

State and Local Liability for 5G-Related Illness

By: Lee Hansen, Principal Analyst
James Orlando, Chief Attorney
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Issue

Does federal law allow someone to sue the state or a municipality for damages if he or she becomes ill due to 5G technology?

The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered one.

Summary

We were unable to identify any federal law that explicitly (1) allows someone to sue the state or a municipality for damages if he or she becomes ill due to 5G technology, (2) makes the state or municipality liable for these types of damages, or (3) prohibits plaintiffs from suing telecommunications companies for these types of damages. Federal law prohibits states and municipalities from regulating the placement, construction, or modification of personal wireless service facilities based on the environmental effects of radiofrequency emissions ([47 U.S.C. § 332\(c\)\(7\)\(B\)\(iv\)](#)), as long as the facilities comply with federal regulations that set limits for the maximum permissible exposure to radiofrequency electromagnetic fields ([47 C.F.R. § 1.1310](#)).

5G Networks

In general, “5G” refers to fifth-generation mobile telecommunication networks that require siting and installation of low-powered radio access nodes known as small cells. For additional information about 5G infrastructure and related federal standards, see OLR Report [2019-R-0081](#).

State law also does not specifically address the potential liability of the state or municipalities for 5G-related claims. In general, however, the concept of sovereign immunity limits when people can sue the state and requires them to first receive approval to do so from the Office of the Claims Commissioner. Although sovereign immunity does not apply to municipalities, state law explicitly exempts municipalities and their employees from liability for personal damages resulting from certain actions ([CGS § 52-557n](#)). Among other things, these exemptions include (1) the acts or omissions of someone other than a municipal employee and (2) issuing a legally authorized permit, license, or approval unless it constitutes a reckless disregard for health or safety.

State Liability

Sovereign immunity limits when someone can sue the state. In most instances, someone who wishes to sue the state must file a claim with the Office of the Claims Commissioner ([CGS § 4-141 et seq.](#)). The claims commissioner may (1) deny or dismiss the claim, (2) grant a claimant an award of up to \$35,000, or (3) recommend that the General Assembly approve an award of a higher amount ([CGS § 4-158](#), as amended by [PA 19-182](#), § 2). The claims commissioner may also authorize suit against the state on any claim which, in the commissioner's opinion, presents an issue of law or fact under which the state could be liable if it was a private person ([CGS § 4-160](#), as amended by [PA 19-182](#), § 4).

A claimant who filed a claim for more than \$50,000 can ask the General Assembly to review the commissioner's decision to (1) deny or dismiss the claim or (2) award a payment of \$35,000 or less ([CGS § 4-158](#), as amended by [PA 19-182](#), § 2).

Municipal Liability

Municipalities have no sovereign immunity from suit, but there are several limitations on municipal liability. Municipalities generally are liable for damages to persons or property caused by: (1) their negligence or the negligence of their employees, officers, or agents acting within the scope of their employment or official duties; (2) negligence in the performance of functions that result in profit or financial gain (for example, a municipal parking garage that charges for parking); and (3) acts constituting the creation or participation in the creation of a nuisance.

However, this liability is significantly limited by several exceptions. For example, municipalities are not liable for:

1. negligent acts or omissions requiring the exercise of judgment or discretion as an official function of authority granted by law;
2. their employees' willful misconduct or criminal activity;

3. initiating a judicial or administrative proceeding unless it began without probable cause or with malicious intent;
4. acts or omissions by someone other than a municipal employee, officer, or agent;
5. issuing or denying a permit, license, or approval when their authority to do so is a discretionary function by law unless it constitutes a reckless disregard for health or safety; and
6. failing to inspect property that is not municipally-owned or -leased to determine if it contains a health or safety hazard unless the municipality had notice about the hazard or failure to inspect constitutes a reckless disregard for health or safety under all the relevant circumstances ([CGS § 52-557n](#)).

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