

UNDER REVISION

**BUSINESS AND FINANCE BULLETIN BUS-75, GENERAL
LIABILITY, AUTOMOBILE LIABILITY AND EMPLOYMENT
PRACTICES LIABILITY SELF-INSURANCE PROGRAM**

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1 of 17

Vice President--Financial Management

Anne C. Broome

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I. REFERENCES

Business & Finance Bulletin [BUS-9](#), Professional Medical and Hospital Liability Self-Insurance Program

Business & Finance Bulletin [BUS-28](#), Property Self-Insurance Program

Business & Finance Bulletin [BUS-39](#), Loss of or Damage to Property of Individuals

Business & Finance Bulletin [BUS-46](#), Use of University Vehicles

Business & Finance Bulletin, [BUS-63](#), Insurance Requirements/Certificates of Insurance

Business & Finance Bulletin, [BUS-69](#), Vehicle Physical Damage Self-Insurance Program

Business & Finance Bulletin [BUS-73](#), Workers' Compensation Self-Insurance Program

Business & Finance Bulletin, [G-28](#), Policy and Regulations Governing Travel

California Tort Claims Act, Government Code Section 810 et seq.

Regents' Policy on Indemnification of Employees for Punitive Damages, January 17, 1986

[Standing Orders & Bylaws](#) of The Regents of the University of California

II. DEFINITIONS

For the purposes of this Bulletin, the following definitions shall apply:

- ***Additional covered party*** means any person or entity holding a Certificate of Self-Insurance duly issued by Program Risk Management, for *occurrences* during the coverage period identified in the Certificate of Self-Insurance; if a particular activity is identified in the Certificate of Self-Insurance, the person or entity is a *covered party* only for *occurrences* arising out of the described activity.
- ***Advertising Injury*** means injury arising out of one or more of the following offenses:
 - (1) Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

- (2) Oral or written publication of material that violates a person's right of privacy;
 - (3) Misappropriation of advertising ideas or style of doing business; or
 - (4) Infringement of copyright, title or slogan.
- **Aircraft** means a vehicle designed for the transport of persons or property principally in the air.
 - **Automobile** means a land motor vehicle, trailer or semi-trailer.
 - **Bodily injury** means bodily injury, sickness, disease, or emotional distress sustained by a person, including death resulting from any of these at any time. Bodily injury includes *damages* claimed by any person or organization for care, loss of service or death resulting at any time from the bodily injury.
 - **Covered contract** means that part of any contract or agreement pertaining to the University's business under which the University assumed the liability to indemnify a third party for damages resulting from the tort liability of the University. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
 - **Covered party** means:
 - (1) The Regents of the University of California (herein referred to as the University) and/or any subsidiary, division, or owned and controlled entity.
 - (2) Members of the Board of Regents of the University of California, but only with respect to their duties as members of the Board of Regents of the University of California.
 - (3) The University's *employees*, but only for acts within the scope of their employment by the University. Coverage for *employees* is limited to obligations under the California Tort Claims Act.
 - (4) Any voluntary worker of the University, but only when such voluntary worker is acting within the capacity and scope of his/her duties as such and is acting and under the direct supervision of a University *employee*.
 - (5) Any person or entity for which the University has assumed liability pursuant to a *covered contract* and the liability assumed in the contract is consistent with the Standing Orders and Bylaws of The Regents of the University of

California, but only to the extent and amount for which the University is legally liable.

(6) With respect to *mobile equipment* registered in the University's name under any motor vehicle registration law, any person is a *covered party* while driving such equipment with the University's permission. Any other person or organization responsible for the conduct of such person is also a *covered party*, but only with respect to liability arising out of the operation of the equipment, and only if no other coverage of any kind is available to that person or organization for this liability. However, no person or organization is a *covered party* with respect to:

- *Bodily injury* to a co-employee of the person driving the equipment; or
 - *Property damage* to property owned by, rented to, in the charge of or occupied by the *covered party* or the employer of any person who is a *covered party* under this provision.
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- **Damages** means compensation in money recovered by a party for loss or detriment it has suffered through the acts of a *covered party*.
 - **Defense Expenses** means reasonable legal fees and expenses incurred through counsel of the University's choice in the investigation, defense or appeal of any lawsuit, provided that *defense expenses* does not include remuneration, salaries, wages, fees, expenses, overhead or benefit expenses of any *covered party*.
 - **Discrimination** means any failure or refusal to hire any person, any failure or refusal to promote any person, the demotion or discharge of any person, employment-related defamation, wrongful failure to grant tenure, or any limitation, segregation or classification of *employees* or applicants for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect his or her status as an *employee*, because of such person's race, color, religion, age, sex, marital status, national origin, disability, medical condition (cancer-related or genetic characteristics), pregnancy, sexual orientation or preference, status as a covered veteran, or other status that is protected pursuant to any applicable federal, state or local statute or ordinance.
 - **Employee** means an individual paid by the University of California for work performed for the University. Individuals performing work as consultants or independent contractors are not employees.

