

INFORMATION SHEET REGARDING DEFENSE OF TORT LAWSUITS AGAINST STATE EMPLOYEES

I. INTRODUCTION

A difficult feature of state employment is that state employees are sometimes personally sued for damages. However, state law does provide for the defense of lawsuits against state employees to protect them from the threat of financial liability that might arise from the performance of official duties. The purpose of this summary is to explain the Attorney General's administration of the law concerning defense of these lawsuits.

II. WHO IS ELIGIBLE?

A state employee is eligible for state defense of tort and civil rights lawsuits if the employee's "acts or omissions were, or were purported to be, in good faith within the scope of that person's official duties" (RCW 4.92.070). This law is generally applied broadly to cover job-related acts or omissions. Exceptions to coverage occur when, for example, an employee intentionally injures someone, clearly violates a law (unless in good faith), or conducts personal activities on state time or using state resources.

Eligible employees are represented by an assistant attorney general. The State pays for all defense costs, settlements, and court judgments that might be entered as well.

III. HOW DO I APPLY AND RECEIVE APPROVAL?

The Attorney General's Office must approve a request for defense. Forms are available from your agency's risk management officer, the Attorney General division that represents your agency, or from the Attorney General's Tort Claims Division, 7141 Cleanwater Drive SW, PO Box 40126, Olympia, WA 98504-0126.

You should submit a completed form to the assistant attorney general for your agency, along with any papers served on you. The assistant attorney general will submit your request to the agency director for recommendation. The assistant attorney general may request information from you and may investigate whether legal requirements for defense are satisfied. The assistant attorney general will forward your request to the deputy attorney general, who will independently review the request and notify you whether the request is approved.

IV. MUST I BE REPRESENTED BY THE ATTORNEY GENERAL?

You do not have to be represented by the Attorney General if you wish to hire your own lawyer. However, the State does not pay for private lawyers hired by employees. In addition, the State is not obligated to pay settlements and judgments in a lawsuit when the Attorney General is not defending the employee.

V. WHAT DOES REPRESENTATION BY THE ATTORNEY GENERAL MEAN?

State law provides that the Attorney General may represent both the State and its employees. The Attorney General's Office defends the employee as part of its representation and defense of the State. Any information provided by the employee will, in the ordinary course, be given to

the employing agency and used in defense of the agency and its other employees. The information may be used by the employing agency in any matter, including matters where the agency and employee may be adverse.

The assistant attorney general is not a personal attorney for the employee and cannot provide representation on private matters, including employment rights. If an employee has an injury or private claim arising from the incident in the lawsuit, the employee should hire a private lawyer. If a state employee chooses to sue a state agency over the same matter for which the Attorney General is providing a defense to the employee, the Attorney General may have to withdraw its authorization for defense of the employee.

If an employee accepts the offer of defense and indemnity by the State, he or she must allow the State, acting through the Attorney General, to make all final decisions on legal strategy and case settlement.

VI. WHEN CAN REPRESENTATION BE TERMINATED?

The legal authority to defend a state employee exists if the employee's actions were within the scope of official duties and the employee cooperates in the defense. If, after the Attorney General approves defense of the employee, the Attorney General concludes that the employee was not acting within the scope of employment, or is not cooperating, state law would no longer authorize the defense. This situation is rare. Examples of situations where it might arise include those where an employee had misrepresented or not fully disclosed information regarding the incident which caused the lawsuit, failed to appear for required proceedings, or refused to provide information relevant to defense of the lawsuit.

If an approval of defense must be withdrawn, the employee should hire a private lawyer. While the Attorney General's Office would continue to represent the State, the Office would no longer have authority to represent the employee. If defense is withdrawn, the State or other defendants that the Attorney General's Office represents in the lawsuit could assert that the employee should be responsible for damages. Any judgment against the employee would be his or her responsibility.

VII. CONCLUSION

State law offers protection to state employees who are sued for job-related activities. The Attorney General's Office provides a strong defense to the State and its employees. However, it is important for state employees to realize their obligation to be truthful and cooperative with their agencies and the Attorney General in the defense of the lawsuits.

The request for and acceptance of representation by the Attorney General are important matters that employees should consider with care. If employees have any questions concerning defense of lawsuits, they can obtain further information about the State's perspective on these issues from the assistant attorney general assigned to their agency. In addition, an employee may wish to consult with a private lawyer, at his or her own expense, before deciding whether to request or accept defense by the Attorney General.