

University Policy: Employee Indemnification Policy

Policy Category: Personnel

Subject: This policy establishes the conditions under which the university will provide indemnification and legal defense for university employees acting within the scope of his or her duties of employment.

Responsible Executive: Vice President, General Counsel & Secretary to the Board of Trustees

Office(s) Responsible for Review of this Policy: Office of General Counsel

I. SCOPE

This policy establishes the conditions under which the university will provide indemnification and legal defense for Eligible Individuals acting within the scope of the Eligible Individual's university duties and authority.

II. POLICY STATEMENT

Subject to the Board of Trustees approval and the provisions outlined below, American University will provide legal defense and indemnification to Eligible Individuals for claims which arise from activities which are within the scope of his or her duties of employment with or service to the University.

III. DEFINITIONS

- A. "*Eligible Individual*" is any person who is or was a university employee, acting at the university's direction and under the university's control.
- B. "*Expenses*" means judgments, fines, penalties, legal fees, settlements and any other expenses actually and reasonably incurred in connection with an actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative brought against an Eligible Individual acting at the university's direction and under the university's control.
- C. "*Indemnify*" means payment on behalf of or by the university of Expenses actually and reasonably incurred by an Eligible Individual resulting from

being named in an Action.

- D. “*Action*” means a pending, threatened or completed civil, criminal, administrative or arbitrative action or suit, any appeal therefrom or any inquiry or investigation that could lead to an action or suit. “Action” does not include internal university hearings, reviews, investigations, or actions brought against an Eligible Individual by the university, or legal procedures an Eligible Individual initiated or proposes to initiate, unless such legal procedures were specifically authorized by the university.

IV. POLICY

A. Conditions for Coverage Under This Policy

Except as prohibited by law, the university shall indemnify each Eligible Individual if the following conditions are met in the sole discretion of the University:

1. the Eligible Individual acted in good faith and in a manner that the Eligible Individual reasonably believed to be lawful and in the best interests of the university;
2. the Eligible Individual gives the Office of General Counsel timely and appropriate notice of any Action. The original copy of any summons, complaint, notice, demand, letter or any other document or pleading must be given to the university’s Office of General Counsel as promptly as reasonably possible. Likewise, Eligible Individuals must give timely written notice to the Office of General Counsel of legal issues which might give rise to an Action as promptly as is reasonably possible. A delay in giving notice to the Office of General Counsel as set forth in this policy can disqualify an Eligible Individual from indemnification or other coverage under this policy.
3. the Eligible Individual’s alleged actions or omissions were within the scope of his or her university duties;
4. the Eligible Individual’s alleged actions or omissions did not constitute dishonesty, gross negligence, recklessness, willful misconduct, or the intentional infliction of harm;
5. the Eligible Individual’s actions did not violate any other University policies; and
6. the Eligible Individual cooperates continuously and fully with the university in the defense of the Action.

B. Exclusions

The protections in this policy will not extend to:

1. defense and/or Indemnification in an internal university dispute resolution proceeding;

2. consulting or other outside professional or business activities for which the Eligible Individual or an entity with which they are affiliated is entitled to receive compensation exceeding reasonable expenses from a party other than the University;
3. acts or omissions while an employee is on an unpaid leave of absence from the University;
4. actions that an Eligible Individual may affirmatively initiate or propose initiating against any other person or entities;
5. Any Indemnification prohibited by law.

C. Other Limitations

1. Indemnification under this policy shall be made only with respect to a specific Action and after a determination has been made that:
 - a) the Eligible Individual's actions meet the applicable standards of conduct;
 - b) applicable conditions are satisfied; and
 - c) Indemnification, in the university's judgment, is proper under the circumstances.
2. The determination regarding Indemnification shall be made by the Office of General Counsel in consultation with the Board of Trustees.
3. If the University learns of material information that would render Indemnification inappropriate, it may revoke the Indemnification and seek restitution for any amounts paid on behalf of the Eligible Individual. Eligible Individuals may be required to execute a separate agreement with the university that includes this requirement, as well as other conditions outlined in this policy; however, the absence of such an agreement in no way limits the University's rights under this policy.
4. The University shall have the right to control the defense of the Action, including the right, in its sole discretion, to decide whether or not to settle the Action, and if so, the terms of the settlement.
5. In Actions where both the university and an Eligible Individual are parties, the University shall have the discretion to determine if an actual, apparent or potential conflict of interest exists between the University and the person so that separate representation for the Eligible Individual is appropriate. If the University, in its discretion, determines that joint representation of the university and the Eligible Individual is inappropriate, the Eligible Individual shall select outside counsel satisfactory to the Office of General Counsel. In

such an instance, the Office of General Counsel may impose additional conditions, such as provision of periodic status reports, and/or require that information be provided that will enable the University to monitor the cost and quality of the representation and compliance with applicable insurance requirements.

6. Nothing in this policy shall limit any other rights to which an Eligible Individual is entitled under any applicable university policies, student handbook, employee handbook, faculty manual or collective bargaining agreements.
7. Eligible Individuals, who have been Indemnified by the university, shall make no statement, oral or written, regarding any Action without prior written permission from the Office of General Counsel.
8. Decisions on the extent of an Eligible Individual's eligibility for defense and/or indemnification, and the selection of counsel, are made on a case-by-case basis by the Office of General Counsel. The decisions of the Office of General Counsel, which will be communicated in writing, are final, subject to the review and approval of the Board of Trustees or the Executive Committee of the Board of Trustees, and are not subject to University appeal or grievance.

V. EFFECTIVE DATE AND REVISIONS:

This Policy is effective as of February 26, 2020.

This Policy was reviewed or revised February 26, 2020.