- ***Employment Practices Wrongful Act*** means any actual or alleged: (1) *Wrongful Termination*; (2) *Discrimination*; (3) *Harassment*; (4) *Retaliation*; or (5) *Workplace Tort*, for which a *covered party* has received a filed and served lawsuit.
- ***Harassment*** means an unwelcome sexual advance, request for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made a condition of employment with the University, is used as a basis for employment decisions with the University, creates a work environment within the University that interferes with performance, or creates an intimidating, hostile, or offensive working environment; or workplace harassment (i.e., harassment of a non-sexual nature) which creates a work environment with the University that interferes with performance, or creates an intimidating, hostile, or offensive working environment.
- ***Loss*** means any damages (including back pay awards, front pay awards, compensatory damages), pre-judgment interest, post-judgment interest, and settlements which a *covered party* is legally obligated to pay as a result of a lawsuit, provided that *Loss* does not include:
 - (1) Civil or criminal fines, sanctions, liquidated damages, taxes or penalties, or matters which are uninsurable under the law pursuant to which this Program is construed;
 - (2) Any costs associated with the modification of any building or property in order to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of the Americans With Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common law;
 - (3) Any other non-monetary relief awarded against any *covered party*, including without limitation any costs associated with compliance with any injunctive relief of any kind or nature;
 - (4) Severance pay or damages determined to be owed under an express written contract of employment or an express written obligation to make payments in the event of the termination of employment;
 - (5) Payment of insured plan benefits;
 - (6) Amounts awarded pursuant to a labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement; and
 - (7) Any amounts awarded pursuant to any other administrative proceeding.

- ***Limit of coverage*** means the amount of coverage stated in the Certificate of Self-Insurance for each *covered party* per *occurrence*. For each *occurrence*, there shall be only one limit of coverage regardless of the number of claimants or *covered parties* against whom a claim is made.

- ***Medical malpractice*** means the inappropriate rendering or failure to render any of the following services:
 - (1) Medical, surgical, dental, x-ray or nursing services, or treatment or the furnishing of any food or beverage in connection therewith; or any services provided by a health care provider as defined in section 6146(c), (2), (3) of the California Business and Professions Code.

 - (2) Furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

- ***Mobile equipment*** means any of the following types of land vehicles, including any attached machinery or equipment:
 - (1) Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

 - (2) Vehicles maintained for use solely on or next to premises the *covered party* owns or rents;

 - (3) Vehicles that travel on crawler treads;

 - (4) Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (a) Power cranes, shovels, loaders, diggers or drills; or

 - (b) Road construction or resurfacing equipment such as graders, scrapers or rollers.

 - (5) Vehicles not described in (1), (2), (3), or (4) above that are not self-propelled and are maintained primarily for purposes other than the transportation of persons or cargo.

- However, self-propelled vehicles with the following types of permanently attached equipment are not *mobile equipment* but will be considered automobiles:
 - (1) Equipment designed primarily for:

- Snow removal;
 - Road maintenance, but not construction or resurfacing; or
 - Street cleaning; and
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and air compressors, pumps and generators, including spraying, welding, building-cleaning, geophysical exploration, lighting, and well-servicing equipment.
- ***Nuclear material*** means source material, special nuclear material, or by-product material. Source material, special nuclear material, and by-product material have the meanings given to them by the Atomic Energy Act of 1954 or any law amendatory thereof.
 - ***Occurrence*** means:
 - (1) With respect to *bodily injury* or *property damage*: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in *bodily injury* or *property damage* neither expected nor intended from the standpoint of the *covered party*.
 - (2) With respect to *personal injury*: an offense as described below.
 - ***Personal injury*** means injury, other than *bodily injury*, arising out of one or more of the following:
 - (1) False arrest, detention or imprisonment, or malicious prosecution;
 - (2) Wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies;
 - (3) Publication or utterance of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or oral or written publication of material that violates a person's right to privacy;
 - (4) Unlawful discrimination or violation of civil rights; or
 - (5) Injury resulting from the use of force for the purpose of protecting persons or property.

