

Questions and Answers About Illinois State University's Insurance and Indemnification Program

Employees are covered under the State Employee Indemnification Act, 5 ILCS 350/1, *et seq.* ("the Act") and, potentially, other commercial insurance policies. In addition, in 1996, the Board of Trustees established a self-insurance plan to cover liability resulting from the conduct of University business or arising out of professional services. The limits and terms of coverage, as well as the procedures for submitting a claim, are defined in a document entitled "The Board of Trustees of Illinois State University Operating Procedures for Self-Insurance Fund" and are subject to change without notice. The following are some frequently asked questions regarding insurance and indemnification:

1. Who is covered?

A. Under the Act:

1. The Act provides that, in the event of a lawsuit that arises out of any act or omission occurring within the scope of State employment, the State employee will be defended by the State. The State will pay the court costs and litigation expenses of defending the action. In the event that the Attorney General (which is the agency that will defend us) determines that the act or omission which gave rise to the claim was not within the scope of the employee's State employment, they will decline to represent the employee. In that case, the employee then would have to get his or her own attorney and pay those costs. If the court finds that the employee was acting within the scope of employment (contrary to what the Atty General said), then the State would reimburse the costs and expenses the employee paid out of pocket.
2. If the lawsuit results in a judgment against the employee, the State will pay that judgment unless the court or jury finds that the conduct or inaction which gave rise to the claim or cause of action was intentional, willful, or wanton misconduct and was not intended to serve or benefit interests of the State. In other words, an employee will be covered (to include being provided an attorney and all costs) in the event that he or she is sued for acting within the scope of his or her employment.

B. Under the Self Insurance Fund and Excess Carrier:

The University and the following persons are covered: Trustees, University employees, and those students, volunteer workers, visiting faculty, and committee members who have been assigned duties for the delivery of University services. Students participating in University authorized internships, externships, professional practice programs, and similar work/learning opportunities are covered. The University may also extend coverage to persons or firms pursuant to a contract with the University, provided that the contract expressly includes such coverage. Under the Act, State employees are covered for a lawsuit "arising out of any act or omission occurring within the scope of the employee's State employment."

2. For what Activities are employees covered?

Coverage is limited to occurrences or professional services which are within the scope of the person's University duties. The Self-Insurance Plan and the Act do not provide protection for liability arising from personal activities, moonlighting, or non-University employment. The Plan and the Act specify other exceptions from coverage, such as intentional violation of the law, criminal acts, etc. Generally, anything deemed to be outside of the scope of employment is not covered.

3. Am I covered for liability arising from a motor vehicle accident while in the course of University business?

Liability arising from motor vehicle accidents is covered by a separate fund administered by the State of Illinois for all state employees.

Central Management Services (CMS) is the University's auto liability insurance carrier. There are two categories of coverage under the State of Illinois auto liability plan:

- For liability arising out of the use of a state-owned vehicle, the coverage is primary (pays first).
- For liability arising out of the business use of a vehicle that is not state-owned, the coverage is excess (pays after other available insurance pays).

In either case, coverage is available only if the vehicle is used in the performance of "state business." There may be situations that arise where a claim may be denied because the driver is not on "state business," although he may be considered to be on "University business." Although there is a fine line between "state" and "University" business, situations do occur when a driver is on "University" but not "state" business. These situations mainly involve student activities.

Vehicles which are not state-owned fall into two groups: personal vehicles and rental vehicles. For personal vehicles, primary coverage would, of course, come from the driver's own auto insurance policy with excess coverage possibly coming from the state plan when vehicles are used in the course of "state business." For a rental vehicle, the state policy is also excess with respect to liability.

4. What actions should an employee take if he or she is notified of a claim or lawsuit?

If an employee is named as a defendant in a lawsuit, he or she must notify the Office of General Counsel immediately following receipt of a summons and complaint. The employee should provide a letter to the legal counsel enclosing a copy of the Summons and Complaint, stating when he or she received the Complaint and whether the acts complained of were in the scope of the person's University employment, and requesting that the University provide legal

representation. When an employee learns of facts which may lead to a claim or lawsuit, the employee should report the matter to his or her supervisor, who in turn should notify the Office of General Counsel for appropriate investigation and follow-up activities.

5. Will the University defend lawsuits which seek punitive as well as compensatory damages or allege intentional or criminal wrongdoing as well as negligence?

Occasionally, a lawsuit will assert multiple claims, some of which may not be covered under the terms of the Plan or the Act. Unless the claims are clearly unrelated to the person's University duties, or some other exclusion clearly applies, the University will normally proceed to defend the case, without waiving the limitations of coverage under the Plan.

6. What happens if a claim or lawsuit is filed after an employee retires or leaves the University?

The University will cover claims and liability arising from acts within the scope of University employment, regardless of when the claim is actually filed. A former employee should submit such claims or lawsuits to the Office of General Counsel in the same manner as if he or she was still actively employed by the University.