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Legal and Compliance

Responsible Office:
[University Counsel](#)

Other Requirement Title:
Defense and Indemnification of State Officers and Employees

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State-Operated Campuses

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Summary

This document provides an overview of NYS Public Officers Law §17 which affords protection to state officers and employees against personal liability in the event that such officers and employees are sued individually as a result of any cause of action which may arise by reason of an act or omission which occurs “while the employee was acting within the scope of his public employment or duties” Former employees and certain volunteers are also covered where appropriate.

It also discusses NYS Public Officers Law §19 pursuant to which reimbursement is authorized for criminal defense expenses incurred by state officers and employees upon acquittal or dismissal of criminal charges brought against the officer or employee. This law requires the state to pay reasonable attorneys’ fees and litigation expenses incurred by a state officer or employee in the defense of a criminal proceeding in a state or federal court. The criminal proceeding must arise out of an act which occurred while the officer or employee was acting within the scope of his or her public employment or duties.

The scope of criminal and civil indemnification protection for officers and employees of the state includes State University of New York officers, employees, trustees and council members serving the state-operated campuses, and authorized volunteers.

Requirement

Defense and Indemnification of Civil Claims

Current and former state officers, employees and volunteers in a state-sponsored program, who are sued in their individual capacity in a civil suit in state or federal court for acts or omissions occurring, or alleged in the complaint to have occurred, within the scope of their employment are entitled to have the State provide for their defense under the terms and conditions of NYS Public Officers Law §17. To invoke the protections of Section 17, the employee must deliver a copy of any papers with which he or she has been served, as well as a request for representation, to the attorney general’s office within five days of being served. The employee must also cooperate fully with the attorney

general in the defense of the matter, the defense of any related action against the state, and in the prosecution of any appeal. If the employee meets the above terms and conditions, the employee is entitled to defense by the attorney general's office, or in the case where the attorney general determines that a conflict of interest exists, by outside counsel paid for by the state. Where an employee is sued in connection with an accident in which he or she was driving a privately owned vehicle on state business, the employee should request defense from the vehicle's liability insurer. Even if the employee is entitled to Section 17 coverage, the state will only act as an excess-insurance carrier in such a situation.

If a monetary judgment is awarded against the employee in state or federal court, or the matter is settled, the state will indemnify the employee where the injury resulted from acts or omissions which actually occurred, as opposed to merely alleged in the complaint to have occurred, within the scope of the employee's public employment or duties. In addition, the damage must not have resulted from intentional acts on the part of the employee. Indemnification and payment of a judgment or settlement must be approved by the University, the attorney general and the comptroller.

When sued in an individual capacity, all personnel located at state-operated campuses outside New York City and Long Island should send the summons, complaint, or other process, with the individual defendant's request for representation and defense pursuant to Section 17 to:

Attorney General
State Capitol
Albany, New York 12224

All personnel located at state-operated campuses in New York City, Nassau and Suffolk Counties, should send the legal papers and request to:

Attorney General
120 Broadway
New York, New York 10271

Following receipt of this material, the attorney general will determine whether the law department will assume the defense of the litigation and will so advise the individual officer or employee. In all cases, a copy of the letter and papers should also be sent to the office of the University counsel.

In situations where the summons or notice must be answered immediately, the office of the University counsel should be contacted by telephone so that arrangements may be made to have the necessary papers delivered to the nearest regional bureau of the office of the attorney general.

Where the legal papers name the University, the State of New York, or University officers or employees described by their official title as the party or party's defendant, the summons or summons and complaint should be forwarded to the office of the University counsel in the usual manner. Where there may be some doubt as to whether the defendants are named in a corporate or personal capacity, the University counsel's office will be glad to advise by telephone.

Reimbursement for criminal defense expenses

NYS Public Officers Law §19 authorizes reimbursement for criminal defense expenses incurred by state officers and employees upon acquittal or dismissal of criminal charges brought against the officer or employee. Specifically, Section 19 requires the state to pay reasonable attorneys' fees and litigation expenses incurred by a state officer or employee in the defense of a criminal proceeding in a state or federal court. The criminal proceeding must arise out of an act which occurred while the officer or employee was acting within the scope of his or her public employment or duties.

Reimbursement will be provided only after the officer or employee is acquitted or the criminal charges are dismissed. The attorney general is empowered to determine, after investigation and review of the facts and circumstances of the criminal proceeding, whether an officer or employee's application for reimbursement should be granted. In the event the entitlement to reimbursement or the amount of reimbursement is disputed, a court will resolve the issue.

Reimbursement of reasonable attorneys' fees will also be available in connection with an appearance before a grand jury. To be eligible the officer or employee must be required to appear as a result of an act which occurred while the officer or employee was acting within the scope of public duties, and the grand jury must return no "true bill" against such individual (i.e., no indictment is issued).

In order to obtain this protection in criminal cases an officer or employee must deliver a written request to the office of the attorney general, together with an original or a copy of any accusatory instrument (such as a criminal information or misdemeanor complaint) within ten days after the officer or employee is arraigned (enters a plea) upon such an instrument. All legal papers and requests should be sent to:

The Attorney General
Division of State Counsel
State Capitol
Albany, New York 12224

A copy of the request for reimbursement and accusatory instrument should also be sent to:

The Office of the University Counsel
State University Plaza
Albany, New York 12246

The officer or employee is also required to provide his or her full cooperation to the attorney general in the prosecution of any criminal appeal or in the defense of any civil lawsuit arising out of the same occurrence.

Definitions

Employee – any person holding a position by election, appointment or employment in the service of the state, whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor. The term employee includes a former employee, his estate or judicially appointed personal representative and persons who assist the education department or the department of health as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice pursuant to Title Eight of the NYS Education Law or title II-A of the NYS Public Health Law.

Section 17 does not apply to physicians who are subject to the provisions of the plan for the management of clinical practice income as set forth in Article XVI of the Policies of the Board of Trustees (codified in 8 NYCRR §340) regarding any civil action or proceeding alleging professional malpractice in any state or federal court arising out of the physician's involvement in clinical practice as there defined.

Related Procedures

There is no related procedures relevant to this requirement.

Forms

There are no forms relevant to this requirement.

Other Related Information

[Criminal Defense Reimbursement Costs](#)[Criminal Defense Reimbursement of Costs Incurred by or on Behalf of Community College Trustees, Officers and Employees](#)

The following link to FindLaw's [New York State Laws](#) is provided for users' convenience; it is not the official site for the State of New York laws.

[NYS Public Officers Law §§ 17 and 19](#)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of [New York State Consolidated](#).

Memorandum to presidents from the office of the university counsel and vice chancellor for legal affairs, 85-14, dated October 1, 1985 regarding Indemnification in Criminal and Civil Proceedings (amendments to Public Officers Law, §§17 and 19).

Memorandum to presidents from the office of the university counsel and vice chancellor for legal affairs, 83-2, dated January 25, 1983 regarding Indemnification in Criminal and Civil Proceedings (amendments to Public Officers Law).

Memorandum to presidents from the office of the university counsel and vice chancellor for legal affairs, 78-8, dated August 2, 1978 regarding Indemnification in Criminal and Civil Proceedings (new section 17 of the Public Officers Law).

Appendices

There are no appendices relevant to this requirement.