

Iowa Statute of Limitations

A law establishing the time limit within which a lawsuit must be brought is called a statute of limitation. Different types of cases have different statutes of limitation. Knowing which statute of limitation applies is critical, since if a lawsuit is not brought within the time limit that applies to the case, the right to sue and recover damages is forever lost. The statute of limitations for a personal injury lawsuit may be as brief as 180 days to up to two years in some cases, subject to a number of factors including the jurisdiction in question. It is critical that you contact an attorney immediately after suffering any injury so that the appropriate statute of limitations can be determined. At **Olson Law Office, P.C.**, we make sure to explore all aspects of your case as soon as possible to ensure that no claims are lost as a result of untimely action.

The Discovery Rule □ Measuring the statute of limitations for a particular situation can be a complex issue. The time usually begins "to run" at the time the injury occurs, however, if a person suffers a hidden injury, the discovery rule may apply. Under the discovery rule, the time begins to run from when the person who is injured knew, or by the exercise of reasonable diligence should have known, that he or she was injured. The discovery rule is commonly applied in cases involving exposure to toxic substances such as asbestos. In such cases, an injured victim normally does not manifest symptoms of injury until well after damaging exposure occurred. Obviously, such is not normally the case in situations involving motor vehicle collisions and other accidents, where injuries are generally immediately apparent.

Exceptions □ Special rules apply in measuring the statute of limitations when a child is injured, in which case the time does not begin to run for an injury until the child reaches 18 years of age. These special rules may also apply to people who are mentally impaired or who leave the state for particular kinds of reasons such as for military service. Of course, regardless of the possible availability of an exception, it is always beneficial to bring a lawsuit as soon as it is practical to do so, since the availability (and memory) of witnesses to an accident and related physical evidence is much greater shortly after an accident than after years have passed. In all matters involving personal injury it is essential that measures be taken promptly to preserve evidence, investigate the accident in question, and to file a lawsuit prior to the deadline imposed by the statute of limitations.

IOWA STATUTE OF LIMITATIONS / REPOSE □ Chapter 614 of the Iowa Code provides the time limitations in which all actions must be brought. □ While the actual statute and current case law must be reviewed closely, Iowa actions and their time limitations generally are as follows:

One Year

a. Enforcement of payment of penalty or forfeiture under an ordinance. Iowa Code § 614.1(1) (2001).

b. Commencement of action for recovery of claim under insurance policies. Iowa Code § 515.138 (2001). *Thomas v. United Fire and Casualty Co.*, 426 N.W.2d 396 (Iowa 1988).

Two Years

a. Personal injury. Iowa Code § 614.1(2) (2001). *But see Lemrick v. Grinnell Mutual Reinsurance Co.*, 263 N.W.2d 714 (Iowa 1978), regarding a claim pursuant to the uninsured motorist provision of an automobile insurance policy. The court held that the claim was governed by the ten-year statute of limitations for a written contract and not a two-year statute of limitations for a tort. Essentially the court reasoned that the action against the insurance company was based on the insurance policy (written contract) and not the action of the uninsured motorist's negligence (tort), notwithstanding the proof of which negligence is an essential element of the proof of the claim for such policy benefits.

However, in *Douglass v. American Family Mutual Insurance Co.*, 508 N.W.2d 665 (Iowa 1993), the Iowa Supreme Court recognized the right of insurance companies to contractually reduce the period of limitations in uninsured motorists policies. In upholding a two-year period of limitations written into the plaintiff's uninsured motorists policy, the court observed that such a provision "grants as many rights as the plaintiff would have in a case of an insured tort-feasor." *Id.* The court further held that efforts by the plaintiff to secure recovery from the tort-feasor did not toll the policy time limit for bringing an uninsured motorist claim. *Id.*

An action "accrues" for purposes of the statute of limitations when all of the elements are known, or in the existence of reasonable care would have been known, to plaintiff. When an automobile collision occurred, causing minor injuries and subsequent serious injuries, a passenger's cause of action against the driver for a later epileptic condition accrued at the time of first injury, not the later manifestation. *LeBeau v. Dimig*, 446 N.W.2d 800 (Iowa 1989).

b. Wrongful death. Iowa Code § 614.1(2) (2001).

c. Injury to reputation. Iowa Code § 614.1(2) (2001).

d. Injury to relative rights, such as loss of consortium and prospective business advantage, whether based on contract or tort. Iowa Code § 614.1(2) (2001). [PRACTICE NOTE: While oral and written contract actions have five- and ten-year limitations, respectively, a third-party beneficiary thereof has only a relative right therein, and the action must be brought within two years.] *But cf.*, five-

year limitations period applied to coal lessee's claim against county for tortious interference with prospective contractual relationship, alleging that county interfered with lessee's prospective contractual relationship as operator of landfilling operation with customer. *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418 (Iowa 1996).

e. Civil rights actions under 42 U.S.C. 1983-governed by Iowa Code § 614.1(2) (2001). *Dautremont v. Broadlawns Hosp.*, 827 F.2d 291 (8th Cir. 1987).

