



**Department of Administrative Services**

**POLICY MANUAL**

**Issuing Division:** Enterprise Goods and Services, Risk Management

**Subject:** Liability Self-Insurance Policy Manual for State Officers, Employees, and Agents

Number

125-7-202

Effective until cancelled.

Revised July 1, 2023

*Shelly Hoffman*

Approval

CONTENTS

I. Purpose.....1

II. Self-Insurance Agreement.....1

III. General Definitions and Exclusions .....2

- General Definitions .....2
- General Exclusions .....3

IV. General Tort Liability .....5

- A. Coverage .....5
- B. Definitions.....5
- C. Exclusions .....5
- D. Limits of Liability .....6
- E. Deductibles.....6
- F. Conditions for Coverage .....6
- G. Claim Filing .....6
- H. Right of Recovery .....6
- I. Fees and Changes.....6

V. Vehicle Liability .....7

- A. Coverage .....7
- B. Definitions.....9



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- C. Exclusions ..... 10
- D. Deductibles ..... 11
- E. Conditions of Coverage ..... 11
- F. Right of Recovery ..... 11
- G. Proof of Insurance ..... 12
- H. Claims Reporting and Procedures ..... 12

VI. Criminal Tort Equivalent Coverage ..... 12

- A. Coverage ..... 12
- B. Covered Parties ..... 13
- C. Definitions ..... 13
- D. Limits of Coverage ..... 14
- E. Payment of Criminal Tort Equivalent Coverage Claims ..... 14
- F. Right of Offset for State Obligations ..... 14
- G. Filing Application for Coverage ..... 14
- H. Requesting Review of a Coverage Denial ..... 16
- I. Recovery Upon Conviction ..... 16

VII. Distribution ..... 16

## I. Purpose

Under Oregon Revised Statutes (ORS) Chapter 278 and ORS 30.260-300, the state pays its own cost of resolving tort liability claims. The state Insurance Fund provides self-insurance that pays the state's legal liability for torts and legal defense cost. These services are provided to state agencies by the Department of Administrative Services, Enterprise Goods & Services Risk Management program.

The purpose of this policy manual is to establish the liability self-insurance coverage provided to State Officers, Employees and Agents, by the Insurance Fund, and the conditions, standards, and other requirements that govern or control the use of this coverage. It does not define or alter in any way the legal rights of claimants. It does not define or limit in any way the state's rights or defenses in any claim or action at law. In some circumstances we may purchase commercial insurance to supplement, augment, or fulfill this policy. This policy does not affect any insurance policy we may own. Should any provision in this policy be contrary to law, the law prevails. This edition applies to all claims with a date of loss on or after the effective date of this policy.

Changes and exceptions to the terms of this policy are only effective if the Enterprise Goods & Services Administrator or the Risk Management Manager signs a written Amendment or Endorsement. This policy manual is subject to change without prior notice.

Additional liability coverage and related information may also be available under:

- Policy 125-7-101, Property Self-Insurance Policy Manual;
- Policy 125-7-201, State Agency Liability Policy Manual;
- Policy 125-7-203, Employee Dishonesty Policy Manual;
- Policy 125-7-204, Volunteer Injury Coverages Policy Manual;
- Policy 125-7-301, Aircraft and Pilot Standards Policy Manual;
- Policy 125-7-401, Alcohol Risk Control Policy Manual;
- Policy 125-7-501, State Business & Travel Status Policy Manual, and
- OAR Chapter 125, Division 155, State Vehicle Use and Access.

