

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania
Governor's Office

Title

Management Directive 310.41, Reporting of General Tort Fund Claims

Date

September 15, 2021

By Direction of

Curtis M. Topper, Secretary of General Services

Contact Agency

Department of General Services, Bureau of Finance and Risk Management, Telephone 717.787.2492

This directive establishes policy, responsibilities, procedures, and limitations for the submission and payment of claims under the General Tort Fund administered by the Department of General Services (DGS), Bureau of Finance and Risk Management.

1. PURPOSE.

To establish policy, responsibilities, procedures, and limitations for the submission and payment of claims through the General Tort Fund.

2. SCOPE.

This directive applies to all departments, offices, boards, commissions, and councils (hereinafter referred to as "Agency") under the Governor's jurisdiction. An Entity not under the Governor's jurisdiction that seeks coverage through the General Tort Fund will be required to comply with this directive.

3. OBJECTIVES.

To ensure that all Agencies and Entities follow the appropriate actions when an accident or occurrence results in potential liability exposure to the Commonwealth and to ensure that all Agencies and Entities understand the limitations of the coverage afforded by the General Tort Fund.

4. DEFINITIONS.

- a. Agency.** An administrative department, board, commission, or office; departmental administrative board or commission; or other agency or official of the Commonwealth subject to *The Administrative Code of 1929, 71 P.S. §§ 51 - 732*.
- b. Entity.** Any administrative department, board, commission, or office; or any legislative or judicial body or official of the Commonwealth not subject to *The Administrative Code of 1929, 71 P.S. §§ 51 - 732*, that elects coverage through the General Tort Fund.

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- c. **General Tort Fund.** The self-insurance fund administered by DGS that provides coverage for tort claims that are filed against Agencies or Entities as a result of the negligence of their employees.

5. POLICY.

- a. DGS has the right to reject or accept claims submitted for payment under the General Tort Fund based upon an investigation into the facts and circumstances surrounding each claim. If DGS rejects coverage, such rejection shall be in writing and forwarded to the Agency or Agencies or Entity or Entities named as defendant(s) in the claim. If DGS accepts coverage, the claim will be paid in accordance with the limits established within this directive.
- b. The limitation of the coverage provided by the General Tort Fund shall be established annually by DGS based on a thorough review of the solvency of the General Tort Fund and the five-year loss history of claims paid. The event threshold will be communicated no later than July 15 of each fiscal year to all Agencies and Entities participating in the program. This event threshold is inclusive of all expenses related to the claim such as litigation costs and attorney's fees. Under extraordinary circumstances, and in the sole discretion of the Office General Counsel acting in consultation with DGS, excess coverage above the limitation of coverage may be approved.
- c. An attorney assigned by the Office of Attorney General (OAG) will defend the Agency or Entity in the event a civil suit is filed unless a conflict or other special circumstances prohibit the same. At the OAG's discretion, legal representation may be delegated back to the respective Agency or Entity counsel.
- d. An Agency or Entity has the right to obtain its own counsel upon receipt of the appropriate delegation from the OAG. DGS retains the right, when appropriate, to preclude or otherwise limit the payment of attorney's fees and litigation costs associated with the Agency's or Entity's choice to use outside counsel.
- e. At the discretion of DGS, outside adjustment services may be contracted on an as-needed basis to assist in the evaluation of claims and potential claims.
- f. DGS has the right to deny coverage when an Agency or Entity fails to notify the DGS administrator of the existence of a claim or potential claim in a timely manner. The payment of claims that do not exceed \$500 must be made by the Agency or Entity and are not reimbursable under the General Tort Fund.

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- g.** Claims involving individual employees, officials, and certain volunteers of the Commonwealth are covered under the Employee Liability Self-Insurance Program (ELSIP) in accordance with the terms and limitations described in *Management Directive 630.02 Amended, Reporting of Employee Liability Self-Insurance Program Claims*.
- h.** Claims involving vehicles of the Commonwealth automotive fleet are covered under the Automobile Liability Self-Insurance Program, (ALSIP) established in response to the passage of *Act 152 of 1978*, commonly known as the *Sovereign Immunity Tort Claims Act*, 42 Pa. C.S. §§ 8521-8527.