f. Statutory penalty. Iowa Code § 614.1(2) (2001).

g. Secured interest in farm products. Time period runs from the date of sale of the products against the secured interest. Iowa Code § 614.1(10) (2001).

h. Medical malpractice. Statute is tolled when patient knew or through use of reasonable diligence should have known of injury for which damages are sought. *Langer v. Simpson*, 533 N.W.2d 511, 517 (Iowa 1995). Annotation, *When Statute of Limitations Commences to Run Against Malpractice Action Based on Leaving Foreign Substance in Patient's Body*, 70 A.L.R.3D 7 (1976); Annotation, *Statute of Limitations Relating to Medical Malpractice Actions As Applicable to Actions Against Unlicensed Practitioner*, 70 A.L.R.3D 114 (1976); Annotation, *When Statute of Limitations Begins to Run Against Malpractice Action in Connection With Sterilization or Birth Control Procedures*, 93 A.L.R.3D 218 (1979); but no more than six years after occurrence unless injury caused by foreign object unintentionally left in body, Iowa Code § 614.1(9) (2001) or proper allegation that health care provider fraudulently concealed facts necessary for discovery. *Koppes v. Pearson*, 384 N.W.2d 381 (Iowa 1986).

The medical malpractice statute of limitations applicable to minors was amended in 1997. Code § 614.1(9) imposes a two year limitation period, unless the minor was under the age of eight at the time of the malpractice. If so, the action must be commenced by the child's tenth birthday, or within two years of malpractice – whichever is later. Code § 614.8 was amended to conform.

i. Wages or liability or penalty for failure to pay wages. Iowa Code § 614.1(8) (2001).

j. Governmental tort claims. Tort claims against the state of Iowa, chapter 25A, and United States of America must be filed within two years. The discovery rule applies to claims brought under the Iowa Act. *Callahan v. State*, 464 N.W.2d 268 (Iowa 1990), but claims under the Iowa Tort Claims Act, Iowa Code Ch. 25 (1991), are not subject to the statute (Iowa Code 614.8 (2001)), which tolls the statute of limitations for minors and mentally ill persons. *Harden v. State*, 434 N.W.2d 881 (Iowa 1989).

Iowa Code section 25A.3 provides that "[c]laims made under this chapter shall

be filed with the director of management, who shall acknowledge receipt on behalf of the state appeal boards." The state appeal board has adopted 543 Iowa Administrative Code section 1.3(1), which provides that claims "shall be filed in triplicate with the Department of Management. . . ." The Iowa Supreme Court has held that a tort claim against the state was "made when it was filed rather than when it was mailed and, thus, that the claim was barred when not filed within two years of its accrual." *McGruder v. State*, 420 N.W.2d 425 (Iowa 1988).

A tort claim against the United States will be forever barred unless it is presented in writing to the appropriate federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. 28 U.S.C. § 2401.

k. Iowa securities law violations. See Iowa Code §§ 502.504 and 502.506 (2001).

l. Interspousal wiretapping. See 18 U.S.C. § 2510 et seq.;

Three Years

a. Against sheriff or public officer. For non-payment of money collected on execution-from date of collection. Iowa Code § 614.1(3) (2001).

b. Section 10(b) of the Securities Exchange Act of 1934. *Lampf, Pleva, Lipkind, Prupis & Petrigrow v. Gilbertson*, 111 S. Ct. 2773 (1991) (defrauded investor cannot sue under § 10(b) unless he brings his suit within three years of the occurrence of the fraud, even if the fraud was not discovered until more than three years after it occurred).

c. Workmen's Compensation. Iowa Code § 85.26(1). The discovery rule does not extend the three-year statute of limitations in § 85.26(1), which runs from the date of the last payment of weekly compensation benefits, not from the date the injury occurred. *Bergen v. Iowa Veterans Home*, 577 N.W.2d 629 (Iowa 1998).

Four Years

a. Civil Racketeer Influenced and Corrupt Organizations Act (RICO) enforcement. *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143 (1987).

b. Child sexual abuse. Iowa Code § 614.8A (2001). An action for injury suffered as a result of sexual abuse during minority but not discovered until after the injured person is of the age of majority must be brought within four years from

the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

Five Years

a. Oral contracts. Iowa Code § 614.1(4) (2001). The five year limitation period governing actions on unwritten contracts also applies to actions on implied contracts. General rule is that a cause of action accrues for limitations purposes when an aggrieved party has the right to institute and maintain suit. In case of contract dispute, right of action accrues and the limitations period begins running upon breach of contract. *Diggan v. Cycle Sat, Inc.*, 576 N.W.2d 99 (Iowa 1998).