## II. Self-Insurance Agreement

The Insurance Fund pays tort liability claims for harm wrongly or negligently done by or on behalf of the state and defends against claims that appear false or unfounded. This self-insurance policy includes the following lines of coverage for state officers, employees, and agents against tort liability, unless the loss is otherwise excluded in this policy manual:

- A. General Tort Liability
- B. Vehicle Liability & Uninsured/Underinsured Motorist
- C. Criminal Tort-Equivalent Coverage

### III. General Definitions and Exclusions

Throughout this policy manual, “you” and “your” refer to Oregon state officers, employees, and agents; “we”, “us”, and “our” refer to the Department of Administrative Services, Enterprise Goods & Services, Risk Management. General Definitions and Exclusions apply to all lines of coverage. Other terms, as used in this policy manual, have the meaning stated in each respective line of coverage definition and exclusion section:

#### General Definitions

- A. **Accident** means a sudden event allegedly causing unplanned and unexpected damage to property or injury to a specific person or persons.
- B. **Agency** means a board, commission, department, division, institution, or branch of the State of Oregon. A public corporation is an agency if we have agreed in writing to provide its legal liability.
- C. **Agent.** The courts are likely to decide someone is your agent if that person performs a duty or function on your behalf and is subject to the direction and control of you or your staff. That direction and control applies to the method, manner, means, location and timing of the duty or function.
- D. **Claim:** Someone alleges that you, acting in your state job, harmed them by committing a tort or wrong for which you are liable. You should quickly notify us of any tort claim, even if you believe that it is unfounded.
- E. **Criminal investigation** means a formal investigation in a criminal proceeding under which a subpoena, official letter, or other document requires you personally to appear to furnish information to a grand jury, district attorney or U.S. Attorney.
- F. **Criminal proceeding** means a formal investigation requiring your personal appearance or information.
- G. **Damages** means all sums recoverable by law from any liability claim covered under this policy manual, including judgment awards, settlements, penalties, and awards of plaintiff's attorney fees or court costs in connection with a tort claim.
- H. **Excess Coverage** means the coverage that applies after primary coverages are exhausted. State liability self-insurance, when it applies to private vehicles under this policy, applies as an excess cover.
- I. **Property Damage** means injury to or destruction of tangible property.

- J. **State business (or official state business or state duties):** Any activity directed and controlled by a state agency to advance the lawful policies and purposes of the agency. Note: State law requires a narrow interpretation of state business when it involves any use of vehicles. Coverages under this policy require that you were acting in the scope of your employment or duties. Essentially that means you were engaged in state business at the direction and control of your agency. To determine that, we may look at your position description, your agency's enabling statutes, and other helpful sources.
- K. **State directives:** The state's explicit communications of its administrative and operational directions and controls for your employment. These include state law, administrative rules, and state policies (like this one). They include written and oral instructions of your agency or supervisors.
- L. **Tort** is defined by statute as the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy.
- M. **Volunteer:** An unpaid person appointed by a state agency to work on its behalf. Volunteers are appointed to do state business under agency direction and control. They receive no remuneration. In this policy, volunteer and agent may be used interchangeably unless the context requires otherwise. See further definition of agent.

## General Exclusions

1. **Criminal defense, fines, or penalties.** Except for the coverage provided in Section VI. Criminal Tort Equivalent Coverage, we do not pay for your defense against criminal charges. We do not pay fines or penalties in any criminal complaints. We do not pay traffic or parking citations. We do not post or pay bail or appearance bonds.
2. **Claims or actions the state brings against you.** Should a state agency file any kind of claim or legal action against you, we will not pay your losses, costs, or defense.
3. **Claims arising from your private acts or omissions.** The state covers only claims which arise in the scope or performance of your state duties under the direction and control of the state. Scope and performance of duty are matters of fact, in the light of all related circumstances. Among other things, we will consider: (i) the duties assigned to you to do, (ii) whether what you did was done under your or your employer's direction and control, and (iii) whether your actions were consistent with or contrary to any state directives. Acting in clear and direct violation of state directives would normally exclude you from the coverages provided in this policy.
4. **Extreme or intentional wrongdoing.** We do not pay for defense or damages if the alleged wrong amounts to malfeasance in office or to willful or wanton neglect of duty. We do not cover acts committed maliciously, with intent to cause unlawful damage or injury, or with gross recklessness. The wrongdoing described in this exclusion would be in clear and direct violation of state directives and will exclude you from the coverages provided in this policy.

