

UTAH DEPARTMENT OF HUMAN SERVICES

POLICY AND PROCEDURES

Policy: 01-01

Effective Date: May 15, 1984
Revision Date: November 1, 2016

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FORMAL LEGAL PROCEEDINGS PROCEDURE

RATIONALE: If the occasion arises whereby individual Department employees are named in lawsuits against the State, it is imperative that certain procedures be followed for the protection of the Department and the employee. The Office of the Attorney General has responsibility to represent the State in all legal suits

I. POLICY:

- A. Department of Human Services employees (including officers, board members, and other individuals as defined in [Utah Code Ann. § 62A-1-105](#)) may be named as defendants in lawsuits. There are certain procedures that must be followed when an employee is named as a defendant in a lawsuit.
- B. The Office of the Attorney General has the responsibility to represent the State. Individual employees, personally named in a suit, are not required to hire private counsel if the criteria for State representation, as found in the [Utah Governmental Immunity Act](#), are satisfied. This Act provides that the State shall defend any action brought against its employees arising from acts or omissions occurring during the performance of the employee's duties, within the scope of the employee's employment, or under color of authority.

II. PROCEDURE:

- A. If an employee receives a legal document entitled, "Notice of Claim", "Complaint", "Summons", "Temporary Restraining Order", or a similar document, immediate action is necessary to meet statutory deadlines.
- B. No later than the end of the following business day after receipt of such document, the employee shall notify in writing their Division/Institution/Office (D/I/O) Director and provide all documents or items, including but not limited to, any receipts, accompanying materials, and the envelopes they were mailed or delivered in, to their assigned Assistant Attorney General.
- C. If the employee fails to make a proper written request to defend employee or fails to reasonably cooperate in the defense, the State may not defend the employee or pay any judgments, compromises, or settlements against the employee. See [Utah Code Ann. § 63G-7-902 \(2\)\(a\)](#).
- D. Officers, board members, and other individuals who are not employees of the Department, and yet still work in direct involvement with the Department, shall also comply with section II (B) of this policy.
- E. If more than one employee is named in a lawsuit, each employee shall individually comply with this policy.

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- F. The State may decline to defend or decline to continue to defend an employee, or pay any judgment, compromise, or settlement if:
1. the alleged acts or omissions did not occur during the performance of the employee's duties, within the scope of the employee's employment, or under color of authority;
 2. the injury or damage resulted from the fraud or willful misconduct of the employee;
 3. the injury or damage resulted from the employee driving or being in physical control of a vehicle while under the influence of alcohol and/or any drug;
 4. the injury or damage resulted from being physically or mentally impaired because of the use of alcohol and/or a non-prescribed use of a controlled substance; or
 5. the employee gave false testimony in a judicial or administrative proceeding.
- G. As a matter of practice, once a lawsuit has been initiated, there should be no discussion of the case with any person, without the involvement of the Assistant Attorney General assigned to the case. Any attempts to contact the employee, by the person who is suing the Department, their attorney, or any other person, should be reported to the assigned Assistant Attorney General on that matter. All employees are requested not to discuss pending litigation without the involvement of the Attorney General's Office.

Date: _____

Ann Silverberg Williamson, Executive Director
Department of Human Services