b. Sale of Goods. See Iowa Code §554.2725 for contracts of sale of goods within the ambit of the Uniform Commercial Code. A transaction between contractor and company that supplied bricks used to construct house was a sale of goods, and thus any action by homeowner against that company for breach of implied warranty had to be brought within five years of date when delivery of bricks was made; transaction was not a rendition of services so as to make five year limitations period inapplicable. *Richards v. Midland Brick Sales Co., Inc.*, 551 N.W.2d 649 (Iowa App. 1996).

c. Injury to property. Iowa Code § 614.1(4) (2001).

d. Fraud. Iowa Code § 614.1(4) (2001). Iowa cases that discuss and narrowly construe the statute of limitations governing fraud have also recognized and given far-reaching effect to the common law doctrine of fraudulent concealment. *Pride v. Peterson*, 173 N.W.2d 549 (Iowa 1970); *Higbee v. Walsh*, 229 Iowa 408, 294 N.W. 597 (1940).

e. Legal malpractice. The discovery rule is applicable to legal malpractice actions, see *Millwright v. Romer*, 322 N.W.2d 30 (Iowa 1982); and the issue of when the cause of action accrues (date of actual injury) must be resolved. When a claimant in a legal malpractice action relies on the discovery rule, the cause of action accrues when the harm or damage was ascertainable or discoverable "by the use of the means of information within [the claimant's] reach, with the vigilance which the law requires of him." *Id.* at 32-33. A person may learn of his attorney's negligence before there is a district court ruling establishing it as a matter of fact. Even then, a question remains as to the rights of final appellate adjudication on the alleged negligent conduct.

While a variety of approaches have been taken by a number of state courts, the Iowa Supreme Court in *Neylan v. Moser*, 400 N.W.2d 538(Iowa 1987), has recently held that the date of injury "coincides with the last possible date when the attorney's negligence becomes irreversible." Citing *R. MALLEN & V. LEVIT, LEGAL MALPRACTICE* § 390, at 457 (1981); *Woodruff v. Tomlin*, 511 F.2d 1019

(6th Cir. 1975); and *AMFAC Distribution Corp. v. Miller*, 138 Ariz. 155, 156-59, 673 P.2d 795,796-99 (1983). In *Woodruff*, the court held that "judgment did not become final until the court of appeals decided the appeal and the time to appeal to the [state] supreme court ..., had expired." *Woodruff v. Tomlin*, 511 F.2d 1019, 1021 (6th Cir. 1975). The *Neylan* court stated that it so held because "it comports with our view that a client has a 'right to rely upon the superior skill and knowledge of his attorney.'" Citing *Millwright*, 322 N.W.2d at 34, and quoting with approval the following from the court in *AMFAC*: "[U]nder our rule, a client will not have to challenge and question every decision made by his attorney or routinely double-check his attorney's conduct during litigation.... Thus, the client will have peace of mind to allow the legal process to work fully and finally in hopes that his position will ultimately be vindicated and will not be forced to disrupt his relationship with his lawyer to preserve what he thinks may be a valid malpractice claim." 138 Ariz. at 159, 673 P.2d at 799.

The Iowa Supreme Court has held that the appropriate statute of limitations is ascertained by determining the actual nature of the action. *Clark v. Figge*, 181 N.W.2d 211 (Iowa 1970); *Sandbulte v. Farm Bureau Mut. Ins.*, 343 N.W.2d 457 (Iowa 1984). The district court recited in *Neylan* that the five-year limitation, section 614.1(4), was applicable but failed to elaborate on why, perhaps because the defense failed to raise the two-year statute. The dispute was over a contingent fee agreement that was initially oral but later reduced to writing.

In *Millwright*, the court viewed legal malpractice as negligence and therefore a cause of action in tort. In *Millwright*, the plaintiff used contract theory as the basis of recovery, but he also alleged negligence, thus raising tort recovery. *Millwright v. Romer*, 322 N.W.2d 30, 32 (Iowa 1982). The court stated: "Legal malpractice consists of the failure of an attorney to use such skill as lawyers of ordinary skill when such failure proximately causes damage it gives rise to an action in tort." The Iowa Supreme Court has now formally held that the statute of limitations for a legal malpractice action is five years. *Norton v. Adair County*, 441 N.W.2d 347, 355 (Iowa 1989).

For limitations purposes in legal malpractice action against an attorney based on preparation of estate tax returns, continuous attorney-client relationship arising out of attorney's representation of both estate and executor personally, both during course of probate and after estate was closed, justified exception to presumption of knowledge of law sufficient to toll statute of limitations beyond date when estate taxes were paid. For limitations purposes where there is continuous attorney-client relationship, it would be palpably unjust and quite unreasonable to require client to obtain second opinion on every professional decision lawyer makes. *Dudden v. Goodman*, 543 N.W.2d 624 (Iowa App. 1995).

f. Actions not covered by other statutes of limitation. Iowa Code § 614.1(4)

(2001). Answering a certified question from the United States District Court for the Northern District of Iowa, the Iowa Supreme Court held the § 614.1(4) five-year period applies to claims arising out of an insurance company's bad faith denial of workers' compensation benefits. *Brown v. Liberty Mut. Ins. Co.*, 513 N.W.2d 762 (Iowa 1994). The *Brown* court also found that the limitations period for such a cause of action begins at the point the insurance company denies coverage.

