

## DoD Guidance on Professional Liability Insurance

**Background.** Section 636 of the Treasury, Postal Service, and General Government Appropriations Act for Fiscal Year 1997, Pub. L. 104-208, 110 Stat. 3009-314, 3009-363, as amended by section 642 of the Treasury, and General Government Appropriations Act for Fiscal Year 2000, 113 Stat. 477 (5 U.S.C. note prec.5941) requires agencies to reimburse qualified employees for not to exceed one-half of the costs incurred for professional liability insurance.

"Professional liability insurance" is defined as liability insurance that covers:

(A) Legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error, or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of such individual's official duties as a qualified employee; and

(B) The cost of legal representation for the covered individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual while in the performance of such individual's official duties as a qualified employee, and other legal costs and fees relating to any such administrative or judicial proceeding."

**Coverage.** Employees eligible to receive reimbursement for professional liability insurance are law enforcement officers as defined in section 636(b) of the 1997 Act and supervisors and management officials as defined by 5 USC §7103(a). (See Statutory and United States Code provisions attached.)

**DoD policy.** In accordance with the provisions of section 636 of the 1997 Act, as amended, DoD will reimburse covered employees up to one-half the cost of a covered premium, not to exceed \$150 per year. The reimbursement may be based on either fiscal or calendar year basis, whichever is more efficient to administer. Non-appropriated fund (NAF) employees and military personnel are not covered by the law.

Consistent with Pub. L. 106-58, DoD Components will fund this program from appropriations/accounts available for civilian personnel costs, in accordance with OMB Circular No. A-11, **Preparation and Submission of Budget Estimates**, which places the cost of this insurance under object class 12.1 ("Civilian Personnel Benefits").

**Employee responsibility for reimbursement.** Employees must submit a completed SF-1164, Claim for Reimbursement for Expenditures on Official Business (Attachment 2), an invoice from the insurance carrier (to verify the cost of the premium), the policy number, the name of the insurance company, and proof of payment to the servicing HRO/CPO or HRO/CPO designee. The employee shall maintain a copy of the completed SF-1164 and supporting documentation so that he/she does not inadvertently submit a request for reimbursement that may exceed the maximum allowance of \$150 per year. After eligibility has been confirmed, the HRO/CPO or HRO/CPO designee shall forward the completed SF-1164 and supporting documentation to the paying office. When the package is received by the paying office, if it is not clear from the invoice that the claim qualifies for PLI coverage, the employee must provide evidence to the paying office that the purpose of the claim is to request reimbursement for a PLI policy. Electronic funds transfer (EFT) for PLI reimbursement is required. Employees must provide the EFT data before payment will be made.

**DoD Component HRO/CPO responsibility.** Each DoD Component shall establish processing procedures amenable to its operating environment. Responsibility for determining eligibility may be retained by the Component Headquarters, delegated to its HRO/CPO, or delegated to its HRO/CPO designee. As indicated above, after eligibility has been determined, the applicable Component Headquarters, HRO/CPO or designee shall forward the completed SF-1164 and supporting documentation to the paying office.

**Eligibility determination.** To be eligible for reimbursement because of law enforcement officer status, an employee must occupy a position that has been determined to qualify, and must have been approved for special retirement coverage under either 5 U.S.C. §8331(20) or §8401(17) as a law enforcement officer/special retirement position. If the position has not been designated as a law enforcement officer in a special retirement-covered position, or the individual has not applied for and received special retirement coverage as a law enforcement

officer, the request for reimbursement must be denied and the employee will be provided written notification of the reason(s) for denial.

An eligibility determination that a position qualifies as a supervisory or managerial position for purposes of reimbursement is based on the definitions 5 USC, §7103(a). This determination is separate and distinct from a position classification determination of a position exercising supervisory or managerial duties and responsibilities in accordance with 5 USC, Chapter 51. It is possible that positions that are not titled "supervisory", e.g., do not meet the 25% requirement, may meet the Chapter 71 definition of supervisor for purposes of reimbursement. These positions are generally designated as Supervisory Code 4 in the Defense Civilian Personnel Data System. Further guidance on positions that meet the definitions of "supervisory" or "managerial" in section 7103 of title 5, United States Code, may be found in case law interpreting that section, in particular, in related decisions by the Federal Labor Relations Authority. If it is determined that a position does not qualify as a supervisory or managerial position, the employee will be provided written notification of denial, specifying the reasons for denial.

The signature of the Component Headquarters, the HRO/CPO, or the HRO/CPO designee approving official on block 9 of the SF-1164 confirms the eligibility determination only. DoD Components must ensure they fulfill any bargaining obligations resulting from this policy.

**Paying office responsibility.** The reimbursement for professional liability insurance will be processed as a miscellaneous payment through vendor pay. The paying office shall verify the completion of the SF-1164, the cost of the premium and the receipt of documentation providing proof of payment. When the package is received by the paying office and it is not clear from the invoice that the claim qualifies for PLI coverage, or that the requested amount of the payment is proper, the paying office shall request that the employee provide evidence that the purpose of the claim is reimbursement for a PLI policy and/or that the payment amount is proper. Payment will be made by EFT. The paying office shall pay up to \$150, but payment may not exceed one-half the cost of the premium listed on the carrier's invoice or the actual documented cost paid by the employee, whichever is less. The amount of reimbursement will be determined based on cost of the premium as listed on the carrier's invoice and the actual, documented cost paid by the employee and the DoD policy governing payment amount. The paying office shall confirm that an employee has not been or, as a result of the requested reimbursement, will not be reimbursed for more than \$150, or one-half of the cost incurred for liability insurance within the applicable fiscal or calendar year period.

