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How Can I Sue The LAPD For False Arrest?

Police officers have one of the most important and difficult jobs -- maintaining law and order -- without which everything we hold dear, our freedom, our property, our safety, our prosperity, would be in jeopardy. But this does not mean that police officers are above the laws they enforce or the people they serve. On the contrary, in "a nation of laws, not men," police officers are required to carry out their duties with a punctilious regard for the constitutional rights of citizens, who are entitled to "life, liberty, and the pursuit of happiness" without unjustified interference by the police.

Unfortunately, in a nation (and city) as large and diverse and tumultuous as ours, police officers often overstep their authority and violate people's rights. Sometimes they do so intentionally, even maliciously; other times, they do so mistakenly or negligently. Either way, someone's rights have been violated. The question is, what can be done about it? What remedy, if any, does the legal system provide? Civil rights lawyers, like myself, use the legal system, wherever possible, to help people whose rights have been violated by the police.

Perhaps the most common type of civil rights case involves false arrest. Generally speaking, a "false arrest" occurs when a police officer (or sometimes a private person or business) detains or confines a person against his or her will and without proper legal authority.

A false arrest potentially violates both federal civil rights law and state common law. Although the basic definition of false arrest is the same under federal and state law, the procedural rules governing false arrest claims under federal and state law are very different and must be complied with strictly or the person's case will be thrown out of court. This discussion outlines these differing rules.

Anyone who believes they have been falsely arrested should consult with a qualified civil rights lawyer immediately.

Probable Cause

A false arrest claim under federal law arises from the Fourth Amendment of the United States Constitution, which provides, in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" A false arrest, therefore, involves the "unreasonable" "seizure" of a "person." This language has been interpreted over the centuries to prohibit an arrest without probable cause. The same definition is used under state law.

Probable cause is the most important concept in false arrest cases.

What is "probable cause"? Probable cause means "information sufficient to support a reasonable belief that an offense has been committed by the person to be arrested." Probable cause does not mean proof beyond a reasonable doubt or proof by a preponderance of the evidence. It does not

mean the person is guilty. It simply means that the police officer had a "reasonable belief" that the person committed a crime.

This is a very low standard, one that is usually satisfied by police officers who perform their jobs competently and in good faith. (An even lower standard -- "reasonable suspicion" -- is required to justify a so-called investigative stop-and-frisk.) Importantly, just because a person in fact is innocent, there still may be probable cause for his arrest.

The existence of probable cause is a complete defense to an action for false arrest, under both federal law and state law. If the police officer had probable cause, therefore, even if the person was innocent, the police officer (or the city) will not be liable for false arrest. This means that many claims for false arrest will be defeated in court, once the police officer shows the court the evidence he relied upon in arresting the plaintiff.

Of course, if the police officer's version of events is legitimately disputed by the plaintiff, or if the police officer is lying about what happened, or if the police officer's assessment of the situation was wrong, or if the police officer acted in bad faith, then the plaintiff may be able to show that there was no probable cause for his arrest; if so, his claim will be allowed to proceed.

Note: If a person was indicted by a grand jury, or the criminal court ruled against him at a probable cause hearing, or he pleaded guilty, or the jury convicted him at trial, then he will not be able to sue for false arrest (unless he can prove that he was the victim of police fraud or perjury or suppression of evidence or other serious misconduct).

Federal Law

A person who is falsely arrested by the LAPD may sue the police officer who arrested him under federal civil rights law, specifically, 42 U.S.C. s. 1983. Other laws may apply in certain situations, but Section 1983 is the main federal law used by civil rights plaintiffs.

The statute of limitations for false arrest claims under Section 1983 in Los Angeles is two years (note: it is different in other states). This means that a person must file his lawsuit within two years of the false arrest or his claim will be untimely and dismissed by the court.

As a general rule, a person's false arrest claim accrues -- i.e., the statute of limitations starts running -- when he is released from custody (not necessarily the same day as the arrest). If a person is arraigned before a judge and remanded for further detention, his false arrest claim accrues when he becomes detained pursuant to legal process. This is a technical legal issue that the U.S. Supreme Court addressed in *Wallace v. Kato*, 549 U.S. 384 (2007).

For most persons, who are released from custody pending the outcome of their criminal matter (whether on bail or ROR), the statute of limitations on their false arrest claims starts running as soon as they are released. This also is the rule under state law.

There is a special, and quite complicated, accrual rule, set out in *Heck v. Humphrey*, 512 U.S. 477 (1994), that applies where the plaintiff has a prior conviction whose validity might be implicated by a successful section 1983 damages action. In such cases, the section 1983 claim

does not accrue until the underlying conviction is overturned or vacated. See also the important 2007 decision in *Wallace v. Kato*, 549 U.S. 384 (2007), dealing with Heck, accrual and section 1983 false arrest/imprisonment claims.

Either way, a person who has been arrested should consult with a qualified civil rights lawyer as soon as possible.

There are no administrative prerequisites for filing suit under Section 1983. This means that a plaintiff may file his case directly in court without first filing a claim with the police department or other government agency.

