

# INFORMATION SHEET REGARDING DEFENSE OF TORT LAWSUITS AGAINST STATE EMPLOYEES

## I. INTRODUCTION.

A difficult feature of state employment is that state employees are sometimes sued for damages. However, state law does provide for the defense of lawsuits against state employees. The purpose of this summary is to explain the Attorney General's interpretation and 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 applied broadly to cover virtually all job-related acts or omissions. Exceptions to coverage occur when an employee intentionally injures someone, clearly violates a law (unless in good faith), or conducts personal activities on state time.

Eligible employees are represented by an Assistant Attorney General. The state pays all defense costs, settlements, and court judgments.

## III. HOW DO I APPLY AND RECEIVE APPROVAL?

The Attorney General's Office must approve a request for defense. Forms are available from the Tort Claims Division, 629 Woodland Square Loop S. E., P.O. Box 40126, Olympia, WA 98504-0126, (206) 459-6600, SCAN 585-6600.

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 submits the form 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 forwards the form to the Attorney General's Office Litigation Manager who independently reviews the request and notifies 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 attorney. However, the state does not pay for private attorneys 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 represents both the state and its employees. The Attorney General defends the employee as part of its defense of the state. Any information provided by the employee may be given to the employing agency and used in defense of the agency and its other employees.

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 an employee requests defense by the Attorney General, he or she must allow the state 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, it becomes apparent 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. It would arise primarily if an employee had misrepresented or not fully disclosed information regarding the incident which caused 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. 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.

If employees have any questions concerning defense of lawsuits, they can consult with the Assistant Attorney General assigned to their agency. In addition, an employee should feel free to consult with a private lawyer before the employee decides whether to request defense by the Attorney General.