

Statutes of Limitations

Background

California law provides specific time limits for filing lawsuits, called statutes of limitations. These laws were enacted to ensure that lawsuits are started quickly after an incident, when evidence is more easily accessible and witness memories are more reliable. In general, once the statute of limitations period for a case has run, the legal claim can no longer be pursued.

The statute of limitations is different for each type of case. To determine the statute of limitations for your case, you will need to determine your cause of action, which is the legal reason for suing. The statutes of limitation for many (but not all!) types of civil cases are found in the [California Code of Civil Procedure \(CCP\) §§ 312-365](http://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CCP&division=&title=2.&part=2.&chapter=&article=) (http://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CCP&division=&title=2.&part=2.&chapter=&article=). The statutes of limitations for several types of common civil actions in California include:

- Personal injury or wrongful death: 2 years ([CCP § 335.1](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=335.1)) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=335.1.)
- Damage to personal property: 3 years ([CCP § 338](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=338)) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=338.)
- Breach of a written contract: 4 years ([CCP § 337](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=337)) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=337.)
- Breach of an oral contract: 2 years ([CCP § 339](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=339)) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=339.)

The statutes of limitations for other types of civil cases may be researched using the resources listed at the end of this Guide.

If a case is filed past the date set by a statute of limitations, the defendant may raise this as an affirmative defense, or as grounds for a demurrer. The court has no leeway on statute of limitation issues. If the case is filed past the date set by the statute of limitations, it must be dismissed. However, it is not always obvious when the statute of limitations period begins or ends.

Research is often required to determine the exact date a statute of limitations began to run. A statute of limitations begins to run when a cause of action “accrues” ([CCP § 312](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=312)) (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=312.) Generally, a cause of action accrues on the date of injury or the date the incident occurs. If a cause of action has multiple elements, the statute of limitations accrues when the final element occurs.

In some cases, determining the date of accrual can be complicated. Occasionally, accrual is postponed until the plaintiff discovers, or should have discovered, the injury. For example, the statute of limitations for medical malpractice is three years from the date of the injury, or one year from the date the plaintiff discovers, or reasonably should have discovered the injury, whichever occurs first. Some medical mistakes may not cause any noticeable after-effects and may go undetected for years until discovered during tests for an unrelated condition. In these types of situations, the patient could not reasonably discover the injury until long after the three-year period for filing after injury. However, the patient would likely be able to file a lawsuit within one year

of discovering the injury. However, if the medical mistake resulted in a noticeable after-effect, such as unusual pain, and the patient did not seek medical attention to discover the source of the pain, the patient would likely be barred from filing past the three-year period, because he should have reasonably discovered the injury much sooner. Delayed discovery is not common. In most situations, reasonable diligence will reveal that a party has been injured.

Determining when the statute of limitations expires can also be a bit tricky. The running of the statute of limitations is “tolled,” or suspended, in certain circumstances. [CCP §§ 350-363](#)

(http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=2.&part=2.&chapter=4.&article=) describe specific instances in which a statute of limitations is tolled. The most common of these are related to a legal status that prevents the plaintiff from starting a case, such as being a minor or being mentally incompetent. The statute of limitations begins to run when that legal status ends, such as on a minor’s 18th birthday.

In other cases, though, the statute of limitations is tolled under the doctrine of “equitable tolling,” rather than by a specific code section. Equitable tolling is a legal theory that ensures plaintiffs are not prevented from filing a lawsuit simply because they sought an alternative form of relief first. Equitable tolling generally applies when an injured person has several legal remedies and, reasonably and in good faith, pursues one. For example, the statute of limitations for a personal injury action may be tolled under the theory of equitable tolling during an ongoing workers’ compensation claim for the same injury. The statute of limitations for filing a personal injury case is two years. However, filing a workers’ compensation claim may pause, or toll, the clock on the injured person’s civil case. At the conclusion of the workers’ compensation process, the civil clock picks up where it left off. The statute of limitations will expire at the end of whatever time remains of the two year statute of limitations.

Do not automatically assume that your statute of limitations is tolled! Determining whether a statute of limitations is tolled usually requires a lot of research into the type of case you’re handling. A list of suggested resources for conducting research is at the end of this Guide.

For more Information

[California Courts Self-Help Website: Statute of Limitations](http://www.courts.ca.gov/9618.htm) (<http://www.courts.ca.gov/9618.htm>)

California Forms of Pleading and Practice KFC 1010 .A65 C3 (Ready Reference), Vol. 30, Chap. 345
Electronic Access: On the Law Library’s computers, using *Lexis Advance*.

California Practice Guide: Civil Procedure Before Trial: Statutes of Limitations KFC 995 .W45

Witkin’s California Procedure KFC 995 .W58 (Ready Reference) Vol. 3, Actions §§ 430 *et seq*

California Jurisprudence 3d KFC 80 .C35 (Ready Reference) Vol. 43, Limitation of Actions

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