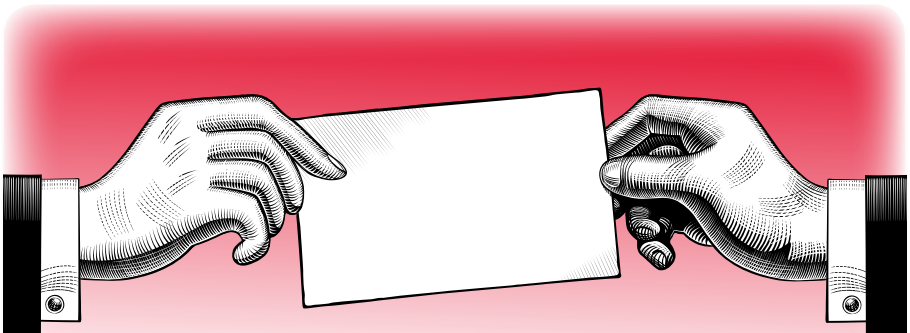

HOW TO FILE A NOTICE OF CLAIM



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I. OVERVIEW

A. Generally: In many instances, in order to bring an action or proceeding against an employer on behalf of CSEA or its members, the employer must be given separate, prior notice of the claim. The formal "notice of claim" does exactly that: it is a written warning, in a formal shape, apprising the appropriate representative of the employer that there is a proceeding in which the employer's interests are involved, giving the employer basic facts and information about the claim. Whether a notice of claim must be presented to the employer depends on several factors: who the employer is, the kind of claim being brought, and what type of legal action will be taken to pursue the claim. Not every action against the same employer will require a notice of claim to be served; moreover, the time in which to file the notice, as well as how the notice must be served upon the employer will also vary.

Despite the fact that different employers have different notice of claim requirements, if the appropriate notice of claim provisions are not followed, legal action cannot be pursued no matter how meritorious the underlying claim. **Therefore, to ensure that we protect valid claims, when in doubt, a notice of claim should be served.**

B. Time period: The period to serve the notice is usually 90 days from the date of the act that gave rise to the grievance; for school districts, however, the period is three months from such date. The time period, however, varies depending on the claim.

NOTE: the accrual of the claim begins from the date of the act that is initially grieved, NOT from the date of the last decision in the grievance process.

Example #1: A member is denied a promotion in a town and grieves the town's appointment of a different candidate. CSEA completes the grievance procedure in the contract bargaining agreement and the process takes longer than the time frame within which to file a notice of claim. The bargaining unit requests that CSEA file a breach of contract claim in court. CSEA may be

precluded from filing a breach of contract claim if no notice of claim was filed within six months from the act grieved (the denial of the promotion).

Example #2: A member is served with a notice of discipline pursuant to Civil Service Law Section 75. CSEA represents the member throughout the disciplinary procedure, and the employer eventually issues a final decision terminating the member. The member requests that CSEA review the termination for an appeal under Article 78. CSEA may be precluded from filing an appeal where no notice of claim was filed within the time period calculated from the date of the final termination decision.

C. The Claimant: Notices of claim must name CSEA as the claimant for PERB improper practice charges, claims arising out of contract grievances or advisory/non-binding arbitration that may result in court action, or where the Union is the aggrieved party.

Notices of claim involving individual rights of an employee, i.e. rights arising out of a statute such as Civil Service Law Section 75 or an Article 78 proceeding challenging an employer's adverse employment action against an employee, should name the individual as the claimant and should be signed by the individual employee. It is also permissible in such cases, but not legally necessary, to name CSEA in the notice of claim in addition to the employee.

D. Form: A notice of claim must be in writing, sworn to by the claimant and indicate: (1) the name and post office address of the claimant and representative; (2) the nature of the claim; (3) the time when, the place where, and the manner in which the claim arose; and (4) the items of damage or injuries claimed to have been sustained so far as practicable.

(See attached Appendix A and B for applicable forms.)

E. Service: In most instances, service of the notice of claim may be made by either personal service or by registered or certified mail. However, service should be made by personal service against school districts, other public authorities and

libraries, and public housing authorities. See Chapter III for more details.

Service is made upon the legal head of the body or entity in question, or any other person designated to receive service, including the Secretary of State. For example, in the case of a city, service may be upon the mayor, comptroller, treasurer, clerk, an officer with functions corresponding to those offices, or city counsel. See Chapter III for more details.