- **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, airborne particles or fibers, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. The term *pollutants* as used herein does not mean potable water, agricultural water, water furnished to commercial users, or water used for fire suppression.
- **Property damage** means:
 - (1) Physical injury to tangible property, including all resulting loss of use of that property; or
 - (2) Loss of use of tangible property that is not physically injured or destroyed.
- **Retaliation** means retaliatory treatment against an *employee* of the University on account of such *employee's* exercise or attempted exercise of his or her rights under law.
- **Workplace Tort** means employment-related misrepresentation, negligent evaluation, wrongful discipline, or wrongful deprivation of career opportunity.
- **Watercraft** means a vehicle designed for the transport of persons or property principally on the water.
- **Wrongful Termination** means the actual or constructive termination of the employment of, or demotion of, or failure or refusal to promote, any *employee*, which is in violation of law or is against public policy, or is in breach of an implied agreement to continue employment.
- **Ultimate net loss** means the sum actually paid or payable in cash in the settlement or satisfaction, investigation or defense of losses for which the *covered party* is liable, either by adjudication or by compromise, with the written consent of The Regents, after making proper deduction for all recoveries and salvages and other collectible insurance. *Ultimate net loss* shall include defense expenses and related expenses incurred by the Program.

III. INTRODUCTION

The University's General Liability, Automobile Liability and Employment Practices Liability Self-Insurance Program is described in this Bulletin. The Program is designed to provide coverage for certain tort liabilities of the University arising from its operations. The Program is funded by each campus and medical center. This Program

does not provide insurance, but instead provides for pooled self-insurance. The Office of Risk Management, in the Office of the President, manages the funding and administration of the Program. This Bulletin does not apply to claims arising out of the University's contract with the United States and its facilities, the Department of Energy (DOE) Lawrence Berkeley National Laboratory, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory. Throughout this Bulletin, words and phrases that appear in *italics* have special meaning. They are defined in Section II., Definitions.

IV. COVERAGES

The Program will pay up to the *limit of coverage* those sums on behalf of the *covered parties* for *ultimate net loss* for which the *covered parties* become legally obligated to pay as *damages* by reason of liability imposed by law or liability assumed by contract because of:

- *Bodily injury or property damage*
- *Personal injury*
- *Personal and advertising injury liability*
- *Employment practices wrongful acts*

as those terms are herein defined and to which this Bulletin applies, caused by an *occurrence* during the coverage period.

V. DEFENSE AND SETTLEMENT

With respect to claims or suits for *damages* to which this Bulletin applies, the Program shall have the right and duty to defend any claim or suit against the *covered party* even if the allegations are groundless, false or fraudulent. However, in making the determination of its duty to defend, the Program may rely on the facts alleged within a third party's complaint, and those extrinsic facts known to it. The Program shall have no duty to speculate about unplead theories of recovery in order to determine its obligations to defend or to indemnify, nor shall the Program be under any continuing duty to investigate whether a potential for coverage has arisen.

At its own expense and with Regental authority, the Program shall have the right to assume the control of the negotiation, investigation, defense, settlement or appeal of any claim which the Program determines, in its sole discretion, to have a reasonable probability of resulting in an *ultimate net loss*. The *covered party* shall fully cooperate in all matters pertaining to such claim or proceeding.

The Program shall not be obligated to pay any judgment or settlement or to participate in the defense of any claim or suit after the Program's *limit of liability* has been totally exhausted by the payment of *defense expenses* and/or judgments or settlements.

VI. PROGRAM LIMIT OF COVERAGE

Regardless of the number of:

- Persons or *entities* covered under this Bulletin,
- Persons or organizations making claims or bringing suits, or
- Claims made or suits brought.

seven million five hundred thousand dollars (\$7,500,000) is the most the Program will pay for the total of all damages including *defense expenses* because of *bodily injury*, *personal injury*, *property damage* or *advertising injury* arising out of any one *occurrence*.

Five million dollars (\$5,000,000) is the most the Program will pay for the total of all damages including *defense expenses* because of *employment practices wrongful acts* arising out of any one *occurrence*.

Defense expenses will be part of and not in addition to such *limit of coverage*, and payment of *defense expenses* by the Program will reduce, and may exhaust, the *limit of coverage*.

VII. COVERAGE PERIOD AND TERRITORY

This agreement applies to *bodily injury*, *personal injury*, *property damage*, *advertising injury* or *employment practices wrongful acts* which occur anywhere in the world during the coverage period.

