

A Primer on State Employee Liability

A. “The King Can Do No Wrong!”: The Doctrine of Sovereign Immunity

The general rule is that state of Texas cannot be sued without its consent, which, in the absence of a statutory waiver (see below), is secured by petitioning the Texas legislature for permission to sue.

B. Indemnification for State Employees and Officers

The State will pay for actual damages, court costs, and attorney’s fees incurred by:

1. A state employee or officer (e.g., agency governing board member);
2. A former employee or officer if the damages arose during his or her prior service;
3. A person serving on a foundation or association board at university request; and
4. A single person may be indemnified up to \$100,000.

Texas Civil Practice and Remedies Code, Sections 104.001 and 104.003.

C. Conduct Covered

The State will pay only if the damages are based on an act or omission occurring during the course and scope of employment or service and only if:

1. The conduct is negligent (willful, wrongful, grossly negligence acts not covered);
2. Rights violations are alleged (bad faith, reckless disregard of rights not covered);
3. The Texas Attorney General finds coverage to be in state’s best interests.

Texas Civil Practice and Remedies Code, Section 104.002.

D. In a Personal Injury Case, Only the State Can Be Sued

Absent the most unusual circumstances, only the state can be sued for personal injury. Two statutory rules apply:

1. If a suit is filed against both the University and an employee, upon filing of a motion, the employee is dismissed;
2. If an employee, acting within the scope of his or her employment is sued, and the suit could have been brought against the University, the employee “shall be dismissed” from the case.

Texas Civil Practice and Remedies Code, Section 101.106.

E. Extending the “Mantle” to State Employee – Official Capacity

A suit against a State employee in his or her “Official Capacity” is a suit against the office, rather than against the employee as an individual or private citizen. When the employee leaves office, the suit does not follow him or her. A State employee normally is immune from liability for his or her negligent actions, provided he or she:

1. Acted within the course and scope of his or her authority; and,
2. In good faith.

F. What to Do if You are Sued

Notifications

Notifications should be made up the chain of command. If you can do so within university protocol, notify the system Vice Chancellor and General Counsel as soon as possible because:

the state is not liable for the defense of an action covered by this chapter or for the damages, court cost or attorney’s fees unless . . .the person against who the action is brought delivers to the attorney general all process served on the person not later than the 10th day after the day of service.

Texas Civil Practice and Remedies Code Section 104.00.

This provision imposes specific responsibilities upon an employee who is sued. Especially if the employee is sued in his or her individual or private citizen capacity, he or she must send a letter requesting representation and all legal documents (Summons and Complaint or Citation and Petition) to:

Attorney General Greg Abbott
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

This notice can be sent through university channels, but the employee should be mindful of the specific statutory obligations imposed upon him or her.