**NOTE:** The two preceding exclusions are matters of law. If a suit is filed against you, the Department of Justice decides whether you qualify for state coverage under the applicable statutes after consulting with us. The law does not allow your rights to be prejudiced by a state decision not to defend you. Also, you may prove in court that your coverage was wrongly withheld. If so, the court will direct us to pay any damages that should have been covered and to reimburse your reasonable costs of defense.

5. **Loss to your property.** Our property policy provides that your agency can agree to be liable for your property if it needs to, in the public interest. Your agency must agree to be responsible in writing prior to the loss. Private vehicles may not be covered. The covered property must comply with the terms and conditions of the Property Self-Insurance Policy Manual 125-7-101.

6. **Loss to state property.** By indemnifying you against tort claims, the state does not cover you or hold you harmless for loss or physical damage you wrongfully cause to its own property. For example, like anyone else, if you wrongfully wreck a state car, we or the agency that owned it may pursue recovery from you for the physical damage to the state car. Agencies may only pursue recovery of the deductible on property covered under the Property Self-Insurance Policy Manual 125-7-101.

In deciding whether we must seek recovery from you, we evaluate the circumstances. We do not seek recovery from you if you meet these three tests:

- a) You were acting in the course and performance of your state duties.
- b) You were attempting in good faith to conform to any applicable state directives.
- c) You were just negligent; not reckless, malfeasant, grossly negligent, or criminal.

7. **Costs you are not obligated to pay.** We do not pay anything which you would not be obligated to pay on your own. We do not pay anything which some other party is obligated to pay for you. This means we do not pay losses or costs which you are entitled to collect from your personal auto insurance or any other primary or valid and collectible insurance.

8. **Anything covered by Workers' Compensation.** We provide workers' compensation insurance through SAIF Corporation. They manage all covered state workers' compensation claims. Those claims are not paid under this policy.

9. **Any costs arising out of allegations of state ethics violations.** By law, ORS Chapter 244, Government Ethics for Public Officers, and Employees, neither we nor your agency may pay any of your defense or penalties for ethics charges.

10. **Any of your costs, defense, or damages if you fail to cooperate or act to prejudice the state's defense.** We will withdraw state coverage from you if you do not properly assist us and the Department of Justice on any claim in which you are involved.

11. **Any costs related to trade or professional license defense.** However, your agency may have authority to use its internal resources to defend your license relative to your performance of state duties. Agencies may not pay or reimburse external costs to defend you from fines, sanctions, suspension, revocation, or other actions against your license.
12. **Repayment of a payment or transfer of state funds or property which you made in violation of the law.** Technically, you are strictly liable for all state assets in your control or care, without regard to negligence or wrongdoing. As a matter of practice, we do not apply the strict liability rule of law. We weigh the wrongful payment or transfer against these coverage exclusions. If the circumstances show the payment or transfer was not excluded from coverage, your defense may be covered under this policy. Any repayment of wrongfully paid or transferred funds or property is not covered.
13. **Legal costs you incur before you report a claim to us or any costs or claims which you have already paid or promised to pay without our approval.** Note: You may not deny, approve, pay, or defend tort claims for yourself. You may not pay someone to withdraw or abandon a tort claim. We must administer all claims. Even without this exclusion, no state officer, employee, or agent may, without statutory authority, use public monies to pay anyone for any kind of demand or claim which is not a valid obligation of the State. Avoid personal liability; call us or your counsel if you are unsure.
14. **Civil fines or penalties imposed by federal or state agencies.**

## IV. General Tort Liability

### A. Coverage

Tort Liability Coverage is subject to the provisions of this policy manual, of ORS 30.260-30.300, and of ORS Chapter 278, we will pay and defend claims against you for torts which you are alleged to have committed, while acting within the scope of your employment or official duties.

### B. Definitions

All definitions relating to General Tort Liability are included under Section III, General Definitions.