Section 1983 provides a full range of potential remedies, including actual damages, compensatory damages, punitive damages (only against individual police officers, not against municipalities), and attorney's fees.

Section 1983 can be a powerful statute for plaintiffs, but it has two serious limitations.

First, individual police officers who violate a person's civil rights may escape liability if the court believes that the officers, in effect, made a "reasonable mistake."

Generally speaking, courts are reluctant to hold police officers liable for their misconduct. Courts will impose liability on police officers only if they violate a person's "clearly established" rights and only if a "reasonable" police officer would have known he was violating the person's rights. This is the doctrine of "qualified immunity" -- the purpose and effect of which is to excuse police misconduct except in the clearest or most egregious cases. Unfortunately, many meritorious civil rights lawsuits are defeated on the grounds of qualified immunity.

The second limitation under Section 1983 is that there is no respondeat superior liability by which to hold municipalities vicariously liable for their police officers' civil rights violations. "Respondeat superior" refers to the basic legal principle whereby an employer will be held vicariously (automatically) liable for the employee's wrongful acts committed within the scope of employment. This rule does not apply under Section 1983.

Only "state actors" who are "acting under color of law" may be sued under Section 1983. State actors are generally government officials and employees, and the term should not be interpreted literally: municipal employees are likewise state actors for purposes of Section 1983.

Under Color of Law

It is similar to the "scope of employment" issue. The Supreme Court has defined action taken "under color of law" as the "[m]isuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." A police officer in uniform and on duty committing excessive force in the course of an arrest is acting "under color of law". Yet that same officer would not be amenable to suit under Section 1983 (except in very limited circumstances) if he were involved in an off-duty, purely personal altercation with an acquaintance.

To hold a city liable under Section 1983, a plaintiff must prove that the city itself violated his civil rights. How? For example, by showing that the police officer who violated his rights was acting pursuant to an official policy or pervasive custom and practice of the police department; or the police officer's actions were authorized and approved by a high-ranking official with policymaking authority; or the police department was "deliberately indifferent" to the plaintiff's civil rights by failing to properly train and supervise the abusive officer. These are the main theories of municipal liability under Section 1983. They derive from the seminal U.S. Supreme Court case of Monell v. Department of Social Services, 436 U.S. 658 (1978).

Unfortunately, in the typical false arrest case it is extremely difficult for the plaintiff to hold the City of Los Angeles liable under Section 1983. This means that if the individual police officer defendant is granted qualified immunity by the court, the plaintiff loses his case.

State Law

In some ways, state law is both better and worse than federal law when it comes to civil rights lawsuits. It is better because it provides a remedy directly against the City of Los Angeles (and other municipalities). It is worse, however, because it has a much shorter statute of limitations and imposes strict administrative pre requisites that must be followed before a lawsuit may be filed in court.

To hold a city or city employee (including police officer) liable under state law, a person (called the "claimant") must first file a "Governmental Claim" with the appropriate government agency. This is a requirement of California Government Code 911.2. Note: Claims for death, injury to person or to personal property must be filed NOT later than 6 months after the occurrence. Claims must be filed with the Office of the City Clerk City of Los Angeles at 200 North Spring Street Room 395, City Hall, Los Angeles, California 90012. State claims against the City require the filing within 1 year of the accrual of the action.

IMPORTANT

The notice of claim must be filed within 180 days of the false arrest. (Not two years). The leading case of *Wilson v. Garcia* 471 U.S. 261 (1985) which held that the forum state's personal injury statute of limitations governs 1983 actions. This is so because 1983 does not have its own statute of limitations.

The governmental of claim must include the claimant's personal information and provide a complete description of the incident, including when it occurred, where it occurred, who it involved (including all information known about the police officers), what happened, and how the claimant was injured. It must be signed by the claimant or by his/her attorney.

It is crucial that the notice of claim be completed and filed properly, as any errors in the process can bar the claimant from suing in court under state law. (The notice of claim requirements do not apply to, or have any effect on, a plaintiff's claims under Section 1983.)

False arrest law, which derives from common law tort law, also does not provide recovery for attorneys fees. This means that the plaintiff's attorney will be paid from the plaintiff's damages award or settlement amount (i.e., a contingency fee).

It cannot be emphasized enough how important the filing of a proper and timely notice of claim is for a successful civil rights lawsuit. Although Section 1983 can be a powerful statute, the best strategy in these cases is to combine federal law claims and state law claims in one lawsuit.

In short, the first thing an LAPD false arrest victim should do is file a proper claim form about the incident with the City of Los Angeles. It generally is a good idea to have a qualified civil rights lawyer prepare and file the notice of claim to ensure compliance with its myriad requirements.

Important: Do not wait to file the notice of claim until after the criminal proceedings have ended; otherwise the 180 day deadline may have passed and you may lose the right to pursue your claim under state law.

Conclusion

If you or someone you know has been the victim of a false arrest, please contact the Law Offices of Goldberg & Gage today.