



WHITE PAPER

# Federal Tort Claims Act and Insurance

## Importance for American Indian Tribes

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## Federal Tort Claims Act

The Federal Tort Claims Act (FTCA) is a federal law that allows individuals to sue the federal government for personal injury or property damage caused by the negligence of federal employees acting within the scope of their employment. This law applies to services offered by American Indian Tribes. Keep reading to learn about the history of the FTCA, and why Tribes should consider liability insurance in addition to the protection they receive under FTCA.

The Federal Tort Claims Act is a limited waiver of sovereign immunity that allows parties to sue the United States for certain tort claims. The FTCA follows specific procedures and limits damages.

American Indian Tribes can enter self-determination contracts with the federal government, allowing them to assume greater control over their affairs, including healthcare, education, law enforcement and other social services. These services are often offered in partnership with the federal government.

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# History of the FTCA

**1975**

In response to American Indian Tribes' need for more autonomy and authority over their services, the Indian Self-Determination and Education Assistance Act (ISDEAA) became federal law. This law is also known as Public Law 638.

It allows federally recognized Indian Tribes to contract with the federal government to administer and operate programs and services previously managed by the federal government.

**1990**

Congress extended FTCA coverage for Tribes under a self-determination contract.

**1994**

FTCA was also extended to self-governance compacts under the Tribal Self-Governance Act of 1994.

Under these federal laws, FTCA became an integral part of the Tribe's ability to manage risk for these operations and critical protection for when Tribal employees step into roles with the federal government and provide specific services.

Overall, the ISDEAA and the FTCA work together to give American Indian Tribes greater control over their affairs and proper legal recourse for services provided under these agreements. With greater autonomy and flexibility, there also comes legal liability and social responsibility when damage occurs and causes injury to Tribal citizens or third parties.

## Do Tribes need Liability Insurance if protected under FTCA?

**The short answer: Yes!** Although the FTCA provides important tort liability protection for certain services, it does not cover all of the services a Tribe could offer its citizens. Each Tribe has additional individual federal compacts or funding agreements, and the covered services may be narrowly defined. The act protects against the negligence of the Tribe and employees for these certain services. However, it is important to understand that this is only true when within the scope of the employment and only when performing services outlined in the agreements.

For these reasons, it is vital for Tribes to have a properly constructed liability insurance policy that recognizes FTCA and picks up where FTCA does not apply.

**Not all liability insurance policies will respond in the same manner. Therefore, it is imperative to consult with a highly specialized insurance broker to help understand the differences in insurance policies and work with an insurance carrier that can build a policy to meet a Tribe's specific needs.**

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