F. 50-h examinations: An employer is entitled to examine the claimant under oath in a fashion similar to a civil action examination before trial or deposition where a claimant serves a notice of claim for a cause of action in a tort (an injury against the person or property of another). Note: Where a public housing authority is involved, an examination is required for any claim.

Since our cases almost never involve tort claims, the employer should not ordinarily be entitled to a 50-h examination after the service of a notice of claim. In the event the employer does serve a demand to conduct a 50-h hearing upon the Labor Relations Specialist or individual CSEA member who is named as a claimant, the CSEA Legal Department should be contacted.

G. "Late" notices of claim: Every possible effort must be made to file a notice of claim on time. However, the courts, under limited circumstances, have the authority to grant an extension of time in which to serve a notice of claim. A request for legal assistance must be made to bring such a motion.

The court application must explain, among other things, the specific reasons why timely service was not made. The employer then has the opportunity to object. Whether to grant permission to file a late notice is within the court's discretion and these motions are regularly disapproved. Moreover, although the court may grant permission to file notice after the notice period, the court is still constrained by the statute of limitations on the action in question. In most cases, that period is within one year and ninety days.

II. TYPES OF CLAIMS

A. Improper practice charges at PERB:

A notice of claim should *always* be served in a matter involving a PERB improper practice charge *where a school district or public authority is involved*.

There is no need to serve a notice of claim for PERB charges against a State department, a county, or a city.

B. Advisory or non-binding arbitration:

Some contract grievance procedures may ultimately wind up in court (i.e. where there is “non-binding” arbitration, or where the school board is the final level of decision making). In such cases, a notice of claim should be filed within ninety days (or three months where applicable) from the date of the incident that gives rise to the grievance.

C. Claims giving rise to Article 78 proceedings:

Whether or not a notice of claim must be served on an employer will depend on the claim being advanced by CSEA. Because a determination about what types of claims will be included in the Article 78 petition will not be made until an attorney is assigned to the matter following approval of legal assistance, the default recommendation is that *a notice of claim should be served against any employer*.

D. Human Rights proceedings:

No notice of claim is required prior to filing an *administrative complaint* with New York State Division of Human Rights.

However, service of a notice of claim *is* required if the identical claim is brought *in court*.

E. Special situations:

1. County soil and water conservation district:

Where a claim is against a county soil and water conservation district (as opposed to a county improvement district), the notice of claim is against the soil and water conservation district, which is a separate entity from the county itself.

2. Town improvement districts:

Where a claim relates to a town improvement district (such as water, sewer, drainage, ambulance, etc.), it is recommended that a notice of claim be filed against both the town and the district.

3. Community colleges:

Education Law requires service of a notice of claim not only on the college but on the "Local Sponsor." The "Local Sponsor" is the city, county or school district that participates in sponsorship of the community college; notice must be served within ninety days, by personal service or certified or registered mail.

4. State departments and agencies:

Procedures are different for state entities and other governmental subdivisions. A notice of claim is not necessary against a State department or agency for an improper practice charge or Article 78 proceeding.

A court action solely for money damages against a state department or agency, unlike other cases, must be brought in the Court of Claims and its procedures involve a "Claim" and "Notice of Intention to File Claim," which are wholly different kinds of documents. Consultation with the CSEA Legal Department should be made as soon as possible in such situations for guidance. The Court of Claims process has a very short time frame.

Actions solely for money damages against the Thruway Authority and the Canal Corporation must also be brought in the Court of Claims.

III. RULES OF SERVICE AGAINST PUBLIC EMPLOYER

A. Counties:	
Upon whom:	Chairperson or clerk of the board of supervisors, clerk, attorney, or treasurer.
When:	Within ninety days.
How:	Personally, or registered or certified mail.

B. School Districts:	
Upon whom:	The "governing body" of the district, e.g., the school board.
When:	Within three months (except for torts, which must be served within ninety days).
How:	Personally.

C. Cities:	
Upon whom:	Mayor, comptroller, treasurer, counsel or clerk, or, if the city lacks such officers, to an officer performing a corresponding function under another name.
When:	Within ninety days.
How:	Personally, or registered or certified mail.

D. Towns:	
Upon whom:	Supervisor or clerk.
When:	For tort or non-equity, within ninety days; for breach of contract, six months.
How:	Personally, or registered or certified mail.

E. Villages:	
Upon whom:	Mayor, clerk or any trustee.
When:	Within ninety days for tort or equity; one year for breach of contract.
How:	Personally, or registered or certified mail.

