

**FACT SHEET - #23a**

SUBJECT: Personal Liability of Federal Employees for Official Acts

1. **PURPOSE.** To provide information and guidance concerning personal liability issues.
2. In January 1988, the Supreme Court decided the case of Westfall v. Erwin. The case held that an employee could be sued in their personal capacity for acts done as a part of their official duties.
3. In a direct reaction to the problems generated by the Westfall case, the question of Federal employee personal liability was taken up by the Congress, and on 18 November 1988 the President signed PL 100-694 into law.
4. This Act (28 USC 2679 et sec.), known as The Federal Employees Liability Reform and Tort Compensation Act of 1988, makes substantial changes in the law applicable to suits brought against Federal employees personally. Under this legislation, an employee is now immune from suit for injuries that may be occasioned by the exercise of government functions. The immunity extends to so-called common law torts, i.e., injuries to property or a person due to acts of individual negligence. In such instances, claims and litigation against the individual employee are now precluded and the only proper defendant is the United States.
5. Procedurally, if a suit is filed against you as a result of your official duties, you should immediately notify the JAG Office of the litigation. The circumstances of the suit will be examined, in consultation with HQDA and the Department of Justice, to see if the acts complained of and upon which the suit are based come within the exercise of government functions and within the scope of your employment. If such is found to be the facts, the U.S. Attorney will certify that the case is one that falls within the provisions of the law. Once certified, the employee is dropped from the lawsuit and the United States is substituted as the defendant upon the approval of the presiding judge.
6. The Federal Employees Liability Reform and Tort Compensation Act does not cover every lawsuit. Federal employees are not immune from suit in three types of situations as described below:
  - a. Employees remain liable to suit if the allegations are that they committed a crime. In such case the employee may face a prison term, personal fines and sizable legal expenses for which there is no Government assistance available.
  - b. Employees are not immune to liability when their actions constitute violations of citizens' rights under the U.S. Constitution. Thus, an employee sued due to an alleged suppression of another's First Amendment right of free speech is not immune under the statute.

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c. Employees are not immune if the allegations are that they violated a statute that specifically provides for suits against individuals. For example, several environmental statutes, civil rights acts and the Privacy Act contain provisions, which provide for personal responsibility for those who violate these statutes.

7. If you have any questions concerning this area of the law or of your possible personal liability, I can be reached at (502) 624-7414/4668.

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