The paying office for an organization is the same office that receives travel vouchers for payment. (A listing of vendor pay points of contact can be found on the DFAS website <http://www.dfas.mil/>).

## Questions and answers:

Q. What does "not to exceed one half the cost incurred" mean?

A. The Office of the DoD General Counsel advises that section 636, as amended, requires DoD to reimburse qualified employees for professional liability insurance costs. However, the wording in the statute permits DoD some discretion on the specific amount, provided the total yearly payment does not exceed one-half the cost of the premium actually paid by the employee.

Q. What does "up to \$150" mean?

A. Given the current cost of professional liability insurance policies (\$300 for \$1,000,000 liability coverage) and the provisions of the law, e.g., that reimbursement not exceed one-half the cost of the premium, DoD has determined that \$150 represents a reasonable maximum. It is possible to be reimbursed less than \$150 for premiums costing less than \$300. Therefore, based on the cost of the premium as identified on the carrier's invoice, payment could be an amount up to \$150 per year.

Q. What is the agency's obligation if the professional liability insurance premium increases after payment has been made?

A. None, if the \$150 limit for that year has been paid.

Q. Can more than one reimbursement be made in a fiscal/calendar year?

A. Yes. The law does not limit the number of reimbursements to one per year. Multiple reimbursements on multiple premiums are permitted, provided the total amount in any year does not exceed the dollar cap of \$150 set

by DoD.

Q. Is DoD's implementation retroactive to October 1, 1999?

A. Yes. The requirement to reimburse qualified employees went into effect on October 1, 1999.

Q. Is an employee who renewed an existing professional liability insurance policy on September 30, 1999, eligible for reimbursement as of October 1, 1999?

A. Yes, the change in the law requiring reimbursement became effective on October 1, 1999. DoD will reimburse covered employees up to \$150 of the cost of premiums in effect on or after October 1, 1999 (but DoD Components are not required to reimburse the portion of the cost of premiums covering the period before October 1, 1999.)

Q. What if an employee purchased a policy in January 1999, was reimbursed in June 2000, renewed the policy in July 2000, and resigned in August 2000 -- is the employee eligible for reimbursement for the policy renewed in July 2000?

A. Yes, DoD will pay up to \$150 per [calendar/fiscal] year to reimburse a qualified employee for the cost of the insurance premium for a qualified policy. The employee must be qualified at the time he or she seeks reimbursement. The policy must qualify and the employee must not already have been reimbursed the maximum of \$150 in that [calendar/fiscal] year.

Q. Is the reimbursement for professional liability insurance prorated if the employee leaves a covered position, e.g., reassigns, retires or leaves to work in another agency?

A. No. When a professional liability insurance policy is cancelled, either by the employee or the insurance company, within fiscal/calendar year period of coverage, or if an individual ceases to be a qualified employee within the coverage period, no recoupment action shall be undertaken.

Q. Is a military supervisor or manager a "qualified employee" for professional liability insurance reimbursement?

A. No. Section 636 of the 1997 Act, as amended, which applies to covered "employees," does not apply to military members who are not "employees."

Q. Are NAF supervisors and managers covered by the provisions of this new authority?

A. No. Section 636 of the 1997 Act applies to qualified "employees." Section 2105 of title 5, United States Code, which defines the term "employee" for civilian personnel law purposes, would exclude NAF employees in this case. Section 2105 includes NAF as "employees" ...[except] for the purpose of -

"[(c)](1) laws administered by the Office of Personnel Management, except -

(A) section 7204;

(B) as otherwise specifically provided in this title;

(C) the Fair Labor Standards Act of 1938;

(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or

(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from non-appropriated funds; or

(2) subchapter I of chapter 81, chapter 84 (except to the extent specifically provided therein), and section 7902 of this title."

Although OPM has not issued implementing regulations or other guidance regarding implementation of section 636 of the 1997 Act, as amended, it is a "law administered by the Office of Personnel Management" that does not fit within any of the enumerated exceptions. NAF employees do not meet the definition of "employee" and are not, therefore, "qualified employees" for purposes of section 636. While there is no legal requirement to do so, DoD

Components may extend this benefit to their NAF workforces, consistent with DoD policy covering appropriated fund employees but may not provide for a rate more generous than that extended to the appropriated fund workforce. If DoD Components extend this benefit to their qualified NAF employees, NAF dollars must be used to fund the reimbursement.

Q. Who has responsibility for determining if the policy submitted by the employee meets professional liability coverage?

A. If it is not evident to the paying office from the carrier's invoice or the policy itself that it is a qualified professional liability insurance policy, it should be returned to the employee to provide evidence that the purpose of the policy presented for reimbursement is to provide professional liability insurance.

Q. Are team leaders eligible for professional liability insurance coverage?

A. Team leaders do not meet the criteria of 5 USC Chapter 51 to be classified as "Supervisory" positions. However, some team leader positions will meet the definition of "supervisory" positions in 5 USC §7103(a), and will be coded with Supervisory Level Code 4 in the Civilian Personnel Data System. Team leaders in positions that meet the 5 USC §7103(a) definition would be eligible for reimbursement.

Q. What services does the Department of Justice provide to Federal employees with respect to legal representation in connection with any administrative or judicial proceeding relating to any act, error, or omission of the covered individual while in the performance of official duties as a qualified employee?

A. This question requires a response to statutory representation and will be addressed in a forthcoming CPMS/Benefits and Entitlements Branch Reference Guide.

Q. Is an employee required to provide EFT information for PLI reimbursement payment?

A. Yes, EFT payment is required by the Debt Collection Improvement Act of 1996. The EFT information can be the same as that provided for pay or travel reimbursements or it may be to a different account. Employees must provide the EFT information along with the request for reimbursement.