F. Housing Authorities:	
Upon whom:	Authority board or officer.
When:	Within ninety days.
How:	Personally.

G. Public Authorities:	
Which Authorities:	Bridge Authority, Dormitory Authority, Onondaga County Water Authority, Erie County Water and Sewer Authorities, Monroe County Water Authority, Ogdensburg Port Authority, Great Neck Water Authority, ORDA, NCHCC, WCHCC, and Roswell Park CIC (note: this list is not exhaustive).
Upon whom:	Member of authority or chief executive officer.
When:	Within ninety days.
How:	Personally.

H. Libraries:	
Upon whom:	Director or Board Chairman.
When:	Within ninety days.
How:	Personally.

I. Community Colleges	
Upon whom:	Board of Trustees and Local Sponsor
When:	Within ninety days.
How:	Personally.

IV. CONCLUSION

This is a complicated but very important area. If notice of claim provisions are not followed, CSEA will not be able to pursue just and meritorious claims. This booklet merely attempts to summarize the major requirements.

To ensure that we protect valid claims, when in doubt, a notice of claim should be served.

Any questions should be directed to the CSEA Legal Department at the earliest opportunity.

APPENDIX "A" -- Form for "CSEA" notices of claim

If the claim is brought on behalf of CSEA (such as an improper practice or breach of contract), the following form should be used:

STATE OF NEW YORK
SUPREME COURT COUNTY OF *[insert]*

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO,
[local, if any to be listed] [unit, if any to be listed],

NOTICE OF CLAIM

Claimant,

-against-

_____,
Respondent.

TO: *[title of person to be served]*
[address]

PLEASE TAKE NOTICE that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO *[local and unit, if named in caption]*, hereby makes claim against _____, as follows:

1. The name and post office address of the claimant is Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, P.O. Box 7125, Capitol Station, 143 Washington Avenue, Albany, New York 12224. Its representative at this time is Labor Relations Specialist _____, *[address]*.

2. The nature of the claim is for *[state the basis of claim, e.g., improper practice charge or breach of contract]*.

3. These claims occurred on or about _____, 20__ __, by virtue of [give conclusory statement, e.g., the employer has assigned exclusive CSEA unit work to non-unit persons or is breaching the collective bargaining agreement between CSEA and the employer by, etc.].

4. The manner in which these claims arose is [give the details]:

a.

5. CSEA and CSEA unit employees have been injured by the action of respondent [in the total sum of \$____, or otherwise describe nature of damages or injuries] and claimant requests that respondent make CSEA and these CSEA unit employees whole.

WHEREFORE, CSEA is entitled to the aforesaid relief, and claim is hereby made and presented for the same.

Dated _____, 20__ __
_____, New York

Respectfully submitted,

Labor Relations Specialist
Representative of the Claimant
[address and telephone number]

TO: _____
[insert name]
[address]

**APPENDIX "B" - Form for "individual CSEA member"
notice of claim**

If the claim is brought on behalf of an individual CSEA unit member (such as claim for discrimination or other statutory violation involving an individual's specific rights), the following form should be used:

**STATE OF NEW YORK
SUPREME COURT COUNTY OF *[insert]***

In the Matter of

[name of individual claimant],

NOTICE OF CLAIM

Claimant,

-against-

_____ ,

Respondent.

TO: *[title of person to be served]*
[address]

PLEASE TAKE NOTICE that *[name of individual claimant]*, hereby makes claim against _____, as follows:

1. The name and post office address of the claimant is: _____
_____. His or her representative at this time is Labor Relations Specialist _____, *[address]*.

2. The nature of the claim is for *[state the basis of claim, e.g. disability discrimination or violation of the such-and-such statute]*.

3. These claims occurred on or about _____, 20__ , by virtue of [give conclusory statement, e.g., the employer failed to provide a reasonable accommodation or violated such and such statute].

4. The manner in which these claims arose is [give the details]:

a.

5. Claimant has been injured by the action of respondent [in the total sum of \$____, or otherwise describe nature of damages or injuries] and requests that the respondent make him/her whole and pay damages for such conduct.

WHEREFORE, Claimant is entitled to the aforesaid relief, and claim is hereby made and presented for the same.

Dated _____, 20__
_____, New York

Respectfully submitted,

Claimant
[address and telephone number]

TO: _____
[insert name]
[address]

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