### C. Exclusions

All exclusions relating to General Tort Liability are included under Section III, General Exclusions.

## D. Limits of Liability

**Tort Liability:** Your liability for damages arising out of most tort claims is limited by the Oregon Tort Claims Act in ORS 30.260 to 30.300 (OTCA). There is no limit on your amount of coverage for general tort liability under this policy manual. If you and the claim remain qualified under this policy, we remain obligated to defend and hold you harmless under its terms.

## E. Deductibles

There are no deductibles. However, we may require any primary insurance or valid and collectible insurance be applied before the state's self-insurance.

## F. Conditions for Coverage

For coverage, you must:

1. **Cooperate fully with us and the Department of Justice.** Coverage may be forfeited if you fail to cooperate honestly and fully in our investigation, settlement or defense, and recover of loss from the claim. If coverage is forfeited, you will be informed in writing of our decision and the reason for the decision.
2. Comply with the terms and conditions of this policy manual.

## G. Claim Filing

Per ORS 30.275, only a claimant or representative of a claimant can provide notice of claim, and the claim must be submitted to *us*.

However, you should contact us as soon as possible, but no later than five working days after you learn of any claim being made against you. If you are served papers for a lawsuit, you should get them to the Department of Justice with a copy to us that day or without any delay. If you delay reporting and defense or payment of the claim is harmed thereby, you may forfeit your coverage.

## H. Right of Recovery

To the extent allowed by law, if we defend or pay damages on your behalf, we have the right to any funds you may recover from any party in connection with the claim, including insurers. This right is limited to the extent of our losses and costs.

## I. Fees and Changes

All our costs are paid by state agencies. Our charges to an agency are based mostly on the losses we attribute to it, its officers, employees, and agents.



## V. Vehicle Liability

### A. Coverage

1. **Basic State Vehicle Liability Coverage.** Subject to the terms and conditions of this policy, ORS 30.260-300, and ORS Chapter 278, we will pay and defend tort claims against you for vehicular injury to people or property while operating a state vehicle within the scope of your state employment or official duties.
2. **Uninsured Motorist (UM) / Underinsured Motorist (UIM) Coverage for State Vehicles.**

Coverage is provided as required under ORS 742.500—742.506. We cover you against uninsured and underinsured motorist's risks (UM/UIM). UM/UIM covers the authorized driver and authorized passengers in a state vehicle for bodily injury resulting from an accident. UM/UIM applies:

- a) To the driver/passenger only when the driver/passenger is an authorized driver/passenger under state law or rules and;
- b) The state vehicle is being used for official state business and;
- c) When the other motorist in the accident is uninsured or underinsured.

An uninsured or underinsured motorist claim does not accrue unless one of the events identified in ORS 742.504(12)(a) occurs within two years from the date of accident.

*We will not pay for any element of loss if the authorized driver/passenger is entitled to receive payment for the same element of loss under any workers' compensation, disability benefits, or similar law per ORS 742.504. The UM/UIM limit is \$25,000 per claimant for bodily injury and \$50,000 per accident for all claimants combined. UM/UIM limits increase automatically to any larger amounts required by state law.*

3. **Personal Injury Protection (PIP) Coverage for State Vehicles.** PIP coverage is provided as required under ORS 742.520 through 742.544. PIP covers injuries to authorized drivers and passengers in, upon entering or alighting from a state vehicle. If applicable, state employees' workers' compensation is primary, and PIP is excess coverage. PIP applies when the driver/passenger is an authorized driver/passenger under state law or rules and the state vehicle is being used for official state business. PIP coverage and limit for each covered person increase automatically to any larger amount required by state law. Our current PIP limits are these:
  - a. All reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services incurred within two years after the date of the person's injury, but not more than \$15,000 in the aggregate for all such expenses of the person. Expenses of medical, hospital, dental, surgical, ambulance and prosthetic services shall be presumed to be reasonable and necessary unless the provider is given notice of denial of the charges not more than 60 calendar days after we receive from the provider notice of the claim for the services. At any time during

