



UNC CHARLOTTE

“Do You Have My Back?”

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“Do You Have My Back?”

When Employees are Legally Protected
By The University
and When They Are Not

Question 1

If a University employee, acting in good faith, fails to properly store, dispose of, or transport a hazardous substance on campus, are they liable for their actions?

Question 2

Should a University faculty or staff member, who participates as a member of a search committee or a disciplinary appeal panel, be liable for their actions?

NC Defense of State Employees Act

Provides university employees with legal defense, representation, and indemnification if they are acting within the scope and course of their assigned job duties and are sued in their official or individual capacities, whether criminally or civilly.

NCGS Chapter 143, Article 31A

Benefit #1

Indemnification for damages and costs.

A university employee, acting within the scope of employment, will be indemnified by the state for any damages and costs entered against the employee in a civil or criminal action or proceeding.

Benefit #2

Legal representation will be provided.

A university employee, acting within the scope of employment, will be provided legal counsel to defend against a civil or criminal action.

Forms of Legal Representation

- Representation by the Attorney General's Office for actions in state and federal court;
- Representation by authorized agency counsel - routinely for actions brought in administrative forums (e.g., U.S. EEOC, U.S. DOE's Office of Civil Rights, U.S. DOL's Wage and Hour Division); or
- Authorized private legal counsel appropriate to the matter at hand.

Question 3

What test must be passed to activate these important benefits?

Test to Activate Benefits

A University employee must be acting within the scope of their employment to qualify for the protections of this statute.

Definition

Acting Within the Scope of Employment

An act growing out of or committed in the course of the discharge of an employee's duties.

NC Defense of State Employees Act

An employee must request legal representation.

* Immediately contact the Office of Legal Affairs upon threat of litigation or service of an actual lawsuit.

The North Carolina Attorney General (AG) has the sole discretion to decide whether to defend and indemnify an employee.

Question 4

Are there any limits to the statutory benefits of the Defense of State Employees Act?

[The Attorney General’s Office has historically interpreted this statutory test broadly, helping to ensure that the University has an active and participatory workforce.]

Grounds for Refusal to Defend

The AG may refuse to defend a you if:

- (a) the act or omission is not within the scope and course of your employment;
- (b) you committed fraud, corruption or acted with actual malice;
- (c) it would create a conflict of interest between you and the State; or
- (d) it would not be in the best interest of the State.

Payment of Judgments & Settlements

Q. How are they funded?

The State’s self-insurance program and its supplemental Excess Liability Insurance provide coverage for negligent acts, errors or omissions committed by University employees in the scope and course of their job duties that result in personal injury or property damage.

Two Layers of Personal Liability Coverage

Layer #1: Under the NC Tort Claims Act the State maintains a self-insurance program with a maximum payment ceiling of \$1,000,000 per claim for damages awarded in a lawsuit or by a settlement agreement against an employee.

Two Layers of Personal Liability Coverage

Layer #2: For judgments or settlements in excess of the tort claim limit (\$1,000,000), and pursuant to the Defense of State Employees Act, the State maintains an Excess Liability Insurance Policy with coverage limits of:

- \$10 million per individual/occurrence, and
- \$25 million annual aggregate.

Summary Lessons

- Acting within the scope of employment?
- Legal representation
- Indemnification for damages
- AG has sole discretion
- Notify OLA immediately of any lawsuit/action
- “Yes, we’ve got your back!”
