

## **Tort Liability of Members of the Armed Forces**

Members of the armed forces are generally immune from liability for damages to another person or to the other person's property as long as the members were acting within the scope of their employment or their official duties and as long as the members were following a lawful command. The immunity applies to the members who were issuing the lawful command and to the members who were obeying the lawful command.

When a military operation is important to the United States or to a state, the operation may be conducted with a large amount of discretion. This discretion applies not only to service members who issue commands with regard to the operation. It also applies to service members who obey the commands. In order for military discipline to be observed, service members are generally not entitled to question lawful commands. A lawful command is one that is issued in accordance with an executive order or in accordance with the regulations of the various military departments. However, a command that may be considered to be lawful during a time of war may not be considered to be lawful during a time of peace.

A command that is not issued in accordance with an executive order or in accordance with the regulations of the various military departments is illegal. A service member who gives an illegal command is therefore liable for damages that result from the illegal command. Whether a service member who obeys the command is liable for damages depends upon whether the service member knew that the command was illegal or whether the service member should have known that the command was illegal.

A service member who is an inferior is entitled to assume that a command that is given by his or her superior is a lawful command. If the superior service member is abusing his or her discretion, the inferior service member is not liable for obeying the command unless the abuse of discretion is obvious and unless the command is clearly inappropriate.

Service members are also not liable for certain activities that they are performing in accordance with their official duties. For example, a service member is not liable for an automobile accident when he or she is driving a military vehicle. Medical personnel who are members of the armed forces cannot be sued for medical malpractice. Only the federal government is liable for the actions of the service members. The individual service member is not liable for these types of actions.

If a plaintiff wishes to pursue an action against the federal government for a service member's conduct, the plaintiff must file an action under the Federal Tort Claims Act or the Military Claims Act.