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## DEMYSTIFYING QUALIFIED IMMUNITY

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Many of our peace officer clients and their families have become increasingly concerned about the public debate over “qualified immunity” and how that legal theory impacts them personally. This Q&A is intended to shed some light on the subject and provide insights into its application.



As a consequence of the widespread condemnation about the death of George Floyd in Minneapolis, there has been considerable focus on the long-established legal doctrine known as qualified immunity and an ensuing debate as to its relationship, if any, with the occurrence of police misconduct. In order to institute meaningful police reforms sought by constituents and various public interest groups, legislators are actively engaged in drafting legislation to modify or eliminate qualified immunity for peace officers.

The vital importance of informed discussions on the nature and ramifications of the principle of qualified immunity has been undermined by general unfamiliarity as to its meaning and application in the context of police conduct. In an effort to provide greater understanding of qualified immunity, we have provided the following information:

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**Q: What is qualified immunity?**

**A:** Qualified immunity is a legal principle that provides protection for certain public employees against claims for damages in civil rights cases and can provide grounds for early dismissal from litigation when the public employee is sued.

**Q: What was the purpose for the creation of qualified immunity?**

**A:** The purpose of qualified immunity is to facilitate a balance between the interest in preventing, and compensating for, constitutional violations, and the recognition that government officials and employees are required to make prompt discretionary decisions.

**Q: Are peace officers entitled to qualified immunity?**

**A:** Yes. The application of qualified immunity in the context of the law

enforcement profession is made to avoid officers being second-guessed in tense and difficult situations, and in those situations where they need to make split-second discretionary decisions. Peace officers are entitled to qualified immunity in civil rights litigation seeking damages under 42 U.S.C. section 1983 where the officer's conduct does not violate "clearly established" statutory or constitutional rights of which a reasonable officer would have known.

**Q: Is there a statute that created qualified immunity?**

**A:** No. There is no statute that provides the right to qualified immunity. Rather, it is a legal precept created by the U.S. Supreme Court in recognition that permitting damages suits against government officials can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties.

**Q: Does qualified immunity protect peace officers from liability for unlawful or criminal misconduct?**

**A:** No. The limited protection of qualified immunity applies only in the context of civil litigation, and solely in those cases in which an officer's conduct does not violate clearly established statutory or constitutional rights of which a reasonable officer would have known. Qualified immunity does not afford police officers, deputy sheriffs and other law enforcement personnel protection from criminal prosecution or administrative actions.

**Q: Who decides if qualified immunity applies in any particular case?**

**A:** The existence of qualified immunity from a civil rights claim is a question of law for the court, rather than a question of fact for the jury.

**Q: When does qualified immunity come into play?**

**A:** Qualified immunity would typically be asserted as a defense by a peace officer following the commencement of a civil rights lawsuit alleging a violation of a federal or constitutional right arising from improper or excessive use of force, false arrest, unlawful detention, destruction of evidence or improper search and seizure.

**Q: How can the doctrine of qualified immunity be changed?**

**A:** The elimination or modification of qualified immunity can be accomplished by Congressional legislation or by changes in current case law by the United States Supreme Court in future decisions.

**Q: Can a local public employer such as a county, city or district change the application of qualified immunity for their employees?**

**A:** No.

**Q: Is qualified immunity a benefit provided exclusively to peace officers?**

**A:** No. Qualified immunity extends to government officials and employees performing discretionary functions, including mayors, council members, city managers, county administrators, and department heads (including police chiefs) and school teachers.

**Q: Does qualified immunity affect decisions to discipline employees?**

**A:** No. Qualified immunity only applies to court cases filed against public employees seeking damages for violations of civil rights.

**Q: Does the dismissal of an officer from a lawsuit on the grounds of qualified**

**immunity mean that an injured person is unable to recover any damages for excessive force by the officer?**

**A:** No. Since the public employer is responsible for hiring, training, and supervising the individual police officer, the employer can be held liable and be required to pay any compensatory damages resulting from an adverse judgment.

**Q: Without qualified immunity, could personal assets of an employee be subject to garnishment or attachment?**

**A:** Even without the application of qualified immunity, personal assets of an employee cannot be subject to collection proceedings unless the employee does not prevail at trial (or fails to prevail due to Summary Judgment), and fails to win on appeal. In addition, under current California law, the public employer must indemnify the public employee for any adverse judgment or settlement of the case (subject to the exception addressed below).

**Q: How does qualified immunity affect the legal obligation of my employer to defend and indemnify me for actions taken in the course and scope of my employment?**

**A:** Irrespective of any qualified immunity, pursuant to California Government Code sections 825 et seq. and 995 et seq. the public employer must defend and indemnify its employees for any adverse judgment or settlement against the employee which arises out of any act or omission in the course of employment. However, pursuant to section 825, the employer is not legally obligated to, but may, pay that part of a judgment that is for punitive damages under specified conditions.

**Q: Is qualified immunity unique to public service?**

**A:** While the doctrine of “qualified immunity” is unique to public service (i.e., government), a similar principle applies in the private sector as well. The doctrine of respondeat superior provides that an employer is subject to liability for injuries caused by an employee's actions resulting or arising from pursuit of the employer's interests.

**Q: Are legislators and prosecutors entitled to greater immunity than peace officers in civil rights actions?**

**A:** Yes. Absolute immunity is accorded to legislators while acting in the course of their official duties. In addition, prosecutors are entitled to absolute immunity from civil rights lawsuits regarding those actions that are an integral part of the judicial process or that are intimately associated with the judicial process.

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