Policy *159* Version 1 *082515*

**Policy Change Cover Sheet**

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| **This form must be attached to each policy presented. All areas in red, including the header, must be completed; if not, it will be sent back to you for completion.** |
|  | *I****f the changes you are requesting include housekeeping, please submit those changes to*** ***ndsu.policy.manual@ndsu.edu*** ***first so that a clean policy can be presented to the committees.*** |
| **SECTION**:  | 159 Injury Claims Against NDSU and State Risk Financing  |
| 1. **Effect of policy addition or change (explain the important changes in the policy or effect of this policy). Briefly describe the changes that are being made to the policy and the reasoning behind the requested change(s).**
 |
| * Is this a federal or state mandate? [ ]  Yes [x]  No
* Describe change: Housekeeping change removing reference to General Counsel
 |
| 1. **This policy change was originated by (individual, office or committee/organization):**
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| * Office/Department/Name and the date submitted: Provost Office on 8/25/15
* Email address of the person who should be contacted with revisions: melissa.lamp@ndsu.edu
 |
| ***This portion will be completed by Mary Asheim.***Note: Items routed as information by SCC will have date that policy was routed listed below. |
| 1. **This policy has been reviewed/passed by the following (include dates of official action):**
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| **Senate Coordinating Committee:** |  |
| **Faculty Senate:** |  |
| **Staff Senate:** |  |
| **Student Government:** |  |
| **President’s Cabinet:** |  |

The formatting of this policy will be updated on the website once the **content** has final approval. Please do not make formatting changes on this copy. If you have suggestions on formatting, please route them to ndsu.policy.manual@ndsu.edu. All suggestions will be considered, however due to policy format guidelines, they may not be possible. Thank you for your understanding!

**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 University Risk Manager, 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 University Risk Manager or contact the University Risk Manger 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 University Risk Manager or University General Counsel. 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.

1. 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 University General Counsel or the University Risk Manager 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 GENERAL COUNSEL IMMEDIATELY IN SUCH SITUATIONS.
2. 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.
3. 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