Six Years

a. Civil (nontort) actions against the United States. Every civil action commenced against the United States will be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases. 28 U.S.C. § 240 1(a).

Ten Years □ *a. Written contracts.* Iowa Code § 614.1(5) (2001). See Iowa Code § 554.2725 for contracts of sale within the ambit of the Uniform Commercial Code. Time for bringing an action to enforce a contract runs from the date of breach, not from the date the agreement was executed. *Krotz v. Sattler*, 586 N.W.2d 336 (Iowa 1998).

[PRACTICE NOTE: Despite the written nature of an insurance policy, the insurer can contractually reduce the period of limitations. You cannot routinely rely on the ten year statute, but must examine the policy and comply with any reduced period of limitations. See, *Douglass v. American Family Mut. Ins. Co.*, 508 N.W.2d 665 (Iowa 1993).]

b. Recovery of real property. Iowa Code § 614.1(5) (2001).

c. Judgments of courts not on record. Iowa Code § 614.1(5)(2001).

d. Set aside judgment quieting title to real estate. The action must be commenced within the ten years from the date of judgment or decree. Iowa Code § 614.1(7) (2001).

Fifteen Years

a. Statute of repose on actions against contractors, engineers, and architects, and improvements to real property. Actions arising out of the unsafe or defective condition of improvement to real property based on tort and implied warranty or for contribution and indemnity whether for injury to person or property, shall not be brought more than 15 years after the date on which occurred the act or omission of the defendant alleged in the action. This does not bar action against a person solely in capacity as owner, occupant, or operator of the improvement. Iowa Code § 614.1(11) (2001). The 15 year

statute of repose applies to manufacturers. The key event is when the product was attached to the building. At that time, it became an improvement to the building, and the 15 year statute began to run. *See, Tallman v. W.R. Grace & Co.*, 558 N.W.2d 208 (Iowa 1997) (asbestos product manufactured by W.R. Grace and as applied to the building was an improvement). *Krull v. Thermogas Co.*, 522 N.W.2d 607, 611-12 (Iowa 1994) and *Buttz v. Owens-Corning Fiberglass Corp.*, 557 N.W.2d 90, 91 (Iowa 1996).

Twenty Years

a. Judgement of courts of record. Iowa Code § 614.1(6) (2001).

Failure of Actions Statute □ If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second action for statute of limitations purposes will be held a continuation of the first. Iowa Code § 614.10 (2001). *Wilson v. Wright*, 189 N.W.2d 531 (Iowa 1971).

Direct Action Against Tort-feasor's Insurer □ Direct action by a third party against a tort-feasor's insurer must be brought within 180 days from the entry of judgment against the tort-feasor or from the date the judgment is affirmed, if appealed. Iowa Code § 516.3 (2001).

Computation of Time Expired □ Iowa Code § 4.1(22) provides as follows: "In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the perfecting or filing of an appeal from the decision or award of any court, board, commission or official falls on a Saturday, a Sunday, the first day of January, the third Monday in January, the twelfth day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday when any of the foregoing named legal holidays fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, the time shall be extended to include the next day which is not a Saturday, Sunday or legal holiday named in this subsection."

Defenses to Limitations Period

Discovery Rule □ The limitations period begins to run from the date plaintiff knew, or through the exercise of reasonable diligence should have known, of the

injury. "The statute of limitations begins to run when a plaintiff first becomes aware of facts which would prompt a reasonably prudent person to begin seeking information as to the problem and its cause." *Estate of Montag v. T.H. Agriculture*, 509 N.W.2d 469, 470 (Iowa 1993). Under the discovery rule, the statute of limitations begins to run when the injured party has an actual or imputed knowledge of the facts that would support a cause of action. It is not necessary that the injured party know these facts are actionable. *State v. Wilson*, 573 N.W.2d 248 (Iowa 1998). This is applicable to personal injury/wrongful death; malpractice, as limited by Iowa Code § 614.1(9) (2001); equitable fraud; mistake; and trespass (Iowa Code § 614.1). See *Flynn v. Locust County Memorial Hosp.*, 203 N.W.2d 613 (Iowa 1973). In *Koppes v. Pearson*, 384 N.W.2d 381 (Iowa 1986), the court held that the discovery rule and doctrine of fraudulent concealment are separate and distinct exceptions to the application of statutes of limitations. [PRACTICE NOTE: The discovery rule does not apply in a fraud-at-law action. *Kurtz v. Trepp*, 375 N.W.2d 280 (Iowa App. 1983).]