VIII. COVERED PARTIES

The parties covered by this agreement are:

- *Covered parties*,
- With respect to any *automobile* owned or leased by The Regents or loaned to or hired for use by or on behalf of The Regents, any person while using such *automobile* and any person or organization legally responsible for the use thereof, provided the actual use is with the permission of The Regents, and with respect to any *automobile* owned or leased by an employee of The Regents if The Regents reimburses or pays the

employee for use of such *automobile*, and only if such *automobile* is operated by said employee in the course and scope of employment and only to the extent that the coverage provided hereunder shall be in excess of any other insurance for said *automobile*. The foregoing notwithstanding, this coverage does not apply to:

- (1) Any person or organization or any agent or employee thereof operating an *automobile* sales agency, repair shop, service station, storage garage or public parking place, with respect to an *occurrence* arising out of the operation thereof; or
- (2) The owner or any lessee, other than The Regents of a leased or hired *automobile* or any agent or employee of such owner or lessee.

- Any *additional covered party*.

IX. EXCLUSIONS

This Bulletin does not apply to:

A. Claims alleging pollution:

Bodily injury or *property damage* arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants*;

- At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any *covered party*;
- At or from any premises, site or location which is or was at any time used by or for any *covered party* or others for the handling, storage, disposal, processing or treatment of waste;
- Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any *covered party* or any person or organization for whom the *covered party* may be legally responsible;
- At or from any premises, site or location on which any *covered party* or any contractors or subcontractors working directly or indirectly on any *covered party's* behalf are performing operations;
- If the *pollutants* are brought on or to the premises, site or location in connection with such operations by such *covered party*, contractor or subcontractor;

- If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of *pollutants*.
- B. Any cost, or expense arising out of any governmental order, directions or request that the *covered party* test for, monitor, clean up, remove, contain, treat, detoxify or neutralize *pollutants*.
- C. Any obligation for which the *covered party* or any insurance company as its insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law or any similar law.
- D. Ownership or operation of any hospital or airport.
- E. Claims arising out of any professional *medical malpractice*.
- F. Fines, fees, penalties, exemplary damages or punitive damages, whether awarded by a court or by an administrative or regulatory agency.
- G. *Bodily injury* or *property damage* arising out of the hazardous properties of *nuclear material*.
- H. Claims arising out of or in connection with land use regulations, land use planning, the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name called, and whether or not liability accrues directly against the *covered party* or by virtue of any agreement entered into by or on behalf of any *covered party*.
- I. *Property damage* to:
 1. Property owned by The Regents or employee;
 2. Property rented to or leased to The Regents where it has assumed liability for *damages* to or destruction of such property, unless The Regents would have been liable in the absence of such assumption of liability;
 3. *Aircraft* or *watercraft* in The Regents care, custody or control.
- J. *Bodily injury* or *property damage* arising out of the ownership, operation, use or maintenance of any *aircraft* or *watercraft*.

This exclusion does not apply to:

1. A *watercraft* while ashore on premises the *covered party* owns or rents;
 2. A *watercraft* the *covered party* owns that is:
 - a. Powered and less than 30 feet long or unpowered and of any length; and
 - b. Not being used to carry persons or property for a charge.
- K. Benefits payable under any employee benefit plan (whether the plan is voluntarily established by the entity or mandated by statute).
- L. Liability of a *covered party*:
1. Arising, in whole or in part out of a *covered party's* obtaining remuneration or financial gain to which the *covered party* was not legally entitled; or
 2. Arising out of the willful violation of a penal code or ordinance committed by or with the knowledge or consent of any *covered party* or claims arising out of oral or written publication of material, if done by or at the direction of the *covered party* with knowledge of its falsity.
- M. Claims arising out of:
1. A failure to perform or breach of a contractual obligation or fraudulent inducement to contract;
 2. *Bodily injury* or *property damage* for which the *covered party* is obligated to pay *damages* by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for *damages*:
 - a. Assumed in a *covered contract*, provided the *bodily injury* or *property damage* occurs subsequent to the execution of the contract or agreement; or
 - b. That the *covered party* would have had in the absence of the contract or agreement.
- N. Liability imposed under the Employment Retirement Income Security Act of 1974 or any law amendatory thereof, or any law or liability arising out of fiduciary activities as respects employee benefit plans.

