

# North Dakota State University

## Policy Manual

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### SECTION 159

### INJURY CLAIMS AGAINST NDSU AND STATE RISK FINANCING

SOURCE: NDSU President

1. Claims by third parties (employees' injuries are processed through Workers Compensation) against the State or NDSU and University employees are governed primarily by state law, NDCC ch. 32-12.2. This law resulted from a North Dakota Supreme Court decision decided in 1994 which overturned sovereign immunity.
2. Claims for injuries caused by a state employee within the scope of that employee's employment are brought against the State and not against the individual employee. The injured party must file a claim with the State Risk Manager in the Office of Management and Budget ("OMB") within 6 months of the injury. Civil actions for damages must be brought against the State within 3 years of the accident.
3. NDSU, through a designated official, the Assistant Attorney General assigned to the University, notifies OMB of incidents via an OMB Incident Report Form. University employees should either fill out a University Incident Report Form and submit this to the Assistant Attorney General assigned to the University or contact the Assistant Attorney General assigned to the University directly. The State Risk Manager, if the injured party wants to file a claim, then sends claim forms to the claimant. The claim is then investigated.
4. The current coverage by the State is \$250,000 per person and \$1,000,000 per occurrence. The State self-insures for this amount. Any judgment beyond this amount would have to go the North Dakota Legislature for an appropriation.
5. OMB has approval authority for state agencies to purchase additional insurance. There are other risk financing coverages; for example, auto insurance, medical malpractice, property insurance through the State Fire and Tornado Fund, aviation liability policies, boiler and machinery coverage, fidelity bonding, and others. On occasion, unique insurance may need to be purchased for specific events. Normally, however, the Risk Management Fund is sufficient. Questions about insurance coverage can be directed to the Assistant Attorney General assigned to the University. Certificates of self-insurance are available.
6. A special situation exists in the case of students or visitors to the campus who appear to have suffered a possible serious injury on the campus and who are unable, because of unconsciousness or other reasons, to clearly request that an ambulance be called for them. When staff members have called the ambulance themselves in the past, there have been cases where the injured person subsequently refused to pay the ambulance bill. This is unfortunate, but a more serious problem could result from neglecting to get prompt medical attention, with a real potential for a liability suit directed against the University.

University personnel should continue to request the services that an injured person appears to need. In most cases, the person or family will be grateful for the action and assume the expenses without question. In the remaining cases, the University will pay for the service if the ambulance company seeks reimbursement against the calling party in order to ensure that staff

members involved in making decisions under stressful circumstances know that they have institutional support. The injured party is liable for the bill, however.

7. Employees not only need to be a part of risk management, but also need to be circumspect about making statements to injured parties, other third parties, or even to other University employees who aren't involved in the investigation about the situation. Statements made can be used against the University in future lawsuits. Employees should confine their statements to the facts and contact the Assistant Attorney General assigned to the University for advice on how the matter should be handled. IF AN EMPLOYEE IS SUED, THE EMPLOYEE HAS TEN DAYS TO NOTIFY THE PRESIDENT AND REQUEST LEGAL REPRESENTATION. EMPLOYEES SHOULD CONTACT THE ASSISTANT ATTORNEY GENERAL ASSIGNED TO THE UNIVERSITY IMMEDIATELY IN SUCH SITUATIONS.
8. Settlements are made, if warranted, by consultation between the University, the State Attorney General's Office, and the State Risk Manager after reviewing all the investigation reports.
9. Employees do have a risk of individual liability if they are acting outside the scope of their employment. An employee is acting within the scope of their employment if the employee is acting on behalf of NDSU performing lawfully assigned duties. However, an employee who acts in a reckless or grossly negligent manner, commits malfeasance in office, or commits willful or wanton misconduct is deemed not be acting within the scope of their employment. In such rare cases, the State has no responsibility to defend the employee.

For more information regarding state employee liability see:

<http://www.ag.nd.gov/Brochures/FactSheet/LiabilityStateEmployees.pdf>

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HISTORY:

New	July 1990
Amended	June 1996
Amended	December 1997
Amended	October 2007
Amended	February 2009
Housekeeping	September 2015
Housekeeping	October 2015