

Policy on Indemnification of Employees

FAQs

1. What is the purpose of the Employee Indemnification Policy? And, why is it important for me?

— Indemnification, in a general sense, means a duty to make good on any loss, damage, or liability incurred by another. The Employee Indemnification Policy [FM V(II)] sets forth the College’s duty to hold an employee harmless for expenses, damages, or liability incurred resulting from a legal claim interposed against an employee (for acts or conduct within the scope of the employee’s duties at the College). The Policy also sets forth the conditions an employee is required to follow to be eligible for indemnification. The likelihood of a Union College employee being subject to a legal claim by a third party (e.g., student or parent) is remote and historically, at Union College, a rare occurrence. However, due to the litigious nature of our society an employee, while performing job duties, could be the subject of a lawsuit. As such, it is important for College employees, subject to a legal claim, to understand: (i) Union’s duty to provide an employee legal counsel to defend the action of the employee and to hold the employee harmless for any damages he/she is found responsible for, and (ii) the conditions they must satisfy in order to be entitled to indemnification protection.

2. The Employee Indemnification Policy provides, as an exclusion, that the Policy shall not extend to any action to the extent it may be indemnifiable under any College insurance policies then in place. What does this mean?

— The College has put into place a comprehensive insurance program covering Union College (the “entity”), the Board of Trustees, Board and College officers, as well as all employees of the College. Typically, when litigation is commenced by a third party, the attorney representing the aggrieved party will sue Union College, the entity, as well as any individuals who are deemed to have responsibility for the actions that form the basis of the cause of action. As such, should an employee be subject to a legal claim, there is a great likelihood that the College’s insurance program will provide the employee legal defense and protection from any damages he/she is found responsible for. Therefore, the College’s indemnification obligation would be satisfied, to the extent that the claim is indemnifiable, under the College’s insurance policies. The College’s carrier has an obligation to respond promptly to a notice of legal claim. If the carrier denies coverage, then the request for indemnification will be reviewed in accordance with the Indemnification Policy by the Vice President for Administration and Finance, the Director of Budgets and Risk Management, Board Counsel, and the College’s general counsel by applying the “conditions” set forth in the Indemnification Policy.

3. As a condition, the Employee Indemnification Policy sets forth that the employee’s alleged actions or omissions were done in good faith, without criminal or other willful

misconduct (e.g., conduct demonstrating a substantial disregard and/or intentional neglect of duties and obligations). What factors are considered to make this determination that the employee acted in good faith?

— The factors applied by the College to make the determination that the employee acted in the best interest of the College include, but are not limited to: (i) the employee appeared to have followed, in good faith, College policies; (ii) in matters of questionable propriety or uncertainty, the employee consulted with College officials and appeared to have followed the recommendations; (iii) the employee appeared to have acted to minimize the damage to the College's reputation by limiting the dissemination of information that has consequences for compliance with law and College policies to those who reasonably had a need to know that information.

4. Who should I contact if I am served with a summons and complaint or receive notification of a claim interposed on behalf of a third party by a state or federal agency (e.g., the Office for Civil Rights)?

— In accordance with the College's policy, you are obligated to give the Vice President for Administration and Finance prompt written notice of such claim or action including, for example, forwarding a copy of any summons and complaint, notice, demand, pleading, etc. Upon receipt of the legal documents, the Vice President for Administration and Finance will notify the College's insurance carrier. The Indemnification Policy provides that any delay in promptly notifying the Vice President for Administration and Finance can disqualify the employee from indemnification. The reason for the requirement of providing prompt written notice is to be able to respond to the legal document in accordance with the applicable deadline. Failure of a party, subject to a legal action, to respond in a timely manner can result, for example, in a default judgment being entered.

5. Do I need to hire own (personal) attorney if I am named in a lawsuit as a result of the performance of my job duties?

— The short answer is probably "no", because, as noted, the College's insurance carrier will assign a defense attorney to defend you and represent you throughout the legal proceeding. The assigned attorney is ethically bound to represent you. However, if you elect to seek representation from your personal attorney, you are obligated to bear the cost of this representation.

6. If I have questions about the Employee Indemnification Policy, who should I contact?

— If you have any questions, please contact the Dean of Faculty and Vice President for Academic Affairs, Strom Thacker (518-388-6102; thackers@union.edu)