

ACLU: KNOW YOUR RIGHTS

THE PRISON LITIGATION REFORM ACT (PLRA)

Important Note: The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. This information was last updated August 2011..

The Prison Litigation Reform Act (PLRA) makes it harder for prisoners to file lawsuits in federal court. This fact sheet outlines the information you need to know before filing a lawsuit. If you are thinking about filing a lawsuit, then you should know about a 1996 law called the Prison Litigation Reform Act (PLRA), which makes it harder for prisoners to file lawsuits in federal court. There are many parts to the PLRA, but the following parts are the most important for you to understand.

1. EXHAUSTION OF ADMINISTRATIVE REMEDIES (42 U.S.C. § 1997e(a))

The first key to remember about the PLRA is that before you file a lawsuit, you must try to resolve your complaint through the prison's grievance procedure. This usually requires that you give a written description of your complaint (often called a "grievance") to a prison official. If the prison provides a second or third step (like letting you appeal to the warden), then you must also take those steps. If you file a lawsuit in federal court before taking your complaints through every step of your prison's grievance procedure, it will almost certainly be dismissed.

A. Question: What is exhaustion?

Exhausting your remedies for the PLRA requires filing a grievance and pursuing all available administrative appeals.^[1] In addition, every claim you raise in your lawsuit must be exhausted^[2] However, if a prisoner does not file a grievance because he is unable to obtain grievance forms, no administrative remedy is "available" and the prisoner may file in court.^[3]

In a multi-step grievance system, if staff fail to respond within the time limits established in the grievance system's rules, the prisoner must appeal to the next stage^[4] If the prisoner does not receive a response at the final appeal level, and the time for response has passed, the prisoner has exhausted.^[5]

An exception to the requirement that all appeals be taken occurs if the prisoner cannot appeal without a decision from the lower level of the grievance system, and the lower level did not respond to the grievance.^[6]

Courts have differed widely on when failure to exhaust might be excused^[7] **But the safest course is always, with respect to each claim you want to raise, and each defendant^[8] you want to name, in your eventual lawsuit, you should file a grievance and appeal that grievance through all available levels of appeal.**

Ultimately, proper exhaustion depends upon the policy requirements of your particular jail or prison. You should get a copy of your prison or jail's grievance policy and follow it as closely as you can.

¹ *White v. McGinnis*, 131 F.3d 593 (6th Cir. 1997); *see also Sapp v. Kimbrell*, 623 F.3d 813 (9th Cir. 2010) (prison's improper screening out of administrative appeals may render administrative remedy "unavailable" for purposes of PLRA).

² *See, e.g., Bey v. Pennsylvania Dept. of Corrections*, 98 F. Supp. 2d 650 (E.D. Pa. 2000); *Cooper v. Garcia*, 55 F. Supp. 2d 1090 (S.D. Cal. 1999).

³ *Miller v. Norris*, 247 F.3d 736 (8th Cir. 2001).

⁴ *White v. McGinnis*, 131 F.3d 593 (6th Cir. 1997).

⁵ *Powe v. Ennis*, 177 F.3d 393 (5th Cir. 1999). *Cf. Lewis v. Washington*, 300 F.3d 829 (7th Cir. 2002) (when prison officials do not respond to a prisoner's initial grievance, administrative remedies are exhausted).

⁶ *Taylor v. Barrett*, 105 F. Supp. 2d 483 (E.D. Va. 2000); see also *Miller v. Tanner*, 196 F.3d 1190 (11th Cir. 1999) (prisoner had exhausted when told by staff no appeal possible); *Pearson v. Vaughn*, 102 F. Supp. 2d 282 (E.D. Pa. 2000) (same).

⁷ See, e.g., *Miller v. Tanner*, 196 F.3d 1190 (11th Cir. 1999) (prisoner who failed to sign and date grievance form did not fail to exhaust administrative remedies; inmate did not fail to exhaust remedies by failing to appeal institutional-level denial of his grievance, after being told unequivocally that no such appeal was possible); *Nyhuis v. Reno*, 204 F.3d 65 (3d Cir. 2000) (substantial compliance with grievance procedure will satisfy exhaustion requirement); *cf. Camp v. Brennan*, 219 F.3d 279 (3d Cir. 2000) (holding that investigation of complaint by Secretary of Corrections rather than regular grievance system satisfied exhaustion requirement); *but see Freeman v. Francis*, 196 F.3d 641 (6th Cir. 1999) (investigations by use of force committee and state police are not exhaustion).

⁸ *But see Jones v. Bock*, 549 U.S. 199 (2007) (rejecting 6th circuit's requirement that a prisoner name every prospective defendant in a prison grievance in order to later bring suit against that defendant in federal court even where a prison's internal grievance system did not require a prisoner to name specific individuals in a grievance).

