

# Qualified Immunity

What is qualified immunity?

- Type of legal immunity
- Was created by the Judiciary in a doctrine
- Balances two important interests—“the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.” **Person v. Callahan, 555 U.S. 223, 231 (2009)**

Defense to Civil Rights Actions

- Government officials are immune from civil liability if action is a “discretionary function” as long as their conduct did not violate clearly **established federal law**. See **Harlow v. Fitzgerald**, 457 U.S. 800 (1982)

How is it applied?

- **Saucier v. Katz**, 533 U.S. 194 (2001) established a two-part test:
  - 1) Was there a constitutional violation based upon the facts?
  - 2) If a constitutional right was violated, the court must then determine whether that constitutional right was clearly established at the time of the alleged conduct.
- Later, **Person v. Callahan** altered the **Saucier** Test. Courts are now able to grant qualified immunity based only on clearly established prong of the test and are not required to determine a constitutional violation occurred.

A break-down of what Qualified Immunity actually means. Qualified Immunity is a doctrine handed down by Supreme Court decisions. A court must review the facts “in the light most favorable to the plaintiff,” the person filing the lawsuit. LEO’s do not always get Qualified Immunity. A two prong test is determined by the court. If the LEO or agency has failed to meet one of the two tests, the court case will proceed without Qualified Immunity.

In cases where a court has determined an LEO has not been reasonable in their actions then Qualified Immunity will not be granted.

Qualified immunity does not always mean that an officer is untouchable. But Qualified Immunity does ensure that when an officer is acting lawfully and for the betterment of the community, they are protected. Also, this is all a Civil Court Case. The burden of proponderance of the evidence in civil court is 51% unlike in criminal court the decision has to be unanimous for a conviction.

Qualified Immunity does not give LEO's the ability to do anything they want and get by with it as portrayed by activists. In fact, LEO's are not the only profession that Qualified Immunity pertains to. If Qualified Immunity is erased, frivolous lawsuits and harassing lawsuits will be allowed to continue and there will be unattended consequence. A consequence would be public entities paying out more tax dollars to defend employees on frivolous and harassing lawsuits.

If the decision is made to legislatively reform Qualified Immunity by doing away with the concept, law enforcement agencies could see good, quality LEO's leave, recruitment and hiring will be affected.

Thank you for your time.

KSA Legislative Chair Jeff Easter