With regard to medical malpractice cases only, Iowa Code § 614.1(9) states that "in no event shall any action be brought more than six years after the date on which" the act or omission occurred "unless a foreign object unintentionally left in the body caused the injury or death." The foreign object exception to the statute of repose for medical malpractice suits does not include situations in which a patient's care requires that some object be placed within the patient's body and either (1) this is not done, or (2) the object is misplaced in the patient's body; rather, the language of the foreign object exception is narrowly limited to situations in which some object is unintentionally left in the body. *Fisher v. McCrary-Rost Clinic, P.C.*, 580 N.W.2d 723 (Iowa 1998).

While a statutory time bar is an affirmative defense that must be established by the defendant, a plaintiff claiming the application of the discovery rule has the burden of proving it. *Estate of Montag v. T.H. Agriculture*, 509 N.W.2d 469, 470 (Iowa 1993).

Under *Oscar Meyers Foods Corp. v. Tasler*, 483 N.W.2d 824 (Iowa 1992), the Supreme Court held that the date upon which a cumulative injury "occurs," for workers' compensation purposes, is the date of injury as of the time at which the "disability manifests itself." The court further defined "manifestation" as being "best characterized as the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." Rejecting a strict rule, the court held that the Industrial Commissioner "is entitled to consider a multitude of factors such as absence from work because of inability to perform, the point at which medical care is received, or others, none of which is necessarily dispositive."

Issue of whether person is mentally ill for purposes of tolling statute of

limitations is factual. *Borchard v. Anderson*, 542 N.W.2d 247 (Iowa 1996). Former wife who had been diagnosed with posttraumatic stress disorder (PTSD) was not mentally ill as would toll statute of limitations for bringing intentional tort action against her former husband; former wife dutifully raised her children, held job, and even remarried, and so was not disabled to such extent that she was unable to file her lawsuit. Ex-wife was held to understand causal connection between domestic abuse and her emotional difficulties as required to begin running of statute of limitations for bringing action against former husband for committing abuse, even if she did not know medically why and how abuse affected her, since she was aware that abuse was inappropriate, and that it caused her harm. *Id.* at 248-50. □ Statute of limitations of professor's claims against student for slander, invasion of right of privacy, and intentional infliction of emotional trauma accrued as of date university held administrative hearing on student's sexual harassment charge against professor. Professor's malicious prosecution claim against student, in connection with sexual harassment charge she filed with university, accrued when petition for judicial review challenging university's initial determination was dismissed, even though university voluntarily dismissed student's claim against professor and expunged records at earlier date. *Penn v. Iowa State Board of Regents*, 577 N.W.2d 393 (Iowa 1998).

The occupational diseases statute, which relieves employers from any liability for disablement or death after one year, or three for pneumoconiosis, from the worker's last exposure is not amendable to the application of the discovery doctrine. "Discovery rule" is a device to relieve the harshness in certain applications of statutes of limitations; it extends the time within which actions must be brought, but cannot be used to eliminate statutory elements for a cause of action. *Ganske v. Spahn and Rose Lumber Co.*, 580 N.W.2d 812 (Iowa 1998).

Minority or Incapacity □ Except in medical malpractice actions, all limits extend for minors and the mentally ill for one year after the termination of the disability. Iowa Code § 614.8 (2001). The exception to this rule is for penalties and forfeitures. *Id.* The medical malpractice statute of limitations applicable to minors was amended in 1997. Code § 614.1(9) imposes a two year limitation period, unless the minor was under the age of eight at the time of the malpractice. If so, the action must be commenced by child's tenth birthday, or within two years of malpractice-whichever is later. Code § 614.8 was amended to conform. Majority is when a person attains the age of eighteen years. Iowa Code § 599.1 (2001). Unlike an action for an adult, computation is not begun the day of the occurrence but the day "from and after" majority. Section 599.1 states that "the period of majority extends to the age of eighteen years." The Iowa Supreme Court has established a basic principle of interpretation that supports the conclusion that the statutory language points to an individual's eighteenth birthday as the point of reaching the age of majority. In *Fetters v. City of Des Moines*, 149 N.W.2d 815, 818 (Iowa 1967), the court explained that

“the word ‘to’ ... is to us inclusionary.” In other words, since section 599.1 states that minority extends to the age of eighteen years, it must extend to the eighteenth birthday because a person is not eighteen years of age until, at least, the earliest moment of his or her eighteenth birthday.

Iowa Code § 614.8 explains that an injured minor has “one year *from and after the* termination” of minority “within which to commence” an action. (Emphasis supplied.) [PRACTICE NOTE: This law does not toll a parent’s claim pursuant to Rule 8 of the Iowa Rules of Civil Procedure. The parent’s claim for medical expenses and consortium must be brought within two years from the date of injury.]

Normally, the day of the event that begins a period of time is considered the first day of that period. *See, e.g., Redmond v. Ray*, 268 N.W.2d 849 (Iowa 1978). For example, an accident on July 4, 1988, begins a two-year limitations period calculated from July 5, 1988, to July 4, 1990. But the language of section 614.8 is very different from the other limitations periods spelled out in chapter 614. While almost all of the rest define the limitations periods simply as “within [number of] years after [event],” section 614.8 says the action must be brought within “one year from and after the termination” of minority.

