not be shortened to 179 days if the final day falls on a legal holiday. Instead, the provisions of § 2-4-108 (2) are controlling. Matthews v. City & County of Denver, 20 P.3d 1227 (Colo. App. 2000).

COLORADO REVISED STATUTES

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