B. Question: What happens if you don't exhaust the grievance process?

The Supreme Court held that failure to exhaust is an affirmative defense that must be raised by the defendants.^[9] Then, if the court finds that the prisoner has not exhausted, the case is dismissed without prejudice^[10] meaning that the lawsuit may be filed again once the prisoner has exhausted, as long as the statute of limitations has not run. If you have exhausted some of your claims, but not all, the court will dismiss only the unexhausted claims.^[11]

There is not a great deal of case law yet addressing whether a prisoner who misses a deadline in the grievance process (many grievance systems have very short deadlines) forever loses his/her constitutional or statutory claim. If you are in this situation, you should appeal through all the levels of the grievance system and explain in the grievance the reasons for the failure to file on time.^[12]

Finally, the statute of limitations is tolled while a prisoner is in the process of exhausting.^[13]

⁹ *Jones v. Bock*, 549 U.S. 199 (2007) (exhaustion requirement under the PLRA is not a pleading requirement that a prisoner must plead and prove before filing suit, rather it is an affirmative defense a defendant must plead or prove).

¹⁰ *Perez v. Wisconsin Dept. of Correction*, 182 F.3d 532 (7th Cir. 1999); *Wendell v. Asher*, 162 F.3d 887 (5th Cir. 1998); *Wright v. Morris*, 11 F.3d 414 (6th Cir. 1997).

¹¹ *Jones v. Bock*, 549 U.S. 199 (2007) (rejecting 6th Circuit's requirement under the PLRA that a prisoner properly exhaust every claim in a lawsuit or face dismissal of the entire suit).

¹² *Harper v. Jenkins*, 179 F.3d 1311 (11th Cir. 1999) (holding that prisoner who filed an untimely grievance was obliged to seek a waiver of the time limits in the grievance system); see also *Days v. Johnson*, 322 F.3d 863 (5th Cir. 2003) (when prisoner's grievance was untimely because he had a broken hand and could not write, dismissal for failure to exhaust was improper); *Pozo v. McCaughtry*, 286 F.3d 1022 (7th Cir. 2002) (prisoner who missed deadline on one of the levels of appeals of the grievance system barred from filing lawsuit).

¹³ *Johnson v. Rivera*, 272 F.3d 519 (7th Cir. 2001); *Brown v. Morgan*, 209 F.3d 595 (6th Cir. 2000); *Harris v. Hegmann*, 198 F.3d 153 (5th Cir. 1999).

THERE ARE VERY FEW EXCEPTIONS TO THE EXHAUSTION REQUIREMENT:

Prisoners seeking to bring a damages action must exhaust available administrative remedies even if the administrative remedy in question, like almost all prison grievance systems, does not provide money damages as a possible remedy.^[14]

Other means of notifying prison officials of your complaint, such as speaking to staff, putting in a kite, or writing to the warden, do not constitute exhaustion. You must use the grievance system.

In the only decision to address this issue, the District of Columbia Circuit Court of Appeals said that under PLRA, courts may still issue injunctions to prevent irreparable injury pending exhaustion of administrative remedies.^[15]

The exhaustion requirement does not apply to detainees in INS facilities.^[16] Also, the exhaustion requirement does not apply to cases filed before the effective date of PLRA, which is April 26, 1996.^[17]

¹⁴ Booth v. Churner, 121 S. Ct. 1819 (2001).

¹⁵ Jackson v. District of Columbia, 254 F.3d 262 (D.C. Cir. 2001). But see Nickens v. District of Columbia, 694 F. Supp. 2d 10 (D.D.C. 2010) (finding failure to exhaust where prisoner did not file emergency grievance and procedures for emergency grievances existed).

¹⁶ Edwards v. Johnson, 209 F.3d 772 (5th Cir. 2000).

¹⁷ See e.g., Salahuddin v. Mead, 174 F.3d 271 (2d Cir. 1999); Bishop v. Lewis, 155 F.3d 1094 (9th Cir. 1998); Brown v. Toombs, 139 F.3d 1102 (6th Cir. 1996).

2. FEES

The Second key to remember about the PLRA is that all prisoners must pay court filing fees in full. If you do not have the money up front, you can pay the filing fee over time through monthly installments from your prison commissary account, but the filing fee will not be waived.

A complex statutory formula requires the indigent prisoner to pay an initial fee of 20% of the greater of the prisoner's average balance or the average deposits to the account for the preceding six months. After the initial payment, the prisoner is to pay monthly installments of 20% of the income credited to the account in the previous month until the fee has been paid.

A major complication of this procedure is that it requires the prison or other facility holding the prisoner to cooperate administratively in the process for assessing the court's statutory fee. The courts can require the prison administration to provide the necessary information.^[18]

¹⁸ Hall v. Stone, 170 F.3d 706 (7th Cir. 1999) (holding warden in contempt for failure to forward fees from the prisoner's account).

3. THREE STRIKES PROVISION (28 U.S.C. § 1915(g))

The Third key thing to remember about the PLRA is that each lawsuit or appeal you file that is dismissed because a judge decides that it is frivolous, malicious, or does not state a proper claim counts as a "strike." After you get three strikes, you cannot file another lawsuit in forma pauperis – that is, you cannot file unless you pay the entire court filing fee up-front. The only exception to this rule is if you are at risk of suffering serious physical injury in the immediate future.