The meaning of this unique language has been explained by the Iowa Supreme Court in *Fetters v. City of Des Moines*, 149 N.W.2d 815, 818 (Iowa 1967). After noting a conflict of authorities, it declared that “we hold in computing time the word ‘from’ is generally construed exclusive if from a given day or date,” i.e., *the date the period begins “from” is not included in the calculation of the one-year period but is excluded.* □ Section 614.8 creates a one-year time period that runs “from and after” the termination of minority on the eighteenth birthday, a time period that does not begin before the day *after* the eighteenth birthday.

[PRACTICE NOTE: Section 614.8 does not toll any statute of limitations outside of those specified in chapter 614. *Harden v. State*, 434 N.W.2d 881 (Iowa 1989) (state tort claims act statute of limitations not tolled).]

[PRACTICE NOTE: Minority will not toll the two-year statute of limitations in a federal tort claims action. 28 U.S.C. § 240 1(a).]

[PRACTICE NOTE: In nontort civil actions against the United States, the six-year statute will be extended for three years after minority or legal disability ceases. 28 U.S.C. § 2401(a).]

Discovery of Sexual Abuse □ Iowa Code § 614.8A (2001) provides that:

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought within four years from

the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

In *Doe v. Cherwitz*, 518 N.W.2d 362 (Iowa 1994), the Iowa Supreme Court addressed the issue of whether the discovery rule applies in sexual abuse cases. In accordance with *Chrischilles v. Griswold*, 150 N.W.2d 94 (Iowa 1967), the court found the discovery rule does apply to sexual abuse cases. *See also Callahan v. State*, 464 N.W.2d 268 (Iowa 1990) (discovery rule applies to post-traumatic stress disorders). *But see Borchard v. Anderson*, 542 N.W.2d 247 (Iowa 1996) (PTSD resulting from severe domestic abuse not within *Cherwitz* rule). The next year, in *Woodroffe v. Hasenclever*, 540 N.W.2d 45 (Iowa 1995) (*en banc*), the court also found that the concept of inquiry notice applies to sexual abuse cases.

Death □ If the plaintiff dies within one year of expiration of the applicable limitations period, the limitation will not apply until one year after death. Iowa Code § 614.9 (2001).

Injunction or Statutory Prohibition □ When commencement of an action is stayed by injunction or statute, the time of the continuance of such injunction or prohibition is not computed as part of the limitations period unless otherwise provided by statute. Iowa Code § 614.13 (2001).

Nonresident or Unknown Defendant □ The limitations period to be computed does not include any time when the defendant is a nonresident of the state or, in cases involving personal injury or death resulting from felony or indictable misdemeanor, does not include any time while the identity of the defendant is unknown, despite diligent efforts to discover the identity. Iowa Code § 614.6 (2001).

Contracts and Open Accounts □ Contract actions are revived by an admission, in writing, by the debtor acknowledging that the debt is unpaid, or by a new promise to pay. Iowa Code § 614.11 (2001). Action on an open account accrues for purposes of computation of the limitations period on the date of the last item of the account. Iowa Code § 614.5 (2001).

Judgments □ No action can be brought upon a judgment rendered in any court of record in the state, within nine years after the rendition of the judgment, without leave of the court for good cause, and upon reasonable notice to the adverse party, or upon a judgment of an associate district court judge, unless the docket of the justice or the record of the judgment is lost or destroyed. The time during which an action is thus prohibited is not excluded in computing the applicable limitations period. Iowa Code § 614.3 (2001).

Actions Against Estates □ *a. Limitations.* All claims against a decedent's

estate, other than charges, must be filed with the clerk within four months after the date of the second publication of the notice to creditors, unless the limitation is waived by the personal representative. Claims for which there is insurance coverage, to the extent of the coverage, or by claimants entitled to equitable relief due to peculiar circumstances, are not barred by this limitation. Iowa Code § 633.410 (2001).

b. Waiver of limitations period by personal representative. It is within the discretion of the personal representative to determine whether or not the applicable statute of limitations shall be pleaded to bar a claim that the personal representative believes to be just. However, this does not apply where the personal representative was appointed upon the application of a creditor. Iowa Code § 633.411 (2001).

c. Extension on behalf of estate. A claim will not be barred by the statute of limitations if the claim was not barred at the time of the decedent's death and is filed against the decedent's estate within four months after the date of the decedent's death. Iowa Code § 633.412 (2001).

d. Extension on behalf of claimant if no administration. All claims barrable under the provisions of section 633.410 will in any event be barred if administration of the estate, whether testate or intestate, original or ancillary, is not commenced within five years after the death of the decedent. Iowa Code § 633.413 (2001).

e. Liens not affected by failure to file claim. Nothing in sections 633.410, 633.412, or 633.413 will affect or prevent any action or proceeding to enforce any mortgage, pledge, or other lien upon property of the estate. Iowa Code § 633.414 (2001).

f. Actions pending at death. Any action pending against the decedent at the time of the decedent's death that survives, is considered a claim filed against the estate if notice of substitution is served upon the personal representative as defendant within the time provided for filing claims in section 633.410; however, this provision shall not bar parties entitled to equitable relief due to peculiar circumstances. A copy of the proof of service of notice of such proceedings must be filed in the probate proceedings but will not be jurisdictional. Iowa Code § 633.415 (2001).

