


MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Reporting of Employee Liability Self Insurance Program Claims	Number: 630.2 Amended
Date: July 10, 2018	By Direction of:  Curtis M. Topper, Secretary of General Services
Contact Agency: Department of General Services, Bureau of Risk and Insurance Management, Telephone 717.787.2492	

This directive establishes policy, responsibilities, and procedures for reporting employee liability claims. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To establish policy, responsibilities, and procedures for the Employee Liability Self-Insurance Program (ELSIP) coverage policy for the reporting of certain liability claims, primarily those founded in negligence, against commonwealth employees, officials, or volunteer workers.
- 2. SCOPE.** This directive applies to all departments, boards, commissions, and councils (hereinafter referred to as an "Agency") under the Governor's jurisdiction. An Entity outside the Governor's jurisdiction who seeks coverage under the ELSIP will be required to comply with the policies and procedures herein.
- 3. OBJECTIVE.** To ensure consistent application of policy and procedures when an accident or occurrence results in personal injury liability claims against the commonwealth or its employees, officials, or volunteer workers acting in good faith and in furtherance of commonwealth business.
- 4. DEFINITIONS.**
 - a. Agency.** An administrative department, board or commission; an office; departmental administrative board or commission; or other agency or official of the commonwealth subject to The Administrative Code of 1929, now in existence or hereafter created.
 - b. Entity.** Any administrative department, board or commission; or any legislative or judicial body or official of the commonwealth not subject to the Administrative Code of 1929 that elects coverage in ELSIP.

- c. **Indemnification.** Payment of damages to a claimant/plaintiff on behalf of a defendant, including, where applicable, plaintiff's reasonable counsel fees. Such indemnification may be the result of a judgment, court order or compromise settlement. Under ELSIP, settlement and legal strategy authority are vested in the Agency or Entity defendant and ELSIP, not with the commonwealth employee, official or volunteer worker. Attorney fees for counsel retained by a commonwealth employee, official or volunteer worker defendant may not be reimbursed by ELSIP.
- d. **Occurrence.** An accident or incident, including continuous or repeated exposure to substantially the same general harmful conditions which results in personal injury, bodily injury or property damage, and which is neither expected nor intended from the standpoint of the commonwealth employee, official or volunteer worker.
- e. **Personal Injury Liability.** A claim for damages alleging negligence, employment discrimination, wrongful discharge, sexual harassment, assault, false arrest, defamation, invasion of privacy, errors or omissions, or violation of any other civil rights.

5. POLICY.

- a. Section 2404(b) of the Administrative Code of 1929 provides that DGS shall have the power and duty to "procure public liability insurance covering all state employees, including members of boards and commissions, while engaged in the performance of their duties...." 71 P.S. §634.
- b. Official Opinions 1976-25 and 1978-28 of the Office of Attorney General authorize DGS to establish self-insurance programs for the commonwealth agency and employee liability waived by Act 152 of 1978.
- c. Section 3(c) of Act 152 of 1978 (the Tort Claims Sovereign Immunity Act) directs DGS to develop an efficient risk management and loss prevention program.
- d. Based upon the preceding statutory authority, DGS established the ELSIP to provide protection for commonwealth employees, officials and volunteer workers who, by virtue of their activities for the commonwealth, are exposed to certain liability. DGS, through its administration of the ELSIP, shall:
 - (1) Retain the right to review the eligibility of all claims. If a claim is ineligible for ELSIP coverage, rejection of ELSIP coverage shall be provided in writing to the commonwealth employee, official, volunteer worker, or the Agency or Entity Office of Chief Counsel, whichever presented the claim for coverage.
 - (2) Limit coverage per occurrence to a maximum of \$250,000, inclusive of all claim expenses, litigation expenses, settlements, and any other ELSIP disbursements over the life of the case. Under extraordinary circumstances and in the sole discretion of the Office of General Counsel, in consultation with the DGS, excess coverage may be approved.

- (3) Provide coverage for any commonwealth employee, official or volunteer worker, unless:
 - (a) The claim against the commonwealth employee, official or volunteer worker results from intentional, willful or malicious conduct, or conduct outside the scope of employment or authorized activity; or
 - (b) The commonwealth employee, official or volunteer worker elects to obtain his or her own counsel. If the employee, official or volunteer worker elects to obtain his or her own counsel:
 - 1 Rejection of ELSIP coverage by a commonwealth employee, official or volunteer worker must be provided to DGS in writing; and,
 - 2 Reimbursement of attorney's fees and indemnification for any judgment may be denied.
- e. A commonwealth employee, official or volunteer worker may be personally liable for claims resulting from conduct determined to be intentional, willful or malicious, or conduct outside the scope of employment or authorized activity of the commonwealth employee, official or volunteer worker, and any and all damages arising out of those claims.
- f. The Office of General Counsel will determine whether legal representation will be provided to a commonwealth employee, official or volunteer worker for claims resulting from conduct alleged to be intentional, willful or malicious, or conduct outside the scope of employment or authorized activity of the commonwealth employee, official or volunteer worker in accordance with the provisions of *Management Directive 205.6 Amended Defense of Suits Against Commonwealth Employees* and *4 Pa. Code §§39.1- 39.4*.
- g. DGS reserves the right to seek subrogation from a commonwealth employee, official or volunteer worker for any amounts paid by ELSIP for claims resulting from conduct determined to be intentional, willful or malicious, or conduct outside the scope of employment or authorized activity of the commonwealth employee, official or volunteer worker.
- h. Claims involving vehicles of the commonwealth Automotive Fleet or general tort matters are covered under the other Self-Insurance Programs established under Act 152 of 1978, as amended.