- the first 50 calendar days after we receive notice of claim, the provider shall, within 10 business days, answer in writing questions from us regarding the claim. For purposes of determining when the 60-day period provided by this paragraph has elapsed, counting of days shall be suspended if the provider does not supply written answers to us within 10 days and shall not resume until the answers are supplied.
- b. If the injured person is usually engaged in a remunerative occupation and if disability continues for at least 14 days, 70 percent of the loss of income from work during the period of the injured person's disability until the date the person is able to return to the person's usual occupation. This benefit is subject to a maximum payment of \$3,000 per month and a maximum payment period in the aggregate of 52 weeks. As used in this paragraph, "income" includes but is not limited to salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm.
  - c. If the injured person is not usually engaged in a remunerative occupation and if disability continues for at least 14 days, the expenses reasonably incurred by the injured person for essential services in lieu of the services the person would have performed without income during the period of the person's disability until the date the person is reasonably able to perform such essential services. This benefit is subject to a maximum payment of \$30 per day and a maximum payment period in the aggregate of 52 weeks.
  - d. All reasonable and necessary funeral expenses incurred within two years after the date of the person's injury, but not more than \$5,000.
  - e. If the injured person is a parent or legal guardian of a minor child and is required to be hospitalized for a minimum of 24 hours, \$25 per day for child care, with payments to begin after the initial 24 hours of hospitalization and to be made for as long as the person is unable to return to work if the person is engaged in a remunerative occupation or for as long as the person is unable to perform essential services that the person would have performed without income if the person is not usually engaged in a remunerative occupation, but not to exceed \$750.
4. **Private Vehicle Coverage.** Our basic state vehicle liability coverage will apply as excess coverage to your private automobile liability insurance only while you use the insured private vehicle solely for duly authorized official state business within state directives. No private vehicle is covered in any way by the state while it is being used for any personal purpose or contrary to state directives.
5. **Order of Coverage.** If any of the following coverages apply to a loss or cost, they apply in this order:
- a. Workers' compensation coverage;
  - b. Any other applicable and collectible insurance;
  - c. Our personal injury protection coverage;

- d. Our self-insured vehicle tort liability coverage;
- e. Any collateral benefit, including insurance, gratuitous benefit, government benefit, or any other; then
- f. Our uninsured / underinsured motorist coverage (pursuant to ORS 278.215).

None of these will pay a cost for which one of the prior coverages is responsible. No one may choose among their coverages.

## B. Definitions

1. **Accident** means a sudden vehicular event allegedly causing unplanned and unexpected damage to property or injury to a specific person or persons.
2. **Hit and Run vehicle** as defined in ORS 742.504.
3. **Phantom vehicle** as defined in ORS 742.504.
4. **Personal vehicle** means a vehicle owned by your staff or any vehicle not owned, rented, or leased by, nor in the possession or control of, the state.
5. **Private vehicle** means a motor vehicle that is owned, commercially rented, borrowed, leased, or otherwise lawfully in the possession and control of any private person or any entity other than the state. A commercially rented vehicle is a private vehicle if it is rented or used for private use or any mix of private and state uses. An independent contractor's vehicle being used for contract services is a private vehicle in use on the contractor's business, not on state business. Take note, this policy provides only limited excess liability coverage of private vehicles and only under strictly defined conditions.
6. **Primary coverage** means the insurer who, by law or contract, is responsible to pay first. Typically, for a private vehicle, your own auto liability insurer has promised to provide your primary insurance. When state self-insurance also applies, it pays only covered costs remaining after your primary insurance is exhausted. For a state-owned vehicle operated under state direction and control, and in compliance with the State Vehicle Use and Access Rules OAR 125, Division 155, state self-insurance is the primary coverage.
7. **Stolen vehicle** defined in ORS 742.504
8. **State vehicle** means a motor vehicle owned, commercially rented, borrowed, leased, or otherwise under the possession and control of the state. A commercially rented vehicle is a state vehicle if it is rented and used by a duly authorized employee at the cost of the state, solely for official state business. A vehicle, owned by DAS and lawfully rented to a local government or other non-state entity, is not a state vehicle for purposes of this policy. A state vehicle used for any purpose other than official state business is used unlawfully and at the personal liability of the driver.

