

Overview of Qualified Immunity

- Qualified immunity is a defense in litigation where an allegation is made that a government employee (including a law enforcement officer) violated an individual's constitutional rights.
- Qualified immunity can be used as a defense when a government employee's actions are determined to be "reasonable."
- A judge makes the determination of whether an employee's actions are reasonable.
- The "reasonableness" test asks the judge to determine whether a reasonable employee faced with the same facts and circumstances would have taken the same action.
- Qualified immunity does not protect a government employee for a violation of clearly established law or criminal activity.
- The determination of whether a government employee is entitled to qualified immunity is based upon the court's consideration of two possible questions:
 1. Did the government employee's action violate someone's constitutional rights? If it did not, then the government employee is protected by qualified immunity.
 2. Would a reasonable government employee have known not to take the action taken by the employee in the particular case, because a reasonable employee would know they were violating a person's rights? In determining this, a court must determine one of three things: Is there legal authority (statute or caselaw in the federal circuit that includes the employee's jurisdiction) stating that the employee's actions were unconstitutional? Is there a consensus in other federal circuits that states that the employee's actions were unconstitutional? Were the employee's actions such an obvious violation that the employee would have been on notice not to take the action they took?
- The court can consider either, or both, questions in determining the employee's entitlement to qualified immunity.