An appeal of a dismissed action that is dismissed is a separate strike.^[19] Even dismissals that occurred prior to the effective date of PLRA count as strikes.^[20]

An exception to the "three strikes" rule may be invoked if a prisoner is in imminent danger of serious physical injury.^[21] A court will evaluate the "imminent danger" exception at the time the prisoner attempts to file the new lawsuit, not at the time that the incident that gave rise to the lawsuit occurred.^[22]

¹⁹ Jennings v. Natrona Co. Detention Center, 175 F.3d 775 (10th Cir. 1999); Patton v. Jefferson Correctional Center, 136 F.3d 458 (5th Cir. 1998).

²⁰ See e.g., Ibrahim v. District of Columbia, 208 F.3d 1032 (D.C. Cir. 2000); Welch v. Galie, 207F.3d 130 (2d Cir. 2000).

²¹ See Gibbs v. Cross, 160 F.3d 962 (3d Cir. 1998) (plaintiff alleged an imminent danger of serious physical injury where dust, lint and shower odor came from his cell vent, causing him to suffer "severe headaches, changes in voice, mucus that is full of dust and lint, and watery eyes."). See also Ciarpaglini v. Saini, 352 F.3d 328 (7th Cir. 2003) (allegations of continuing harm as result of being denied medications for bipolar disorder, Attention Deficit Hyperactive Disorder, and panic disorder were sufficient to meet imminent danger exception); Ashley v. Dilworth, 147 F.3d 715 (8th Cir. 1998) (allegations that staff placed plaintiff in proximity to known enemies satisfied imminent danger requirement).

²² Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir. 2001)(en banc).

4. PHYSICAL INJURY REQUIREMENT (42 U.S.C. § 1997e(e))

The Fourth key to remember about the PLRA is that you cannot file a lawsuit for mental or emotional injury unless you can also show physical injury.

The requirement of physical injury only applies to money damages, it does not apply to claims for injunctive and declaratory relief.^[23] Some courts have suggested the possible availability of nominal and punitive damages even when compensatory damages are barred by the requirement of physical injury.^[24] The courts are split on whether a claim for violation of constitutional rights is intrinsically a claim for mental or emotional injury in the absence of an allegation of a resulting physical injury (or injury to property).^[25] Not surprisingly, the courts differ in their evaluation of what constitutes sufficient harm to qualify as a physical injury.^[26]

²³ See Harper v. Showers, 174 F.3d 716 (5th Cir. 1999); Perkins v. Kansas Dept. of Corrections, 165 F.3d 803 (10th Cir. 1999); Davis v. District of Columbia, 158 F.3d 1342 (D.C. Cir. 1998).

²⁴ See Hutchins v. McDaniels, 512 F.3d 193 (5th Cir. 2007) (PLRA does not bar punitive or nominal damages for a constitutional violation); Searles v. Van Bebber, 251 F.3d 869 (10th Cir. 2001) (PLRA does not bar punitive and nominal damages for violation of prisoner's rights); Allah v. Al-Hafeez, 226 F.3d 247 (3d Cir. 2000) (claims for nominal and punitive damages can go forward); Davis v. District of Columbia, 158 F.3d 1342 (D.C. Cir. 1998) (noting possibility that nominal damages would survive). But see Al-Amin v. Smith, 637 F.3d 1192 (11th Cir. 2011) (drawing no distinction between compensatory and punitive damages for purposes of PLRA).

²⁵ See Rowe v. Shake, 196 F.3d 778 (7th Cir. 1999) (First Amendment claim not barred by physical injury requirement); Canell v. Lightner, 143 F.3d 1210 (9th Cir. 1998) (claim for violation of First Amendment is not a claim for mental or emotional injury); cases going the other way include: Thompson v. Carter, 284 F.3d 411 (2d Cir. 2002); Searles v. Van Bebber, 251 F.3d 869 (10th Cir. 2001); Allah v. Al-Hafeez, 226 F.3d 247 (3d Cir. 2000) (First Amendment claims involve mental or emotional injuries); Davis v. District of Columbia, 158 F.3d 1342 (D.C. 1998) (claim for violation of privacy is claim for mental or emotional injuries).

²⁶ See Gomez v. Chandler, 163 F.3d 921 (5th Cir. 1999) (allegations of cuts and abrasions satisfy physical injury requirement); Liner v. Goord, 196 F.3d 132 (2d Cir. 1999) (intrusive body searches qualify as physical injury); compare to Herman v. Holiday, 238 F.3d 660 (5th Cir. 2001) (claim of "physical health problems" by prisoner exposed to asbestos does not specify a physical injury which would permit recovery for emotional or mental damages due to fear caused by increased risk of developing asbestos-related disease); Harper v. Showers, 174 F.3d 716 (5th Cir. 1999) (confinement in filthy cell where exposed to mentally ill patients not physical injury). See also Wilkins v. Gaddy, 130 S.Ct. 1175 (2010) (per curiam) (question of serious physical injury in excessive force cases is whether force was applied in good-faith or maliciously or sadistically to cause harm, not just whether harm was greater than de minimis).

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