9. **Underinsured Motorist** means a driver who causes an accident and has at least minimum legally required motor vehicle liability insurance, but the insurance does not have payment limits high enough to cover the damage they caused.
10. **Uninsured Motorist** per ORS 742.504, "Uninsured vehicle" means:
- A. A vehicle with respect to the ownership, maintenance or use of which there is no collectible motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of the vehicle, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance denies coverage or the company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at the time of the accident;
  - B. A hit-and-run vehicle;
  - C. A phantom vehicle;
  - D. A stolen vehicle; or
  - E. A vehicle that is owned or operated by a self-insurer.
11. **Vessel** means a boat, ship, craft, or structure, excluding a float plane, made to float or travel upon the water which may or may not be powered by a marine engine.

## C. Exclusions

Except as expressly provided in this policy, we do not pay for anything excluded under Section

III. General Exclusions or any of the following:

1. **Personal Injury Protection (PIP) for an injury anyone intentionally causes to himself or herself.**
2. **Your liability arising out of or during any personal use of a state or private vehicle, including any use that is contrary to state directives.** Those directives include the provisions of ORS Chapter 283, OAR 125 Chapter 155, and other specific directives of an agency or your supervisors. While using a state or private vehicle contrary to state directives, the driver shall be deemed in all respects to be driving on personal business, not official state business, and without state permission.

3. **Any other coverage for private vehicles.** Except for the excess vehicle liability coverage described, we do not provide any coverage under this policy for any kind of private vehicle (motor vehicle, vessel, airplane, or others), regardless of its use, authorization, or contract terms. We do not provide PIP, UM, UIM, medical, physical, or property damage, accident, or comprehensive coverages. We do not pay your private insurance deductible or rate increases. Your private vehicle insurance is entirely reimbursed as part of state mileage rates pursuant to ORS 292.250. No agency, subject to that statute, may pay you more. No agency subject to ORS Chapter 278 may provide any other coverage. You are responsible to insure yourself in any private vehicle you use on state business.

## D. Deductibles

There are no deductibles. However, we may require that any primary insurance or valid and collectible insurance be applied before the state's self-insurance.

## E. Conditions of Coverage

For coverage, you must:

1. **Cooperate fully with us and the Department of Justice.** Coverage may be forfeited if you fail to cooperate honestly and fully in our investigation, settlement or defense, and recovery of loss from the claim.
2. **Have private liability insurance for any private vehicle that you use on state business.** That includes all passenger-carrying vehicles, private boats of more than six horsepower, and all powered airplanes and other powered vehicles. You must have normal and reasonable liability insurance or type and limits as required by law. For a motor vehicle on public roadways, you must carry at least the minimum liability insurance prescribed by law.
3. **Hold a valid license and meet all other requirements of applicable law and rule to lawfully operate the vehicle.**
4. Comply with the terms and conditions of this policy manual.

## F. Right of Recovery

Our right to recovery under Section IV, General Tort Liability, also applies to any personal injury protection we may pay. We are entitled to reimbursement from insurers or others under ORS Chapter 742.

