



## POLICY

### **Title:** Indemnification - Officer and Employee

#### Policy Statement

The University shall provide its officers and employees a legal defense, and pay costs, judgments, or settlement expenses actually and reasonably incurred in connection with the defense or resolution of civil actions filed in external forums, such as judicial or agency proceedings, against such officers and employees in connection with their performance of University duties, subject to the eligibility criteria and procedures stated in this policy.

#### Reason for the Policy

This Policy outlines the required procedure and eligibility criteria that must be met for the University to assume financial responsibility for litigation and related expenses associated with the defense or resolution of claims against University officers and employees.

#### Applicability of the Policy

This policy applies to all University of Vermont employees and trustees.

#### Definitions

*Good Faith:* In a manner reasonably believed to be lawful and without gross negligence.

*Gross Negligence:* Willful and wanton misconduct.

*Indemnification:* As defined in this Policy, the agreement of the University to assume financial responsibility for the liability of its employees.

*Officers and Employees:* As defined in this Policy, persons employed and compensated by the University, referred to in the Procedures statement collectively as "employees."

#### Procedures

##### **Conditions of Eligibility**

Defense and/or payment under this policy shall be available only if all of the following conditions are met to the satisfaction of the University, in its sole discretion:

- 1) The action must have been brought against a current or former employee by reason of his/her being or having been an employee of the University at the time of the acts or omissions ("conduct") giving rise to the action. In addition, the conduct must have occurred:

- a) Within the scope of University employment; and
- b) In good faith.

Indemnification shall be unavailable if an employee willfully engages in misconduct or acts with the intention of causing harm or damage to person or property. In its sole discretion, the University may elect to provide indemnification under this policy to employees charged with conduct constituting a violation of criminal laws or which is subject to criminal penalties (such as conduct in violation of compliance requirements under health and safety or environmental laws), provided that the criteria established in the policy are otherwise met.

- 2) A written request for indemnification and the original copy of any summons, complaint, notice, demand, letter, or other document or communication containing notice of a threatened or filed civil action must be provided by the employee to the University Department of Risk Management within five business days of its receipt by the employee. Exceptions to this five-day rule may be made in the sole discretion of the Director of Risk Management in the event of extenuating circumstances not within reasonable control of the employee. The University reserves the right to decline reimbursement of any expenses incurred prior to notification.
- 3) The employee must cooperate continuously and fully with the University, through its General Counsel in consultation with the Director of Risk Management, in the investigation and defense of the claim or action.
- 4) The employee must accept legal counsel selected by the University (through its General Counsel in consultation with the Director of Risk Management) provided that, in the event of an actual or potential conflict of interest between the employee and the University as reasonably determined by the General Counsel, the University will make available to the employee independent counsel mutually acceptable to the employee and the General Counsel, assuming that the employee is otherwise eligible for indemnification under the criteria described in this Policy.

*Additional Restrictions: Rights under this Policy shall not extend to:*

- 1) Claims or actions made against an employee for acts or omissions occurring in connection with the provision of private consulting services or services offered in conjunction with non-University businesses or endeavors.
- 2) Claims or actions an employee initiates, or proposes to, against another person or party.
- 3) Any persons, claims, or actions relative to whom indemnification is either prohibited by law or for which alternative provision is made under law.
- 4) Any and all internal University proceedings.
- 5) Demands, claims, or other petitions for relief made prior to the filing of an external action. The University may, in its sole discretion, elect to retain outside counsel and/or settle such demands or claims before they become the subject of a civil action. Rights under this policy arise only upon the filing of an external civil action, subject to the eligibility criteria and restrictions otherwise stated in this policy.

### **Third Party Rights**

The rights conferred under this policy shall not enlarge the rights or remedies otherwise available to any third-party plaintiff or claimant, nor shall any person or entity be entitled to make claims as third-party beneficiary hereunder. This Policy shall not serve as a waiver of sovereign immunity insofar as applicable.

### University Action Upon Request

The Director of Risk Management or their designee shall provide a written response to any employee request for indemnification under this Policy within 10 business days of receipt of the information described in paragraphs 2 and 3 of the "conditions of eligibility" section above.

In the event that eligibility cannot reasonably be determined within that timeframe, or the University determines to provide indemnification subject to a reservation of rights, said director or designee shall provide the employee with a written status report and/or reservation of rights statement. An employee may appeal any total or partial denial of indemnification under this Policy by filing written appeal with the University Vice President for Chief Safety and Compliance Officer within five business days of receipt of a final decision from the Department of Risk Management. The decision of the Chief Safety and Compliance Officer will constitute the University's final action on the indemnification request.

### Modifications

The University reserves the right to modify or withdraw this Policy in its sole discretion, except as to acts or omissions that occur before the effective date of such modification or withdrawal.

## Contacts

<b>Questions concerning the daily operational interpretation of this policy should be directed to the following (in accordance with the policy elaboration and procedures):</b>	
<b>Title(s)/Department(s):</b>	<b>Contact Information:</b>
Director of Risk Management and Safety	(802) 656-3242 <a href="mailto:risk.management@uvm.edu">risk.management@uvm.edu</a>

## Forms/Flowcharts/Diagrams

- None

## Related Documents/Policies

- None

## Regulatory References/Citations

- None

## Training/Education

Training will be provided on an as-needed basis as determined by the Approval Authority or the Responsible Official.

## About this Policy

<b>Responsible Official:</b>	Chief Safety and Compliance Officer	<b>Approval Authority:</b>	President
<b>Policy Number:</b>	V. 3.10.3	<b>Effective Date:</b>	March 7, 2017

<b>Revision History:</b>	<ul style="list-style-type: none"><li>• V. 4.1.9.1 effective September 29, 2006</li><li>• V. 5.14.2/V. 4.1.9.2 effective March 22, 2012</li><li>• V. 3.10.3 reaffirmed July 20, 2022</li></ul>
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