

10 KAR 1:011. Defense of employees.

RELATES TO: KRS 12.211, 12.212, 12.213, 12.215, 44.055

STATUTORY AUTHORITY: KRS 12.213

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.213 requires the Governor, with the advice of the Attorney General, to promulgate administrative regulations governing the methods of defense of employees or former employees of the Commonwealth. This administrative regulation establishes the methods for defense of employees or former employees of the Commonwealth.

Section 1. Definitions.

- (1) "Claim" means a claim whether or not a suit has been filed.
- (2) "Civil action" means a civil suit filed in a state or federal court.
- (3) "Defendant" means an employee or former employee of the Commonwealth who has been sued in a civil action in his or her official or individual capacity on account of an act or omission made in the scope and course of his or her employment as an employee of the Commonwealth and any of its agencies, but does not include an employee or former employee of the Commonwealth being sued for negligence in the operation of a state vehicle.
- (4) "State agency" means any department, administrative body, division, or program cabinet acting for the Commonwealth, but does not include local units of government such as school districts, counties, sewer districts, or other municipalities.
- (5) "Acts and omissions liability insurance" means insurance to cover the cost of defending civil actions covered under this administrative regulation and paying judgments or settlements resulting therefrom.

Section 2. Notice of Claim; Investigation. An employee or former employee against whom a claim is made which may result in a civil action against him or her on account of an act or omission made in the course of his or her employment by a state agency shall immediately report the claim and the circumstances surrounding the claim to the Attorney General. The Attorney General may cause an investigation of the claim to be made by a regular or special investigator employed by his or her office.

Section 3. Application for Defense; Response.

- (1) An employee or former employee of the Commonwealth desiring the Attorney General to provide for his or her defense under this administrative regulation shall make a written request to the Attorney General and shall submit with the request a copy of the summons, complaint, and all other papers, documents, and exhibits pertaining to the action.
- (2) If the application for defense is received by the Attorney General at least ten (10) days before a pleading is due, the Attorney General shall make a timely response to the court by filing an answer or motion for the defendant. The filing of a pleading in the case shall not commit the Attorney General to continue the defense if the Attorney General has not reached a final decision and notified the defendant that his or her defense will be provided.
- (3) Upon receiving an application for defense, the Attorney General, after any investigation and research he or she deems necessary, taking into consideration the factors set out in KRS 12.212, shall decide and notify the defendant whether defense will be provided and, if so, by which method set out in Section 4 of this administrative regulation. Unless written acceptance of the defense has been made by the Attorney General, he or she shall not be responsible for the defense of a defendant.
- (4) In every case where the Attorney General has made a general delegation of his or her discretionary power to decide whether to provide defense, the delegated authority shall

make the decision whether to provide defense. If the delegated authority provides legal counsel for the defense, the application for defense provided by this section shall not be filed with the Attorney General. All settlements shall be approved by the Attorney General as provided by Section 6 of this administrative regulation.

Section 4. Methods of Defense.

(1) If a defendant is covered by insurance as provided in Section 5 of this administrative regulation, defense to a civil action may be provided in any of the following manners:

(a) The Attorney General may assign an assistant attorney general or a special assistant attorney general employed for that purpose to handle the case to conclusion by settlement or final adjudication.

(b) The Governor, or any department with the approval of the Governor, may assign a regularly employed attorney pursuant to KRS 12.210 or an attorney employed under a personal service contract to handle the case to conclusion by settlement or final adjudication.

(c) Any state agency may assign its employed counsel to handle the case.

(2) Except as provided in Section 6 of this administrative regulation, and regardless of the method of defense provided, a settlement of litigation being defended under this administrative regulation shall not be made without the approval of the Attorney General.

(3) A defendant who has requested defense under this administrative regulation may elect to provide his or her defense by counsel employed by the defendant and shall notify the counsel employed by the state of his or her election in writing.

Section 5. Insurance.

(1) Any state agency, or class of state agencies, may be authorized by the Governor to purchase acts and omissions liability insurance for the protection of its employees and the benefit of the public.

(2) Any state agency that believes it is economically feasible to purchase acts or omissions liability insurance may request the Governor for authority to do so. The agency's request shall be documented with data as to the history of claims, probable cost of the insurance, and any reasons it believes insurance is advisable.

(3) Any policy of acts and omissions liability insurance purchased by a state agency shall provide a maximum coverage of \$50,000 for each claim. Nothing in this administrative regulation shall be deemed to waive the sovereign immunity of the Commonwealth with respect to a claim covered by this administrative regulation or to authorize the payment of a judgment or settlement against a state employee in excess of the limit provided in any acts or omissions liability insurance purchased by a state agency.

Section 6. Settlements.

(1) Any counsel assigned by a state agency or the Attorney General may recommend to the Attorney General the settlement of a civil action against a defendant under this administrative regulation. If the Attorney General approves the recommended settlement, he or she shall notify the Secretary of the Finance and Administration Cabinet by written memorandum and if the Secretary concurs in the recommendation the Secretary shall issue a voucher to the State Treasurer for payment of the settlement. A settlement shall not be made or paid without prior approval of the Attorney General.

(2) Guidelines for settlements. A settlement shall not be recommended unless the assigned counsel believes:

(a) The claim is legally valid;

(b) There is a strong probability of a judgment being rendered against the defendant;
and

(c) The settlement is a reasonable compromise in light of the nature of the claim.

(3) Defense counsel shall document, in writing, the reasons for recommending a settlement to the Attorney General and the documentation shall be a public record open to public inspection.

(4) This section shall not apply to any settlement reached by a defendant or his or her insurer which results in no cost to the Commonwealth.

Section 7. Cost of Administration. The Attorney General shall be reimbursed for the cost to his or her office for the administration of KRS 12.211 to 12.215 upon vouchers submitted by the Attorney General and approved by the Secretary of the Finance and Administration Cabinet.

(46 Ky.R. 3059; 47 Ky.R. 517; eff. 12-1-2020.)