6. RESPONSIBILITIES.

- a.** Individuals employed by an Agency or Entity involved in an occurrence that may result in a claim or potential claim that are eligible for coverage under the General Tort Fund shall immediately report the claim or potential claim to the Agency or Entity for which they are employed.
- b.** Agencies or Entities, upon notification of a claim or potential claim, shall prepare a Liability Accident Report (Form STD-430) and submit it as outlined in Section 7, below. If a lawsuit has already been commenced, a copy of the original complaint and evidence of service should be forwarded to the DGS administrator. An attorney assigned by the Office of General Counsel may assist Agencies or Entities with the preparation and submission of claims and potential claims for payment under the General Tort Fund in the event such Agency or Entity does not have its own counsel.
- c.** DGS shall administer the General Tort Fund, review claims and potential claims that are submitted, establish claim files, and has the sole responsibility to evaluate, and possibly settle, claims between \$501 and \$5,000.
- d.** The OAG, or, if a claim is delegated, the Agency or Entity Office of Chief Counsel, and DGS must approve all settlements. In instances wherein the OAG is providing legal representation on behalf of an Agency or Entity, the represented Agency or Entity's Office of Chief Counsel must also approve all settlements in excess of \$100,000. All settlements must be approved in writing by all counsel.

7. PROCEDURES.

- a.** The Agency or Entity Office of Chief Counsel, or the OAG, if representing the Agency or Entity, must submit to DGS a completed Report of Incident/Accident form (STD-430) as soon as practicable once a claim or potential claim involving a Commonwealth employee or official is known. If a lawsuit accompanies the claim, the request must include a

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copy of the complaint or writ of summons (civil suit); a copy of the representation letters provided to all Commonwealth employees or officials; and an estimate of the potential financial liability. Requests should be emailed to RA-BRIM@pa.gov.

- b.** DGS will review the STD-430 and associated claim information to verify eligibility under the General Tort Fund. If eligible, DGS will open a claim file. If a claim is ineligible for coverage, rejection of coverage shall be provided in writing to the Commonwealth employee or official, or the Agency or Entity Office of Chief Counsel, whichever presented the claim for coverage.
- c.** The Agency or Entity Office of Chief Counsel, or the OAG, if representing the Agency or Entity, may submit requests for payment of expenses associated with claims determined eligible for general torts coverage as they are received. The request must include copies of invoices or receipts along with sufficient information for DGS to associate expenses to the tort claim file. No expenses will be paid until the STD-430, along with a copy of the claim (civil suit or other formal documentation of the claim or potential claim) and other required documentation has been received and a general tort claim file has been opened.
- d.** DGS will track the payment of all general torts claim expenses for purposes of Agency and Entity loss history. Unless an excess coverage exception under Section 5.b., above, is approved, general torts coverage is limited to the event limit of coverage per occurrence, inclusive of all claim expenses, litigation expenses, settlements, and any other tort disbursements over the life of the case.
- e.** Upon judgment or settlement of the matter underlying the claim, the Agency or Entity Office of Chief Counsel, or the OAG if representing the Agency or Entity, shall submit a request for payment of the judgment or settlement to DGS. The request must include a completed and fully executed Settlement Memorandum & Invoice (SRIM-47) and a copy of the judgment or settlement agreement. No payment will be made without the SRIM-47 and the judgment or settlement agreement. SRIM-47 forms should be emailed to RA-GSBRIMSETTLE@pa.gov.
- f.** If the total judgment or settlement costs along with paid expenses exceed the event limitation of coverage, DGS shall issue an invoice for payment of all costs exceeding event limitation of coverage to the Agency or Entity Office of Chief Counsel. DGS will not pay such a judgment or settlement amount until funds exceeding the event limitation of coverage have been paid to DGS.