

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 assist in addressing potential risks and liabilities resulting from the conduct of University business. The following are some frequently asked questions regarding insurance and indemnification:

1. Who is covered?

A. Under the Act:

The State Employee Indemnification Act provides that any State employee will be defended by the State of Illinois in the event of a civil lawsuit that arises out of any act or omission occurring within the scope of that employee’s State employment.

State employee is defined as: any present or former . . . trustee or employee of the State . . . individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State . . . and includes the estate or personal representative of an employee. The term “employee” does not mean an independent contractor.

The State will pay the court costs and litigation expenses of defending the action. In the event that the Attorney General (“AG”, 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, the AG will decline to represent the employee. In that case, the employee would then 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 AG previously determined), then the State would reimburse the costs and expenses the employee paid out of pocket.

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 costs) in the event that he or she is sued and received a judgment for acts or omissions occurring within the scope of his or her employment.

B. Under the Self Insurance Fund and Excess Carrier:

The Self-Insurance Plan covers any member of the Board of Trustees, University employees, students participating in University authorized internships, externships, professional practice programs, and similar work/learning opportunities or volunteer workers participating in a University established and authorized activity. Coverages may be extended under the Program to persons or firms in certain circumstances, but only pursuant to a written certificate of coverage authorized by the President.

2. **For what Activities are employees covered?**

Coverage is limited to actions, errors or omissions which are within the scope of a person's University duties. Neither the Self Insurance Plan nor the Act provides protection for liability arising from personal activities, or non-University employment. Generally, anything outside an employee's 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.

Central Management Services (CMS) oversees the State's auto liability program . 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 the driver may be considered to be on "University business." Although there may be 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.

Because independent Registered Student Organization activities are not recognized by the State of Illinois to be "state business," a number of university vehicles were selected to be commercially insured for their use. Vehicles used by students for Registered Student Organization are insured specifically for that use only, and each driver must meet internal driver qualification standards before operating an insured vehicle.

Vehicles which are not state-owned fall into two groups: personal vehicles and rental or leased vehicles. For personal vehicles, primary coverage would come from the driver's own auto insurance policy with excess coverage 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?

1. If 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.
2. Notify the Office of General Counsel immediately following receipt of a demand letter, Summons, Complaint or other notification of a claim or lawsuit.
3. An employee should contact the Office of General Counsel immediately to discuss the matter and determine if the acts complained of were in the scope of the person's University employment. The Office of General Counsel may request that the employee provide a letter clarifying the issue and requesting that the University provide legal representation.

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?

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