Prior Dismissal-Subsequent Actions □ Iowa has a "savings" statute that allows limited refiling upon prior dismissal of an action even if the statute of limitations has run. Iowa Code § 614.10 (2001). Iowa law is unclear in a situation where a prior federal diversity suit is dismissed for lack of subject matter jurisdiction, as to whether the filing of the prior suit interrupts or tolls the applicable statute of limitations in a subsequent state action filed after the statute has run.

Iowa Code section 614.10 states as follows: "If, after the commencement of an action, the plaintiff, for any cause except negligence in its prosecution, fails therein, and a new one is brought within six months thereafter, the second shall, for the purposes herein contemplated, be held a continuation of the first." Iowa Code § 614.10 (2001).

Many jurisdictions have adopted "savings" statutes that allow subsequent actions to be brought when the initial action was dismissed in some manner other than on the merits despite the fact that the statute of limitations had expired. See Annotation, *Statute Permitting New Action After Failure of Original Action Commenced Within Period of Limitation, as Applicable in Cases Where Original Action Failed for Lack of Jurisdiction*, 6 A.L.R.3d 1043 (1966). The following cases adopted the majority positions: *Frederick Smith Enter. Co. v. Lucas*, 204 Miss. 43, 36 S.2d 812 (1948); *Gus-tafson v. A-B Svenska Amerika Linien*, 258 A.D. 734, 14 N.Y.S.2d 905 (1939); *Conner v. Copley Press, Inc.*, 112 Ill. App. 3d 248, 445 N.E.2d 458 (1983); *Dalo v. Laughlin*, 636 S.W.2d 585 (Tex. App. 1982).

When a federal suit is dismissed for lack of subject matter jurisdiction because of lack of adequate diversity and the same action is subsequently brought against the same party in the proper federal court with the defendant's correct citizenship, the *Erie* doctrine would dictate that the state tolling statute be applied. Thus, Iowa Code section 614.10 (2001) would be implemented, the state statute of limitations would be tolled, and the subsequent federal action would not be barred.

Plan of Restitution □ The two-year statute for bringing a civil action to recover money damages is tolled under Iowa Code § 910.8 when a plan of restitution is instituted. There need be no specific amount of restitution established in order for restitution to be considered instituted. *Speer v. Blumer*, 483 N.W.2d 599 (Iowa 1992).

Tolling of Limitations-Filings of Suit

Filing of Petition □ The filing of a petition commences an action and tolls the applicable limitations period. Iowa R. Civ. P. 48. However, service of process must be obtained within 90 days thereafter. See also, *Henry v. Shober*, 566 N.W.2d 190 (Iowa 1997) (delay of 169 days in obtaining service was both intentional and presumptively abusive and the fact that good-faith settlement negotiations were ongoing did not justify delay and dismissal was warranted); *Carroll v. Martir*, 2000 WL 502601 (Iowa 2000) (dismissal was warranted).

Comparative Fault □ In actions governed by Iowa Code section 668.8, filing of a petition tolls the statute of limitations for actions against all parties who may be assessed any percentage of fault. A plaintiff may bring an action against an

existing third party defendant after the statute of limitations has run to preserve joint and several liability rights pursuant to section 668.4. *Reese v. Werts Corp.*, 379 N.W.2d 1, 5 (Iowa 1985). However, section 668.8 does not apply to parties who could have been joined as parties within the statute of limitations but were not. *Bettsworth v. Morey's & Raymond's*, 423 N.W.2d 196, 198 (Iowa 1988).

Products Liability □ An action brought against a wholesaler, retailer, or distributor of a product, who is not the assembler, designer, or manufacturer, in which the plaintiff certifies that the manufacturer is not yet identifiable, tolls the statute of limitations against the manufacturer until discovery has identified the manufacturer. Iowa Code § 613.18 (2001). Section 613.18(3) of the Iowa Code merely suspends the statute of limitations to identify the manufacturer of a product. *Harrington v. Toshiba Machine Company, Ltd.*, 562 N.W.2d 190 (Iowa 1997). Section 613.18(3) provides: An action brought pursuant to this section, where the claimant certifies that the manufacturer of the product is not yet identifiable, tolls the statute of limitations against such manufacturer until such time as discovery in the case has identified the manufacturer. "[T]he tolling under Iowa Code section 613.18(3) means that the time between the filing of the certification under that statute and the identification of the manufacturer is to be deducted from the total elapsed time in computing the date of expiration of the two-year statute of limitations under section 614.1(2). The identification of the manufacturer does not commence a new period of limitations." *Id.*

