

§8112. Defense and indemnification of employees

1. When a governmental entity is not liable. A governmental entity, with the consent of the employee, shall assume the defense of and, in its discretion, may indemnify any employee against a claim which arises out of an act or omission occurring within the course and scope of employment and for which the governmental entity is not liable. Except as otherwise provided herein, in lieu of assuming the defense of an employee, a governmental entity may pay the reasonable attorneys' fees and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity is not liable for the attorneys' fees and defense costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omissions in question. In addition, after the litigation against the employee is concluded, a governmental entity may recoup any attorneys' fees and costs paid to outside counsel on behalf of the employee if the governmental entity proves that the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if notice is not required to have been filed as provided in section 8107 or if the employee does not notify the governmental entity within 30 days after receiving actual written notice of the claim or within 15 days after the service of a summons and complaint, if the governmental entity is prejudiced by the lack of such notice.

[PL 1987, c. 740, §10 (RPR).]

2. When the governmental entity is liable. A governmental entity shall, with the consent of the employee, assume the defense of and shall indemnify any employee against a claim which arises out of an act or omission occurring within the course and scope of employment and for which sovereign immunity has been waived under section 8104-A, under another law or by legislative authorization. Except as otherwise provided herein, in lieu of assuming the defense of an employee, the governmental entity may pay the reasonable attorneys' fees and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity shall not be required to indemnify its employee and is not liable for the attorneys' fees and court costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omissions in question. In addition, after the litigation against the employee is concluded, a governmental entity shall be relieved of any obligation to indemnify the employee for punitive damages and may recoup any attorneys' fees and costs paid to outside counsel if the governmental entity proves that the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if notice is not required to have been filed as provided in section 8107 or if the employee does not notify the governmental entity within 30 days after receiving actual written notice of the claim or within 15 days after the service of a summons and complaint if the governmental entity is prejudiced by the lack of such notice.

[PL 1987, c. 740, §11 (RPR).]

2-A. Suits against employees under federal law. A governmental entity, with the consent of the employee, shall assume the defense of and, in its discretion, may indemnify any employee against any claim that is brought against the employee under any federal law and that arises out of an act or omission occurring within the course and scope of employment. Except as otherwise provided herein, in lieu of assuming the defense of an employee, the governmental entity may pay the reasonable attorneys' fees

and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity is not liable for the attorneys' fees and court costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omission in question. In addition, after the litigation against the employee is concluded, a governmental entity may recoup any attorneys' fees and costs paid to outside counsel if the governmental entity proves the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if the employee does not notify the governmental entity within 15 days after the service of a summons and complaint if the governmental entity is prejudiced by the lack of such notice.

[PL 1987, c. 740, §12 (NEW).]

3. Act or omission outside course or scope of employment. In cases when a governmental entity is obligated to indemnify an employee under subsection 2, the governmental entity may refuse to indemnify its employee if a court determines that the act or omission of the employee occurred outside the course and scope of that employment.

[PL 1987, c. 740, §13 (AMD).]

4. Conditions under which discontinuation prohibited.

[PL 1987, c. 427, §5 (RP).]

5. Consent to suit; limit on recovery from employee. In any action on a claim against the State:

A. Which is in excess of the limit established in section 8105, subsection 1 and for which the Legislature has granted special authorization to proceed within a specified limit; or [PL 1977, c. 578, §4 (NEW).]

B. For which the State is immune and for which the Legislature has granted special authorization to proceed within a specified limit; [PL 1977, c. 578, §4 (NEW).]

the award of damages, including costs, against both the State and its employee shall not exceed the limit established by the Legislature. If, however, it is found that the act or omission occurred outside the course or scope of employment, the award of damages against that employee may exceed the limit specified by the Legislature.

[PL 1977, c. 578, §4 (NEW).]

6. This action shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

[PL 1977, c. 578, §4 (NEW).]

7. Independent contractors; leases. A governmental entity may, in its discretion, assume the defense of and may indemnify any person who is providing services to the governmental entity pursuant to a written contract or with whom the governmental entity has entered into an agreement for the lease of premises.

[PL 1977, c. 578, §4 (NEW).]

8. Liability under section 8104-D. A governmental entity shall purchase insurance or self-insure on behalf of its employees to insure them against their personal liability to the limit of their liability under section 8104-D and, to the extent that insurance coverage is not available, shall assume the defense of and indemnify those employees to the limit of their liability under section 8104-D.

[PL 1987, c. 740, §14 (NEW).]

9. Certain suits arising out of use of motor vehicles. A governmental entity is not required to assume the defense of or to indemnify an employee of that governmental entity who uses a privately owned vehicle, while acting in the course and scope of employment, to the extent that applicable liability insurance coverage exists other than that of the governmental entity. In such cases, the employee of the governmental entity and the owner of the privately owned vehicle may be held liable for the negligent operation or use of the vehicle but only to the extent of any applicable liability insurance, which constitutes the primary coverage of any liability of the employee and owner and of the governmental entity. To the extent that liability insurance other than that of the governmental entity does not provide coverage up to the limit contained in section 8105, the governmental entity remains responsible for any liability up to that limit.

[PL 1995, c. 462, Pt. C, §1 (REEN); PL 1995, c. 462, Pt. C, §§2,3 (AFF).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §4 (RPR). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 427, §§3-5 (AMD). PL 1987, c. 740, §§10-14 (AMD). PL 1993, c. 707, §§G7,8 (AMD). PL 1993, c. 707, §G9 (AFF). PL 1995, c. 462, §C1 (AMD). PL 1995, c. 462, §§C2,3 (AFF).

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