## G. Proof of Insurance

1. **State Vehicles:** The state's self-insured coverage should be accepted by all jurisdictions in the United States, its possessions and territories, and Canada. State coverage is continuous and fully funded. We issue a Certificate of Self-Insurance for any state vehicle to agencies who own vehicles. A copy of the Certificate of Self-Insurance should be kept in the vehicle.
2. **Foreign Insurance:** We delegate authority to each state agency to buy coverage for any state vehicles in any jurisdiction other than the United States, its possessions and territories, and Canada. Each driver is responsible to assure that he or she has adequate coverage before driving in any country or jurisdiction. Lack of proper coverage in some countries could result in a driver facing criminal fine, imprisonment, and criminal defense costs. We do not cover these. The driver could also be liable to the state for loss due to confiscation of its vehicle.
3. **Private Vehicles:** Drivers are responsible, under ORS Chapter 806 and this policy, to provide proof of legally adequate insurance for any use of any private vehicle in any jurisdiction. See definition of private vehicles. This policy is not proof of insurance for a private vehicle. We provide certificates of self-insurance only for state vehicles (see definitions).

## H. Claims Reporting and Procedures

Per ORS 30.275, only a claimant or representative of a claimant can provide notice of a liability claim, and the claim must be submitted to us. Please notify Risk Management of any accident within the next working day if it caused major property damage, serious injury, or death.

To notify Risk of a claim for state owned property please refer to the Property Policy Manual 125-7-101.

## VI. Criminal Tort Equivalent Coverage

### A. Coverage

Within our specified limits of coverage, we may pay your necessary and reasonable legal expenses in a criminal proceeding. The minimum conditions for eligibility of this coverage are that:

- a) At the discretion of the Risk Manager or designee, we find that circumstances are such that, if the criminal complaint had been brought against you as a tort claim under Oregon law, you would qualify in all respects for full indemnification under the tort provisions of this policy; or that a criminal complaint has been filed against you for violation of a Federal statute or rule; or that you have been advised in writing of a criminal investigation requiring your personal appearance of information; and

b) Your agency must apply to us for coverage as soon as possible after learning of criminal proceeding involving you. If this coverage becomes available to you because of a collective bargaining agreement that becomes effective after you learn of a criminal proceeding involving you, this coverage may apply to a criminal proceeding involving you within 180 days before the effective date of the collective bargaining agreement.

You are not covered if you are an independent contractor working for the state under a contract that excludes tort claims coverage by the state, irrespective of whether the exclusion is effective.

For coverage to apply, the agency must have standing operating procedures in place which describe performance expectations. The agency must document that supervisors and staff have received up to date training regarding operating procedures.

## B. Covered Parties

You must be a state officer, employee, or agent in the performance of official duties. Unless expressly stated, this coverage is not extended to third parties when Risk Management agrees to cover others under general the State Agency Liability Policy Manual 125-7-201.

## C. Definitions

1. **Criminal complaint** means a formal charge against you by a grand jury, district attorney or U.S. Attorney alleging violation of a federal or state law, rule or ordinance which may result in imposition of criminal penalties or sanctions; or notice by letter from the U.S. Attorney that you are the target of a federal Grand Jury criminal investigation. This definition only applies to Section VI, Criminal Tort-Equivalent Coverage.
2. **Qualifying case** means (a) a criminal complaint has been filed against you; (b) you are the target of a federal Grand Jury criminal investigation; or (c) you are a required participant in a criminal investigation. Multiple charges arising out of one event, or a continuous or intermittent series of events shall constitute a single occurrence for purposes of coverage under this policy. If you are not eligible for coverage with respect to one charge or allegation arising out of one event or a continuous or intermittent series of events, then you are not entitled to any benefits for any of the charges. This definition only applies to Section VI, Criminal Tort-Equivalent Coverage.

## **D. Limits of Coverage**

1. This coverage applies to represented and non-represented state officers, employees, and agents. When such coverage is provided by the applicable collective bargaining agreement, this coverage is primary for collectively bargained similar coverage. This coverage is excess of any other insurance you have for legal advice or availability of free legal advice.
2. Coverage shall not exceed \$35,000 for any alleged felony occurrence or \$15,000 for any alleged misdemeanor occurrence upon which a criminal proceeding is based, as defined at our sole discretion. This is the total amount available for all phases of a covered occurrence including investigation, trial, appeal and post-conviction and habeas corpus relief proceedings.

