

OSBHE FINANCIAL ADMINISTRATION STANDARD OPERATING MANUAL

This policy was developed prior to implementation of Banner FIS. Therefore, specific information related to the previous accounting system (FMS) is no longer relevant. This policy is made available on-line since certain general principles are still applicable. If you have questions, please contact the Controller's Division at (541) 737-3636 / cdwebmaster@ous.edu. Applicable sections of this policy will be transitioned to the new Fiscal Policy format as time and resources permit.

SECTION 07.03 INSURANCE FUND - LIABILITY (Last Revised 01/89)

A SCOPE OF LIABILITY COVERAGE

The Insurance Fund is a State self-insurance program to defend, save harmless and indemnify State agencies, officers, employees and agents against any tort claim or demand arising out of an alleged act or omission, including operation of motor vehicles, occurring while acting within the scope of their employment or duties. Injured parties may file liability claims against the State under certain circumstances. However, there is no liability for discretionary acts. Insurance fund premiums are based on the class of exposure, number of employees and loss history. For further information see ORS 278.100 - 278.215, and Department of General Services Policy 125-7-201, Liability Insurance.

[1] Claims Covered by Insurance Fund

Insurance is provided for tort claims against the Department of Higher Education, institutions, employees and agents including:

- General liability claims, including damage caused by pollution.
- Professional liability claims (e.g., malpractice).
- Personal injury (e.g., libel, slander or discrimination).

Non-owned property leased, controlled, or possessed by an institution is covered by the Insurance Fund for loss, damage or destruction due to employee negligence while in the course and scope of employment. Additional information regarding claims involving each of the following is contained in the indicated section:

- Motor Vehicles (see 07.07)
- Aircraft (see 07.08)
- Activities in foreign countries. Claims are primarily covered by foreign liability insurance which provides higher limits and extended coverage (see 07.06).

[2] Tort Claim Excluded from Insurance Fund Coverage

Insurance is not provided for tort claims arising from acts or omissions involving either:

- Malfeasance in office, or
- Willful or wanton neglect of duty.
- An injury or death of any person covered by Worker's Compensation.
- Collecting or assessing of taxes.
- Claims limited or barred by any other statute.
- Riot, civil commotion, mob action or their prevention.
- Acts done under unconstitutional laws or regulations, but only the liability of the law had been constitutional.

[3] Persons Covered by the Insurance Fund

The following are covered by the State Liability Fund:

- a. All officers and employees including student government officers and student workers who provide services for pay for Auxiliary Enterprise organizations.
- b. Volunteer workers under the direction and control of, and performing services on behalf of the Department of Higher Education.
- c. Medical, dental and allied health service students, interns and residents performing medical, dental or health service functions at an institution.
- d. Paid trainees and fellows, and licensed medical personnel of OSU. (Ref.: ORS 30.267 - 30-268 and FASOM 07.01D).
- e. Other persons who are acting as agents of the Department of Higher Education.

[4] Persons Not Covered by the Insurance Fund

The following are not covered by the State Insurance Fund unless they are acting as agent of ODHE:

- Student teachers, student nurses, and students in other practicum and intern programs.
- Volunteers working for and employees paid by student governments or student activities.
- Volunteers working for and employees paid by affiliated organizations such as foundations and alumni associations.

[5] Statutory Limits on Liability

The liability of an institution or person covered by the Insurance Fund for claims arising out of a single accident or occurrence is limited by ORS 30.270 to:

- \$50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages.
- \$200,000 to any claimant for all other claims.
- \$500,000 aggregate to all claimants for all claims.

No award can be made for punitive damages. The above limitations include damages for loss of service or support.

B TORT LIABILITY CLAIMS

Claimants may file claims against the ODHE, institutions, employees or agents for damages resulting from acts or omissions in the performance of duty in accord with ORS 30.275.

Institutions must notify Risk Management Division of all potential claims, written notices of claims, and tort liability suits. Send notices to:

Claims Section
 Risk Management Division
 1225 Ferry Street S.E.
 Salem, OR 97310
 (Phone: 378-6315 or 1-800-452-7813)

[1] Reporting Incidents

A written, narrative report of the event or circumstances on which a claim or potential claim is based should be sent to Risk Management Division. The report should include, when available, the following:

- Time and place of the accident or event.
- An explanation of the circumstances giving rise to the claim or potential claim.
- Name, address and phone number of each person involved and each person involved or

- who witnessed the event.
- A statement of the circumstances from each person involved and each witness.
- Name, title, address and phone number of the institution representative who will be available for further discussion.

[2] Inquiries About Claims

Direct an individual who inquires about filing a claim to Risk Management Division. Obtain details and notify Risk Management Division of the potential claim per B[3].

[3] Potential Claim

Notify Risk Management Division in writing within 10 days of the occurrence or knowledge of an accident, incident or other event that can reasonably be assumed will result in a liability claim. Department of General Services form 125-07-221, Insurance Fund Liability Claim/Suit Transmittal, may be used to report potential claims.

[4] Written Notice of Claim

On receipt of a written notice of a claim, forward immediately to Risk Management Division with the following information:

- Name of the person on whom the notice was served.
- Name of the person who presented the notice, if delivered.
- Date received.

Within 10 days, prepare and send to Risk Management Division a report of the accident, incident or other event involved.

- Time, place and details of the incident.
- Name, address, phone number, and statement of persons involved and any witnesses.
- Name, address, and phone number of agency contact persons.

[5] Written Notice of Suit

Upon being served with a summons or other notice of a tort liability law suit, notify the Claims Manager, Risk Management Division by phone or in writing. Immediately forward all summons, complaint papers and written request for Insurance Fund coverage to:

Chief Counsel
Trial Division
Department of Justice
State Office Building
Salem, OR 97310

Send one copy of documents to:

Chief Counsel, Higher Education
Department of Justice
540 Citizen's Building
975 Oak Street
Eugene, OR 97401

[6] Defense of Claims

The Attorney General's office will defend or negotiate to settle all claims that fall within the scope of the Insurance Fund. The Attorney General will reject the defense of a claims if it is determined that the act of omission complained of either:

- was not in the performance of duty,
- amounted to malfeasance in office, or
- amounted to willful or wanton neglect of duty.

C INSURANCE FUND ASSESSMENTS

The Department of General Services assesses the Department of Higher Education each November for its share of Insurance Fund support annually as of July 1. The overall Insurance Fund assessment is then broken down into individual institutional assessments based on each institution's number of employees and claim experience.

D REFERENCES

Additional information regarding the Insurance Fund is contained in the following Oregon Revised Statutes (ORS) and Department of General Services Policies.

- ORS 30.260 to ORS 30.300, Tort Actions against Public Bodies.
- ORS 278.120, Defense of Claims by Attorney General.
- ORS 278.425, Insurance Fund.
- GS Policy 125-7-201, Liability Insurance
- GS Policy 125-7-201, Part A: General Liability
- GS Policy 125-7-201, Part B: Motor Vehicle Liability
- GS Policy 125-7-204, Tort vs. Non-Tort Claims or Suits