

University Study Abroad Programs A Guide to Faculty Liability Issues

I. Working Assumptions

For purposes of this Guide it is assumed: 1) that the study abroad programs in which faculty are involved are sponsored by the University of Texas; 2) that faculty are participating in them as a part of their official duties as paid employees of The University; and 3) that the law of the State of Texas, not those of another jurisdiction or a foreign country are applicable. The Guide does not address faculty members who "volunteer" to go on University sponsored study abroad programs (something that should not occur), those who accompany a University-sponsored program for personal (recreational) reasons, or those who are involved with non-University sponsored programs.

II. Disclaimers and Caveats

The intent of this document is to provide general information and advice to faculty on the topic of state employee liability and indemnification; it is not a substitute for professional legal counsel. The document does not purport to be official University policy; nor a complete statement of state law, and any discrepancy between its contents and University policy or state law is not intentional. Finally, because there are so many open questions concerning the laws in the area of employee liability (e.g., what happens if an employee is sued in foreign country?), the document cannot be a comprehensive description and interpretation of the state laws that govern the area.

III. Conditions of Coverage

The State of Texas anticipates that its employees, including faculty of public institutions, may be sued for discretionary actions they undertook, or failed to take, in the good faith performance of their job duties. For that reason, it has created a statutory plan that provides for the representation and indemnification for those of its employees who were:

1) doing the job that they were hired and paid to do (i.e., be acting with the course and scope of employment); 2) performing the duties of that job in an objectively reasonable fashion; and 3) acting in good faith in the performance of those duties.

IV. The Statutory Indemnification Plan Applicable to State Employees

The state legislature, over time, has created a set of laws that, in most cases, provides for:

- legal representation of "public servants" by the Office of the Attorney General when lawsuits arise out of the discharge of their official duties; and

- indemnification for money damages assessed against them (up to certain amounts) for negligence (i.e., the failure to act as a reasonably prudent person

would under same or similar circumstances); or the deprivation of a civil right because of discriminatory or retaliatory conduct.

A. Attorney General Representation

State employees who have been sued for conduct performed while in course and scope of their employment will, in nearly all cases, be represented by the Office of the Attorney General of Texas. Individuals may decline legal representation offered by the Attorney General and retain their own attorneys; or, they may have their private counsel work with the Attorney General; however, the right to indemnification by the state is usually contingent on the Attorney General being in charge of the litigation.

It is critical that an employee who is sued promptly notify the Office of Legal Affairs or the President's Office, since the law requires that the Attorney General be notified that an employee has been served with "process" no later than ten days after that service.

B. Indemnification for Damages Assessed Because of the Acts or Omissions of a State Employee

A state employee who is sued in his or her personal capacity for negligence (claims usually involve motor vehicle accidents or misuse of tangible property), or the deprivation of a civil right, may be "indemnified" by the state in amounts of up to \$100,000 (per person) and up to \$300,000 (per occurrence) in the case of personal injuries. Up to \$10,000 is paid when only damages to property are involved. As a practical matter, if a judgment is entered against a state employee, and there is no finding that an employee acted with willful misconduct, gross negligence, or in bad faith with conscious indifference or reckless disregard, the state (through the employing agency) will pay the judgment up to the statutory limits. The employee will not have to pay the judgment and then seek indemnification from the agency.

It is possible, although not probable, that a judgment could be assessed against an employee for more than amounts that the indemnification limits. Protection for this possible "gap" comes from three different sources. First, a separate state law limits the personal liability of public servants, when sued for a violation of Texas law, to \$100,000. Second, The University of Texas System carries an umbrella liability policy that covers its employees who are found liable for non-intentional violations of civil rights. However, the policy will be invoked only as a secondary payor (it assumes indemnification under the state scheme), and will not cover conduct that is found to be intentionally **tortious** or malicious.

Finally, an individual's personal general or professional insurance may be looked to for funds in the event of a large judgment.

V. Course and Scope of Duties

The scope of a faculty member's official duties while leading a University sponsored or organized study abroad program is defined by a number of variables that can include the following: the nature of the individual's employment with The University, the purpose of a specific program, the location of the program, the representations made about the program in documents provided by The University (usually through the professor), the age and number of students participating in the program, and the understandings and agreements with the students concerning their duties and responsibilities and those of the program director.

For example, the obligation to ensure that the academic component of a study abroad program is appropriately delivered and that students' academic performances are fairly evaluated is obvious. However the amount of supervision that will be provided in the non-class room aspects of the program may not be so easy to discern. For example, what duties do the following statements, taken from a study abroad program web site, create?

"Supervision: Two UT faculty members and a graduate student will accompany the group"; or

"The Program begins in Paris. Students spend four days touring the monuments, museums, and neighborhoods as well as enjoying Parisian night life".

The text appears to imply that the group will be supervised while involved in all program activities; and, while there is probably no implied guarantee that a good time will be had be all, it also implies that there will be some supervision of the exploration of Parisian night life. This is the type of situation where the reasonable standard of care and use of judgment, discussed below, comes into play.

Finally, The University's Rules on Student Discipline and Conduct, which apply to students while on field trips or study abroad programs, as well as any written codes of conduct provided by individual programs, may also provide additional guidance for faculty in determining the limits of appropriate student behavior and what their obligations are in relation to the conduct of the students enrolled in the program.

VI. The General Standard of Care

Faculty members who, in course and scope of their employment, conduct University sponsored field trips or study abroad programs are obligated to exercise reasonable care in the performance of all their official duties. There is no bright line rule as to what "reasonable care" means in all situations; rather, faculty are expected to use their best judgment in deciding what is appropriate conduct in a given situation.

VII. Personal Insurance Questions

The question of whether an employee should purchase insurance that protects against liability that might be incurred while on the job is one that each person must determine, based on his or her duties and individual needs. Given that there is a possibility of a "gap" in coverage under the state indemnification scheme, it is recommended that professional liability insurance or expanded general liability coverage be purchased if it is available at a reasonable cost.

VIII. Risk Avoidance Recommendations

Professors who direct trips can best protect themselves from liability by careful **pre-trip** planning and preparation, including clear written statements to participants of what will be required of them. Once on site, they need to remain alert to conditions and current events in the host country or region; and be aware of, and responsive to, problems that students may experience.

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