

**DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

DEPARTMENTAL PERSONNEL MANUAL SYSTEM

DPM LETTER: 1000-1

DATE: DEC 22 1999

SUBJECT: Reimbursement for Professional Liability
Insurance

PURPOSE

Effective October 1, 1999, section 636 of the Treasury, Postal Service and General Government Appropriations Act, 1997 (Treasury Appropriations Act), (5 U.S.C. prec. 5941 note), as amended by section 642 of the fiscal year 2000 Treasury Appropriations Act, requires agencies to reimburse a "qualified employee" (an agency employee in the position of law enforcement officer, supervisor or management official) for up to one-half of the annual premium costs incurred by such employee for professional liability insurance. This directive establishes the U.S. Department of Transportation's (DOT) policy implementing that requirement.

BACKGROUND

Generally, when an employee is sued while acting in the scope of his or her employment, the United States will be substituted as the proper defendant, and the Department of Justice (DOJ), in defending the case, will assign an attorney at no cost to the employee. However, in certain limited circumstances, DOJ may determine that defending the employee is not in the best interest of the Government and, therefore, may refuse to defend the employee. Also in very rare cases, an employee can be found personally liable for constitutional torts while acting within the scope of his or her duties (generally referred to as "Bivens" actions) or for on-the-job misconduct. Because of such possibilities, an employee may choose to purchase private professional liability insurance. Such insurance, as defined by the Act, includes coverage for administrative, judicial proceedings and investigations. It should be noted that in the event DOJ does agree to defend the employee, a professional liability insurance policy may contain a provision allowing the insured to request that the insurer provide him with an attorney, selected by the insurer, to monitor and oversee the defense being provided by the United States. The decision to buy professional liability insurance is a personal choice for each employee, and DOT neither encourages nor discourages purchasing such insurance.

FILING INSTRUCTIONS: File with DPM Chapter 1000 Letters

DISTRIBUTION: Personnel Council Members

OPI: M10/JBudnik/(202) 366-9439

QUALIFIED EMPLOYEES

The term "**law enforcement officer**" (LEO) means an employee, the duties of whose position are primarily the investigation, apprehension, prosecution, or detention of individuals suspected or convicted of offenses under the criminal laws of the United States, including any law enforcement officer under section 8331(20) or 8401(17) of title 5, U.S.C., or under section 4823 of title 22, U.S.C. Determinations on employee eligibility for liability insurance reimbursement as an LEO must be consistent with determinations on LEO coverage for retirement.

The term "**supervisor**" means an individual employed by an agency having the authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "**supervisor**" includes only those individuals who devote a preponderance of their employment time to exercising such authority. Determinations on employee eligibility for liability insurance reimbursement as a supervisor must be consistent with determinations on supervisory status for labor relations purposes.

The term "**management official**" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency. Determinations on employee eligibility for liability insurance reimbursement as a management official must be consistent with determinations on management official status for labor relations purposes.

INSURANCE POLICY DEFINITION

The term "**professional liability insurance**" means insurance which provides coverage for:

- (A) legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error, or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of such individual's official duties as a qualified employee; and
- (B) the cost of legal representation for the covered individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual while in the performance of such individual's official duties as a qualified employee, and other legal costs and fees relating to any such administrative or judicial proceeding.

OPERATING ADMINISTRATIONS

For purposes of this policy, the term “**Operating Administration,**” (OA) includes those organizations listed in 49 CFR 1.3, or its successor, as well as the Office of Secretary, the Transportation Administrative Service Center and the Office of Inspector General. New organizational elements of equivalent status shall also be covered when they are created.

SETTING THE REIMBURSEMENT RATE

DOT intends to reimburse qualified employees 50% of their annual professional liability insurance premium or \$150.00, whichever is less. However, because the OAs did not have the opportunity to budget for this added expense in their FY 2000 and FY 2001 budgets, and since we are already well into FY 2000, reimbursement rates will be phased in as follows.

Upon issuance of this policy, each OA must set a reimbursement rate for FY 2000 of not more than 50% nor less than 20% of the annual premium. Once set, the reimbursement rate shall apply uniformly to all qualified employees in the OA and shall remain in effect for the remainder of the FY. The OA must notify all qualified employees of the opportunity for reimbursement and appropriate program information, including the reimbursement rate and procedures to claim reimbursement.

Prior to the beginning of FY 2001, each OA must set a reimbursement rate for FY 2001 of not more than 50% nor less than 35% of the annual premium, which shall apply uniformly to all qualified employees in the OA for the entire FY. If the reimbursement rate is different from that set for FY 2000, the OA must notify all qualified employees of the new reimbursement rate.

Beginning with FY 2002, the reimbursement rate for all qualified DOT employees shall be 50% of the annual premium. If that reimbursement rate is different from that set for FY 2001, the OA must notify all qualified employees of the new 50% reimbursement rate.

In setting the FY 2000 and FY 2001 reimbursement rates, OAs should consider budget availability, the number of qualified employees, and any other appropriate factors.

AMOUNT OF REIMBURSEMENT

Reimbursement shall be limited to the lesser of:

- (a) The established percentage of the annual premium; or
- (b) \$150.00 per year.

REQUIREMENTS FOR REIMBURSEMENT

- The employee must be currently employed in a position at DOT that meets the definition of LEO, supervisor or management official.
- Reimbursement may be made only for professional liability insurance as defined herein.
- Reimbursement is authorized only for fully paid annual premiums. Employees who opt to pay premiums on a quarterly, semi-annual, or other partial basis must wait until the annual premium is fully paid before submitting a request for reimbursement.
- Reimbursement is authorized only for new policies effective on or after October 1, 1999, or for renewal of annual policies on or after that date.

REIMBURSEMENT REQUEST PROCEDURES

Typically, an employee's immediate supervisor serves as the approving official for reimbursing employee expenses. However, operating administrations have the discretion to designate someone other than the immediate supervisor to approve reimbursement, and such designation would apply to reimbursement of premiums for professional liability insurance.

To claim reimbursement, an employee must submit to the approving official:

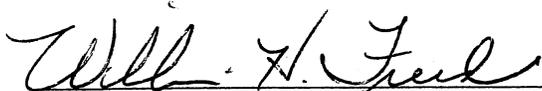
- A properly completed SF-1164 (Claim for Reimbursement for Expenditures on Official Business) ;
- A copy of the insurance policy or other documentation evidencing the purchase of professional liability insurance; and
- Proof of full payment of the annual premium for which reimbursement is being sought.

The approving official shall review the documentation to ensure all requirements for reimbursement have been met and shall forward approved requests to the appropriate accounting office for payment.

Questions concerning a specific request for reimbursement, including questions concerning whether an employee meets the definition of LEO, supervisor or management official, or if the insurance meets the definition of professional liability insurance under the Act, should be addressed to the servicing human resources office, who shall consult with the legal office, as appropriate, in rendering advice.

INSURANCE POLICY CANCELLATION AND REFUNDS

At any time the cancellation of a liability insurance policy, whether by the policyholder or the insurance carrier, results in a refund from the insurance carrier of all or any part of the annual premium, the employee must notify his or her servicing human resources office or other designated office within 30 days of the refund receipt. The employee must also provide information requested by the human resources office or other designated office to assist them in determining the amount of the refund representing the prorated reimbursement of the premium that the employee received from the government. The employee must repay the pro rata amount to the government.



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