Special Notice or Limitations Provisions

Contractual □ *a. Insurance policy terms.* Insurance policy terms may shorten a statute, e.g., standard "New York" form fire policies require action to be brought within one year. *Thomas v. United Fire & Cas. Co.*, 426 N.W.2d 396 (Iowa 1988). The insured automobile policy will control the time for bringing an uninsured or underinsured motorist claim and not the two-year statute for personal injury or wrongful death. Most insurance policies now contain one year limitation period clauses.

b. Proof of loss or notice requirements in insurance policies. Proof of loss or notice requirements in insurance policies may specify a shorter time in which to notify the insurer or provide proof of loss. [PRACTICE NOTE: The Iowa Supreme Court has held that failure to comply with notice clauses will not automatically defeat policy coverage or bar an action on the policy, as long as no prejudice results to the insurer from the failure of the insured to comply.] *Pirkl v. Northwestern Mut. Ins. Assoc.*, 348 N.W.2d 633 (Iowa 1984).

c. Forum selection clauses in contracts. Forum selection clauses in contracts may specify the law of a different jurisdiction as governing the contract. The Iowa Supreme Court has adopted section 187 of the *Restatement (Second) of Conflict of Laws* (1971), which permits parties to agree on the law to be applied

to the contract as long as it does not override the public policy of a state having a materially greater interest in the transaction. *Freeze v. American Home Prod. Corp.*, 839 F.2d 415 (8th Cir. 1988).

d. Liquidated damage clauses and other provisions in written contracts.

Liquidated damage clauses and other provisions in written contracts may include special notice requirements as a condition precedent to filing suit. Arbitration clauses may also require specific notice or limitation requirements.

Statutory *a. Public contracts.* Notice of appeal of a municipality's decision to enter into a contract for a public improvement must be filed within ten days after such decision is entered of record. Iowa Code § 73A.2 (2001).

b. Governmental tort claims-state, municipal, and federal. At the state level, notice of claim must be made to the state appeal board within two years after accrual of the claim. If the board does not act within six months, the claim may be withdrawn by notice in writing and suit begun. If the six-month waiting period would extend beyond the two-year limit, the latter period is extended six months by filing of notice of claim. Iowa Code §§ 25A.5, 25A.13 (2001).

[PRACTICE NOTE: The Iowa Supreme Court held that a tort claim against the state was "made" when it was filed rather than when it was mailed, and if not timely filed was barred. *McGruder v. State*, 420 N.W.2d 425 (Iowa 1988).]

Municipal claims must be made within six months. Iowa Code § 613A.5 (2001).

[PRACTICE NOTE: The requirement of Iowa Code section 613A.5 that suit must be brought within six months unless notice of claim is presented within sixty days of the incident has been struck down by *Miller v. Boone County Hosp.*, 394 N.W.2d 776 (Iowa 1986).] However, actions against municipalities may be filed within two years after notice of the claim is given, pursuant to Iowa Code section 613A.5, even though not filed within two years of the date the injury was discovered. *Clark v. Miller*, 503 N.W.2d 422 (Iowa 1993). Thus, even though the sixty-day notice requirement of section 613A.5 has been declared unconstitutional, the time for filing an action may be extended by giving such notice. *Id.*

Federal tort claims must be brought within two years after the claim accrues or within six months after the date of mailing of notice of final denial of the claim by the agency to which it was presented, or it shall be forever barred. 28 U.S.C. § 2401(b).

Other federal civil actions must be filed within six years after the right of action accrues. If the claimant is under legal disability or is overseas when the claim arises, within three years after disability ceases. 28 U.S.C. § 2401(a).

c. Dramshop. The injured person is required to give notice to the licensee or

insurer of same within six months of the occurrence. This period shall be extended until the incapacity of the injured party is removed or until that party has had a reasonable time for discovery of the name of the defendant. Iowa Code § 123.93 (2001).

d. Worker's compensation. Notice must be given to employer within ninety days of injury; the discovery rule applies. Iowa Code § 85.23 (2001). Suit must be commenced within two years from the date of injury in contested cases. Iowa Code § 85.26 (2001). *See also* special limitations in section 85.26. *See Venenga v. John Deere Co.*, 498 N.W.2d 422 (Iowa 1993), for notice requirements in cumulative injury cases. *See* Chapter 85A for notice and limitation provisions relating to occupational disease claims.

e. Consumer credit code. Consumer remedies actions must be brought within one year after a violation. Iowa Code § 537.5203(6) (2001).

f. State civil rights. The complaint must be filed with the Iowa Civil Rights Commission within 180 days after the discriminatory event. If the complaint is not settled or dismissed within 60 days, the complainant may request an administrative release/right-to-sue letter and must file suit in district court within ninety days of the date of letter. Iowa Code § 216.16 (2001).

The above is not legal advice. That can only come from a qualified attorney who is familiar with all the facts and circumstances of a particular, specific case and the relevant law. See [Terms of Use](#).