## **E. Payment of Criminal Tort Equivalent Coverage Claims**

To the limits we have set for this coverage, we will directly pay the reasonable and necessary legal defense costs incurred on your behalf by you or on your behalf by or through the criminal defense counsel of your choice. Defense counsel must submit a written request for payment to Department of Administrative Services, Risk Management.

## **F. Right of Offset for State Obligations**

We may withhold or reduce any payment under this coverage, applying all or part of it to any payments due from you to the state in connection with the qualifying case.

## **G. Filing Application for Coverage**

1. Your agency must file an application on your behalf. The agency must notify us in writing that you have been charged or are a required participant in a criminal investigation in a qualifying case and request this coverage. We must receive this notice as soon as possible after the date you are notified of the charges or of the criminal investigation requiring your participation.
2. The notice to us must:
  - a) Describe the incident and conduct that are the basis of the criminal proceeding;
  - b) Confirm that the actions taken and the conduct in question were within the course and scope of your duties;
  - c) Report whether agency policy or procedure applied to the conduct in question and if so, whether the policy or procedure was followed (attach copy of applicable policy and procedure).



- d) Report whether direction from a supervisor was sought, received, and followed. If direction was sought, indicate the name of the supervisor. If direction was not sought, explain why not; and
  - e) Report whether advice of DOJ was sought, received, and followed. If advice was sought, indicate the name of the attorney providing the advice.
  - f) Provide training records for supervisors and staff documenting attendance at training in policy and procedure related to the circumstances of this criminal proceeding.
3. You may provide additional information separately if you so choose. The release of your application and additional information will be protected to the extent allowed by law. You may want to seek legal counsel before responding.
  4. The Risk Manager or designee will review the criminal complaint or available information regarding the criminal investigation, the application for coverage and any other materials it considers relevant to determine if coverage under this policy is in the best interest of the state and its operations. This determination will be based on consideration of whether:
    - a) The employee was acting within the course and scope of duties;
    - b) The employee was, while engaged in the actions or activities that resulted in the criminal proceeding, acting in good faith under the totality of the circumstances. In determining whether the employee was acting in good faith for the purposes of coverage under this policy, the Risk Manager or designee may consider factors including, but not limited to, the following:
      - i) Was the employee clearly complying with all applicable agency policies and procedures?
      - ii) Did the employee seek and follow direction from a supervisor? If not, would the circumstances have permitted such consultation?
      - iii) Prior to the incident, did the employee seek out and attend training offered by the agency concerning lawful conduct under the circumstances giving rise to the criminal proceeding?
      - iv) Did the agency seek and follow advice of DOJ? If not sought, would the circumstances have permitted or reasonably necessitated such consultation?
      - v) Under the totality of the circumstances, would a reasonable employee have believed that the conduct was lawful and within the course and scope of duties?
      - vi) Has the employee previously sought coverage under this policy and, if so, to what extent are the circumstances similar?

## H. Requesting Review of a Coverage Denial

In the event the application for coverage is denied in whole or in part, you may ask your agency to request review and reconsideration. Requests shall be submitted to the Administrator of the Department of Administrative Services, Enterprise Goods and Services or designee. The request shall specifically state what coverage was denied and describe the consequences to the individual if coverage is not provided. Decisions by the administrator are final.

## I. Recovery Upon Conviction

In the event we pay for your expenses under this Section VI and then you are convicted of the crime in question or enter a plea bargain in lieu of conviction, we will recover all expenses paid under this Section VI. Recovery may be made by offset from employee or contractor compensation or from other amounts otherwise due to be paid to you by the State.

The terms and conditions of this coverage may change without notice. We will provide you with current terms and conditions when we are notified of your claim.

## VII. Distribution

This policy manual and any revisions are posted on our Web site. They may also be published in collections of related rules and policies. Managers should make this policy available to all employees who are interested or who are likely to be exposed to claims. Feel free to make copies and distribute them. However, be sure to also distribute any revisions or amendments.

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