

CC. EMPLOYEE LEGAL DEFENSE AND INDEMNIFICATION WITHIN THE SCOPE OF COUNTY EMPLOYMENT

GENERAL POLICY

It is the policy of Scott County to construe liberally, for the benefit of County officers and employees, the parameters of statutory legal defense and indemnification under Iowa Code Chapter 670. As a corollary of this policy, it is the expectation of the County that all officers and employees of the County will cooperate fully with the County Attorney's Office, or as appropriate, with outside legal counsel in the defense of all tort and other claims involving Scott County as a named party, or as statutory legal defender or indemnitor of the County's officers and employees. However, the County does not intend, by implementation of this policy or otherwise, to waive the immunities available to it under Iowa Code Section 670.4, common law or otherwise.

SCOPE

This policy is applicable to the following:

All employees who are responsible to the Scott County Board of Supervisors;

All employees who are responsible to a County elected office holder including the elected office holder and Deputies;

All employees not directly responsible to either the Board of Supervisors or an elected office holder whose governing body and the Board of Supervisors have certified its applicability.

Code Chapter 670 limits the applicability of statutory legal defense and indemnification to situations where County officers or employees act within the scope of their County employment. In this context the term "scope of their employment" shall be liberally construed in favor of the broadest reasonable coverage for those officers and/or employees who as a regular part of their responsibility take work home or, like County prosecutors and/or law enforcement officers, are considered "on duty" at all times.

Whenever the provisions of this policy are in conflict with the Code of Iowa, or with a collectively-bargained agreement between the County and a certified bargaining unit, the provisions of the collectively-bargained agreement and/or the Code of Iowa will prevail.

STATUTORY LEGAL DEFENSE AND INDEMNIFICATION OF COUNTY OFFICERS AND EMPLOYEES (IOWA CODE SECTION 670.8)

The County will provide legal defense, usually via the Civil Division of the County Attorney's Office, for any employee or officer who is sued civilly on account of acts arising within the scope of County employment. In addition to providing legal defense, the County will usually be obligated to save harmless and indemnify such an officer or employee except in two circumstances, as follows:

Exceptions to Indemnification

1. The County is not obligated to indemnify its officers or employees respecting any award of punitive or exemplary damages. However, the County retains the discretion to indemnify its officers or employees respecting awards of punitive damages.
2. Secondly, the County is not obligated to save harmless and indemnify an officer or employee (and would be entitled to seek restitution respecting judgments awarded against the County respecting the acts of such employee or officer) if in an action brought by the County against an officer or employee it is determined that the conduct of the officer or employee, upon which the underlying tort claim was based, constituted a willful and wanton act or omission.

If in the course of providing legal defense to an employee or officer, either via the County Attorney's office or, as appropriate, via retained outside counsel, the investigation of the factual nature of the claim discloses that there is an actual (or legally relevant appearance of) conflict between legal counsel's representation of both the County's corporate interest in the matter and the individual's separate interest, the County will, upon the articulation of such conflict or appearance of conflict, retain separate counsel to defend the separate interest of the involved officer or employee.

Of course, any officer or employee retains the individual option of retaining at private expense, his or her separate legal counsel when sued in the course of county employment. The County would only underwrite the expense of separate counsel in the event of a legally cognizable conflict of interest. In such cases the County will take input from the involved officer or employee as to the ultimate choice of separate legal defense counsel, but the County retains the right and responsibility to select competent independent legal counsel.

"SAFE HARBOR" FOR COUNTY'S ASSUMPTION OF THE OBLIGATION TO UNDERWRITE AWARDS OF PUNITIVE DAMAGES AGAINST OFFICERS AND EMPLOYEES WITHIN THE SCOPE OF THEIR EMPLOYMENT.

The County recognizes that in tort claim cases involving requests for punitive damages, it may be in the County's overall interest to negotiate settlements of claims that embrace the relinquishment of all claims against its officers and employees, including claims for asserted, but unproven punitive damages. Further the County recognizes that it may from time to time be in the overall best interests of the County to settle "globally" judgment awards that include elements of both compensatory and punitive damages. The County expects the full and active cooperation of its officers and employees in the defense of any and all civil claims brought against the County, its employees and officers. Failure to provide such full and active cooperation may, and likely will, provide cause for discipline.

In reciprocity for the County's legitimate expectation that all employees and officers will fully and actively cooperate in the legal defense of any and all claims brought against the County, its employees and officers, it is the policy of the County to obligate the County to indemnify its officers and employees respecting any award of punitive damages under the following circumstances:

1. If within 90 days from the reported (to the County) date of loss by any claimant, the County via its relevant operating departments, commissions, and officers has not initiated disciplinary action against an involved officer or employee respecting the underlying factual situation, said officer or employee will be entitled as a matter of right to County indemnification respecting any ultimate award of punitive damages respecting said incident.
2. In the event the County's investigation of the underlying factual situation is deemed incomplete by the Department Head of the involved officer or employee 90 days after the date of reported loss, and the fact of such incomplete investigation status is certified to the involved officer or employee by his or her Department Head, the County may extend for a second and final 90-day period the formal investigation of the underlying factual basis of the claim. In such a case of extended investigation, the County will obligate itself to indemnify the involved officer or employee respecting any ultimate award of punitive damages unless disciplinary action against the involved officer or employee is initiated within the extended period of 180 days following the reported date of loss to the County.

However, if it is later discovered (following the above 90-day or 180-day investigation) that an involved officer or employee has falsified information relating to his or her involvement in a claim situation, the County shall not be obligated to indemnify such officer or employee respecting an award of punitive damages.

PROFESSIONAL DISCIPLINARY INVESTIGATIONS/PROCEEDINGS

It shall be the County's policy to extend the above rights to legal defense and, as appropriate, indemnification to county officers or employees who are the object of professional disciplinary investigations and or enforcement proceedings involving acts or omissions occurring within the scope of county employment.

SUBROGATION AND COUNTER-CLAIMS

Often the same factual pattern that gives rise to a Plaintiff's claim against County officers and/or employees will give rise to counterclaims against that Plaintiff on behalf of the involved officer, employee or the County directly. When the County has paid out benefits on behalf of the officer or employee's loss as with, for example, worker's compensation benefits respecting a job injury caused in whole or part within the scope of County employment by operation of law the County becomes subrogated to, and entitled to recover, those losses sustained by its officers or employees. The involved officer or employee will be notified if the County elects to pursue its subrogated interest.

Depending on the circumstances further, non-subrogated, losses (for example, non-economic "pain and suffering") may need to be asserted by the officer or employee in the same litigation brought by the third party Plaintiff or they may be deemed to have been waived. Such personal losses are the exclusive entitlement of the employee, and have nothing at all to do with the County's legal obligation to provide legal defense and indemnification, as appropriate. For advice concerning such personal losses, the officer or employee must consult their own personal attorney or counselor, as the County Attorney's Office or outside retained defense counsel will not be involved in such matters.