

Liability of State Employees

State of North Dakota
Office of Management & Budget
Risk Management Division

Although a state employee enjoys certain protections, the employee can still be sued for job-related actions or decisions. The real question is whether the lawsuit will be successful. The North Dakota Legislature has enacted several laws to protect state employees from job-related lawsuits. However, the employee must follow all established procedures in order to be protected by these laws. These procedures, and the employee's responsibilities, are explained briefly in this fact sheet.

Within the Scope of Employment

North Dakota law provides that a lawsuit based on the actions of a state employee "within the scope of the employee's employment" must be brought against the State and not the state employee. A state employee's actions are "within the scope of employment" if the employee was performing duties or tasks lawfully assigned to the employee. These protections apply to temporary and permanent employees, present and former officers or employees of the State and all persons acting in an official capacity on behalf of a state agency, board, commission or department.

Statutory Immunity

However, if the person bringing a suit ignores state law and sues a state employee, as an individual, for job-related actions, the employee has "statutory immunity" under state law. Under this statutory immunity, a state employee may not be held "personally liable" – that is, be ordered by a court to pay money damages out of his or her own pocket – for job related actions with the employee's scope of employment.

The person suing has the burden of convincing the court that the employee was not acting "within the scope of employment." The law provides additional immunities to protect state employees. For example, a state employee may not be held liable for:

- Discretionary actions;
- Legislative or rule-making activities;
- Judicial or quasi-judicial actions, like deciding a contested case or appeal; or
- Exercising reasonable care in implementing a statute or rule, even if that statute or rule later is found to be invalid.

Other Jurisdictions

If one of these immunities applies, the state employee should be dismissed from the lawsuit.

A federal court or a court in another state may not apply all of the protections given by North Dakota law and our state laws do not necessarily apply in those courts. To deal with this possibility, state law provides that, except for punitive damages, the State will "indemnify" (or stand behind by insuring) a state employee who is found personally liable for actions "within the scope of employment," if that employee gave timely notice of the claim and cooperated in the defense of the case.

The Lawsuit

Courts or juries sometimes award “punitive damages” to people who sue successfully. The purpose of these particular awards is to punish the person who committed the wrongdoing. Punitive damages are awarded rarely and usually only for extreme misconduct. The State will not pay a “punitive damage” award for a state employee.

The law requires anyone who sues a state employee for job-related actions to send a copy of the legal papers starting the lawsuit to the State’s Office of Management and Budget (OMB). When OMB receives these papers, someone from the Risk Management Division of OMB or the Office of Attorney General will contact the employee. If a state employee is served with legal papers, however, the employee should not wait to be contacted by OMB.

- ◆ **If a state employee is sued, the employee should notify the supervisor and the Office of Attorney General immediately, in writing.**

If Legal Papers Are Served

Depending on the case, the State may provide an attorney hired by the Risk Management Fund or an attorney from the Office of the Attorney General to represent the employee. While the employee may choose to hire a private attorney, the State will not pay the private attorney’s fees, nor will it pay a judgment against the employee if the case is lost.

- Write down the DATE the legal papers were received, and how the papers were delivered.
 - IMMEDIATELY contact the agency supervisor and the Office of Attorney General.
 - Give written notice of the lawsuit to the head of the agency and the Office of Attorney General within 10 days of being served with legal papers. The state employee MUST do this in order to qualify for many of the available benefits.
 - If the employee wants the state to provide a lawyer, a written request for defense must be given to the agency head and the Office of Attorney General within 10 days of the papers being received. It’s best to do this immediately.
 - Give the legal papers to the designated attorney along with the relevant background information.
- ◆ **To qualify for representation by a state attorney, and most other related benefits, the employee must provide full cooperation and complete disclosure throughout the defense of the case.**

Minimize the Risks

If a state employee is concerned that job-related actions or decisions are putting the agency or the State at risk of being sued, please discuss the situation with the appropriate supervisor. The supervisor may wish to contact the agency’s attorney or the Risk Management Division to discuss the issue further and take appropriate actions to minimize the risks of a lawsuit.

Contact Information

More information on this subject as well as information on reducing the risk of law-suits is available from:

- The Risk Management Division, Office of Management & Budget, 1600 East Century Ave., Suite 4, Bismarck, ND 58503-0649; Tel: (701) 328-7584, Fax: (701) 328-7585. E-mail: rminfo@nd.gov; or online at www.nd.gov/omb/agency/risk-management-services