

Chapter 11

DEFENSE AND INDEMNIFICATION

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[HISTORY: Adopted by the Town Board of the Town of Patterson 7-9-80 as L.L. No. 2-1980. (readopted 4-13-2005 by L.L. No. 9-2005) Amendments noted where applicable.]

GENERAL REFERENCES

Code of Ethics - See Ch. 17

§ 11-1. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE - Any person holding a position by election, appointment or employment in the service of the town, but shall not include a volunteer, any person not compensated for his services or an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

TOWN - The Town of Patterson, Putnam County, New York.

§11-2 Provisions for defense by town.

A. Upon compliance by the employee with the provisions of § 11-3 of this chapter, the town shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting or in good faith purporting to act within the scope of his public employment or duties. Such defense shall not be provided where such civil action or proceeding is brought by or on behalf of the town.

B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by the Town Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Town Attorney determines, based upon his investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The Town Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel of his choice. The Town Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the Town Attorney shall so certify to the Town Board. Reasonable attorney's fees and litigation expenses shall be paid by the Town to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the employee is entitled to representation under the terms and conditions of this section by the need of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Town Accountant. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorney's fees shall

be resolved by the court upon motion or by way of a special proceeding.¹

C. Where the employee delivers process and a request for a defense to the Town Attorney or the Town Supervisor, as required by § 11-3 of this chapter, the Town Attorney or Town Supervisor, as the case may be, shall take the necessary steps, including the retention of an attorney under the terms and conditions provided in Subsection B of this section, on behalf of the employee to avoid entry of a default judgment, pending resolution of any question relating to the obligation of the town to provide for a defense.

§ 11-3. Conditions.

The duties to defend provided in this chapter shall be contingent upon delivery to the Town Supervisor and if appointed, the Town Attorney or his assistant, at his office by the employee the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after he is served with such document and the full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the town based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the town provide for his defense pursuant to this chapter, unless the employee shall state in writing that a defense is not requested.

§ 11-4. Limitation of applicability.

The benefits of this chapter will inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this chapter be construed to affect, alter or repeal any provisions of the Worker's Compensation Law.

§ 11-5. Extension of benefits to certain employees restricted.

The benefits of this chapter shall be extended to an employee of a negotiating unit for which an agreement has been negotiated pursuant to Civil Service Law, Article 14, only if such agreement expressly so provides

§ 11-6. Extension to members of Industrial Development Agency authorized.

The benefits of this chapter shall be extended to members of the Town of Patterson, Putnam County, New York, Industrial Development Agency, whose members are not compensated for their work.

¹ Edition's Note: Amended at time of adoption of Code (see Ch.1, General Provisions, Article D).

§ 11-7. Extension to members of Housing Authority authorized. [Added 3-13-1996 by L.L. No. 2-1996]

The benefits of this chapter shall be extended to members of the Town of Patterson, Putnam County, New York, Housing Authority, whose members are not compensated for their work.

§ 11-8. Effect on insurers.

The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

§ 11-9. Construal of provisions.

As otherwise specifically provided in this chapter, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town or any right to defense provided for any governmental officer or employee by, in accordance with or by reason of any other provision of state or federal statutory or common law.

§ 11-10. Effect on pending proceedings.

The provisions of this chapter shall apply to all actions and proceedings specified herein which have been commenced, instituted or brought on or after the effective date of this chapter.

§ 11-11. Indemnification of Town employees.²

A. The Town shall indemnify and save harmless its employees in the amount of any judgement obtained against such employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act of omission from which such judgement or settlement arose occurred while the employee was acting within the scope of his public employment or duties; the duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

B. An employee represented by private counsel shall cause to be submitted to the Town Board any proposed settlement which may be subject to indemnification by the Town and if not inconsistent with the provisions of this section the Board shall certify such settlement and submit

² Edition's Note: Amended at time of adoption of Code (see Ch.1, General Provisions, Article I).

such settlement and certification to the Town Attorney. The Attorney shall review such proposed settlement as to form and amount and shall give his approval if in his judgement the settlement is in the best interest of the Town. Nothing in this subsection shall be construed to authorize the Town to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Town Attorney.

C. Upon entry of a final judgement against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgement or settlement personally or by certified or registered mail within 30 days of the date of entry or settlement upon the Board; and if not inconsistent with the provisions of this section such judgement or settlement shall be certified for payment by such Board. If the Attorney concurs in such certification the judgement or settlement shall be paid upon the audit and warrant of the Town Accountant.

§ 11-12. Limitations on indemnification.³

Nothing in this chapter shall authorize the Town to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to §51 or the General Municipal Law; provided, however, that the Town shall indemnify and save harmless its employees in the amount of any costs, attorneys fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.

§ 11-13. Cooperation of employee required.⁴

The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Town Attorney, or his assistant, at his office, by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleadings within five days after he is served with such documents; and the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the Town based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the Town provide defense pursuant to the chapter.

³ Edition's Note: Amended at time of adoption of Code (see Ch.1, General Provisions, Article I).

⁴ Edition's Note: Amended at time of adoption of Code (see Ch.1, General Provisions, Article I).

§ 11-14. Payment of judgements or claims.⁵

Upon entry of a final judgement against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgement or settlement, personally or by certified or registered mail within 30 days of the date of entry or settlement, upon the Town Board; and if not inconsistent with the provision of this Chapter, the amount of such judgement or settlement shall be paid by the Town.

⁵Edition's Note: Amended at time of adoption of Code (see Ch.1, General Provisions, Article I).