



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

What Is a Monell Claim?

The heightened publicity surrounding law enforcement and breaches of civil rights may have surfaced the term “Monell claim” and left you wondering what it is and how it applies to actions alleging a breach of civil rights. Monell claim refers to *Monell v. Department of Social Services*, a 1978 case in which the Supreme Court of the United States uprooted absolute immunity for public entities and held that a municipality may be accountable for the actions of employees if the actions alleged are unconstitutional pursuant to a policy statement, ordinance, regulation, or decision officially adopted and promulgated by officers.

Monell claims derived from the Civil Rights Act of 1871. Statute 42 US Code Section 1983 creates a private cause of action for damages against state and local governments and officials for violations of the US Constitution and laws. Monell claims are specific to claims against a public entity as the employer, supervisor, and policymaker. Prior to the Monell decision, municipalities were immune from lawsuits, so few police departments purchased insurance.

Although Monell claims today are most frequently associated with policing or jail operations such as excessive force, unlawful search and seizure, false arrest, lack of due process, or conditions of confinement, Monell claims are not limited to actions against law enforcement. Employment-related claims may also be presented against municipalities alleging a department policy and practice of discrimination targeting an individual or group. In fact, Jane Monell, the lead plaintiff in the Monell class action suit, pursued an employment-related action representing a group of female employees in the New York City Department of Social Services who were forced to take unpaid pregnancy leaves before such leaves were medically necessary.

For a Monell claim to survive, the plaintiff must establish that a public entity had an unconstitutional policy either by an actual written policy or an unofficial custom or practice exercised repeatedly. It is rare that an agency would have a written policy in conflict with the constitution; therefore, it is more typical for a plaintiff to allege that the agency had a pattern of constitutional violations so prevalent in the department that the practice was customary. To sustain the burden of proof, the plaintiff will typically make a public records request for policies and training practices, and conduct depositions of multiple staff to determine if there is a frequency of the alleged behavior to support the action.

These are few things to remember about Monell claims:

- The Monell decision allows plaintiffs a method to sue municipalities for unconstitutional policies and practices that led to an incident that harmed an individual or group.
- Employees may be sued individually for misconduct.



- Monell claims may be related to law enforcement or employment cases presented against a municipality.
- A Monell claim differs from vicarious liability in that there must be a constitutional violation and a trend of instances or practices that a jury would infer to be an accepted practice within the municipality for a claim to withstand.
- Awards to Monell claims may be compensatory or injunctive relief (policy change).
- An unsuccessful defense to a Monell claim exposes the municipality to compensate the victim by reimbursement of plaintiff's legal fees and potentially punitive damages.

Because of the financial, reputational, and community engagement risks that accompany Monell claims, risk managers are wise to review policies and practices in collaboration with department leaders, human resources professionals, and legal advisors to proactively address complaints and deter behavior that may lead to an inference that a practice or accepted behavior within a department is misaligned with constitutional rights.

Note: This information should not be relied upon for legal advice; please contact an attorney for your specific needs.



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