



“Do You Have My Back?”  
Employee Liability Protections and Rules on  
Secondary Employment and Other External  
Commitments

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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:

- ▶ \$2 million per individual/occurrence, and
- ▶ \$10 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!”

# Secondary Employment and Other External Commitments for Pay

# Secondary Employment

- ▶ Full-time University/State employment is "primary"
- ▶ Any other employment is "secondary"
- ▶ Advanced approval necessary before SHRA employee can engage in any secondary employment

Authority: University Policy 103.3, PIM 22, and State Human Resource Policy Manual.

## If secondary employment would ...

- ▶ create a conflict of interest with University employment OR
- ▶ adversely effect the University employment

... then the request would be denied.

# Scenarios

- ▶ Barista
- ▶ High School Volleyball Coach
- ▶ Tax Filing Expert

# External Professional Activity for Pay

- ▶ Faculty and EHRA employees whose FTE is .75 or greater must submit an EPAP request prior to participation
- ▶ The EPAP is integrated into the Niner Research COI form

Authority: University Policy 102.1, External Professional Activities of Faculty and Other Professional Staff; University Policy 101.24, Conflicts of Interest and Commitment.

# External Professional Activity for Pay

EPAP Definition -- Any activity that is:

- 1) not included within one's University employment responsibilities;
- 2) performed for any entity, public or private, other than the University;
- 3) undertaken for compensation; and
- 4) based upon the professional knowledge, experience and abilities of the employee.



# External Professional Activity for Pay

BOG regulation permits EPAP activities provided:

- ▶ they do not create a conflict of interest or commitment that interferes with obligations to the University
- ▶ they are generally limited to no more than 20% of one's contracted time, and
- ▶ advanced review and approval is obtained as described in the regulation.

Authority: UNC Board of Governors Regulation 300.2.2.2[R].

# Scenarios

- ▶ Expert Witness
- ▶ Canadian River Guide
- ▶ Weekend Instructor

# Key Considerations

- ▶ Advanced disclosure required – must request permission prior to engaging in secondary employment
- ▶ Cannot adversely effect University employment
- ▶ Limited to 20% of full-time University commitment
- ▶ Conflicts of interest and conflicts of commitment must be avoided
- ▶ Updates – annual disclosure and review required