6. RESPONSIBILITIES.

- a. Commonwealth **employees, officials, or volunteer workers** of Agencies or Entities involved in an occurrence that may result in a claim or potential claim shall report immediately to their Agency or Entity Office of Chief Counsel that claims have been or may be made.
- b. **Agencies or Entities** shall notify DGS of a claim or potential claim as outlined in Section 7, Procedures of this directive. Agencies or Entities are responsible for consulting with their respective human resources and legal departments concerning appropriate disciplinary or other personnel actions where claims allege improper conduct against current employees.

- c. **Agency or Entity Head (or designee)** shall approve all requests for ELSIP payment of claims greater than \$10,000. Agency Head (or designee) shall ensure compliance with Office of Administration policy with respect to approval of any underlying prelitigation, administrative or litigation settlement terms involving employment and related parameters.
- d. **DGS** shall review claims for ELSIP eligibility, establish ELSIP-eligible claim files, process expense and settlement transactions for eligible claims through ELSIP fund, and issue annual billings to all agencies or entities participating in the ELSIP.
- e. **Office of Chief Counsel for the Agency or Entity engaging the commonwealth employee, official, or volunteer worker** shall approve all ELSIP requests for payment of claims regardless of amount and whether legal representation is provided by the Office of the Attorney General (OAG) or by Agency or Entity counsel. Agency counsel shall ensure compliance with Office of General Counsel policy with respect to approval and execution of any underlying prelitigation, administrative or litigation settlement agreements entered into by the Agency. Entity counsel is responsible for ensuring any underlying prelitigation, administrative or litigation settlement agreements are approved and executed by the Entity in accordance with applicable law.
- f. **DGS Office of Chief Counsel** shall approve all ELSIP payments of claims in excess of \$10,000.

7. PROCEDURES.

- a. Agency or Entity Offices of Chief Counsel, or the OAG if representing the Agency or Entity, must submit to DGS a Notice of Potential Claim and Request for ELSIP Coverage (STD-542) as soon as practicable once a potential claim or claim involving commonwealth employee, official or volunteer worker liability is known. The request must include a copy of the claim (civil suit, PHRC/EEOC complaint, or other formal documentation of the claim or potential claim); a copy of the representation letters provided to all commonwealth employees, officials, or volunteer workers; and an estimate of the potential financial liability. Requests may be hand-delivered, emailed (RA-GSBRIMELSIP@pa.gov), or mailed first class mail.
- b. DGS will review the STD-542 and associated claim information to verify ELSIP eligibility. If ELSIP eligible, DGS will open a claim file. If a claim is ineligible for ELSIP coverage, rejection of ELSIP coverage shall be provided in writing to the commonwealth employee, official, volunteer worker, or the Agency or Entity Office of Chief Counsel, whichever presented the claim for coverage.
- c. Agency or Entity Offices 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 ELSIP coverage as they are received. The request must include copies of invoices or receipts along with sufficient information for DGS to associate the expenses to the ELSIP claim file. No expenses will be paid until the STD-542 along with a copy of the claim (civil suit, PHRC/EEOC complaint, or other formal documentation of the claim or potential claim) and other required documentation has been received and an ELSIP claim file has been opened.

- d. DGS will track the payment of all ELSIP claim expenses for purposes of Agency and Entity loss history. Unless an exception under Section 5.d.(2) is approved, ELSIP coverage is limited to \$250,000 per occurrence, inclusive of all claim expenses, litigation expenses, settlements, and any other ELSIP disbursements over the life of the case.
- e. Upon judgment or settlement of the matter underlying the claim, Agency or Entity Offices of Chief Counsel, or the OAG if representing the Agency or Entity, shall submit a request for payment of the judgment or settlement. The request must include a completed and fully executed Request for ELSIP Payment of Completed Claim (STD-543) and a copy of the judgment or settlement agreement. No payment will be made without the STD-543 and the judgment or settlement agreement.
- f. If the total judgment or settlement costs along with paid expenses exceed \$250,000, payment of the judgment or settlement shall be made by DGS in the total amount unless DGS approves an alternative arrangement. DGS shall issue an invoice for payment of all costs exceeding \$250,000 to Agency or Entity Office of Chief Counsel. DGS will not pay such a judgment or settlement amount until funds exceeding \$250,000 have been paid to DGS.

This directive replaces, in its entirety, *Management Directive 630.2*, dated May 15, 2013.