X. CONDITIONS

A. *Covered Party's Duties in the Event of Occurrence, Claim or Suit*

1. In the event of an *occurrence*, written notice containing particulars sufficient to identify the *covered party* and also reasonably obtainable information with respect to the time, place and circumstances thereof, and addresses of the injured and of available witnesses, shall be given by or for the *covered party* to the respective Campus or Medical Center Risk Management Office.
2. If a claim is made or suit is brought against the *covered party*, the *covered party* shall be obligated to forward to the respective Campus or Medical Center Risk Management Office every demand, notice, summons or other process received by him/her or his/her representative.
3. If a suit is brought and served against the *covered party*, the *covered party* shall be obligated to forward to the respective Campus or Medical Center Risk Management Office and the Office of General Counsel a summons and complaint or other document served on him/her or his/her representative.
4. The *covered party* shall cooperate with the Program and, upon its request, assist in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the *covered party* because of *bodily injury, personal injury, or property damage* or with respect to which coverage is afforded under this Bulletin; and the *covered party* shall, as deemed desirable, attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The *covered party* shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense on behalf of the Program.

B. Other Coverage

If collectible insurance or any other coverage with any insurer or other source respectively is available to the *covered party* covering a loss also covered hereunder (whether on a primary, excess or contingent basis), the coverage hereunder shall be in excess of, and shall not contribute with, such other insurance coverage.

C. Severability of Interests

The term *covered party* and its sub-terms including entity, *covered party* and *additional covered party* are used severally and not collectively, but the inclusion herein of more than one *covered party* shall not operate to increase the limits of the Regent's liability.

D. Termination

Coverage provided by this Bulletin may be terminated at any time in accordance with action approved by The Regents.

E. Subrogation

The Regents shall be subrogated to the extent of any payment hereunder to all the *covered party's* rights of recovery therefore; and the *covered party* shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights.

XI. RESPONSIBILITIES

A. The Regents of the University of California

Provide indemnification and defense with respect to claims alleged to result from acts or omissions of University employees while in the course and scope of University employment, in accordance with the California Tort Claims Act.

B. Director, Risk Management, University of California Office of the President

1. Review the General Liability Program on a continuing basis and determine the most effective manner by which to manage this risk;
2. Assist Chancellors in the application of the Program and its coverage of specific situations;
3. Act as the University's representative to the insurance industry;
4. Maintain and administer the General Liability Fund;
5. Secure and manage services of the Third Party Claims Administrator;

6. Maintain and manage the University's Risk Management Information System; and
7. In conjunction with the Office of General Counsel, identify and approve UC defense counsel.

C. Office of the General Counsel

1. Serve as chief legal office of the University charged with the responsibility for all legal matters affecting the University including lawsuits covered by this Program.
2. Accept service of Summons and Complaints on behalf of The Regents and promptly report receipt of service to the Office of the President, Office of Risk Management.
3. In conjunction with the Office of the President, Office of Risk Management, identify, select and approve UC defense panel.
4. Report significant legal Program activity to The Regents.

D. Chancellors or designee (Medical Center/Campus Risk Management Office)

Manage and implement local General, Automobile and Employment Practices Liability programs to reduce operational risk including but not limited to:

1. Ensuring employees are informed of the General Liability, Automobile Liability and Employment Practices coverage available under the Program;
2. Establishing campus procedures for identification and reduction of exposures;
3. Providing prompt notice of all new summons and complaints to the Office of the President, Office of Risk Management, to the Office of the General Counsel, and to the University's Third Party Claims Administrator;
4. Issuing certificates of self insurance evidencing University General Liability coverage under the Program, in accordance with Business and Finance Bulletin [BUS-63](#), Insurance Requirements/Certificates of Insurance, and policies and procedures established by Office of the President, Office of Risk Management;

5. Coordinating the gathering of all pertinent documentation deemed necessary to process the loss. Assist adjusters assigned by the Third Party Claims Administrator with investigation including but not limited to scheduling appointments with campus personnel and securing records, and providing campus directives and other information required to make a determination of liability;
 6. Advising the Office of the President, Office of Risk Management, and the Third Party Claims Administrator of developments that might affect the outcome of pending investigations and/or litigation;
 7. Coordinating campus consent to settlement in accordance with Regents and campus policy;
 8. Coordinating local claims management with the Third Party Administrator, the Office of General Counsel, and the Office of the President, Office of Risk Management; and
 9. Coordinating local funding of liability program costs allocated to the location by the Office of the President, Office of Risk Management.
- E. Third Party Claims Administrator
1. Receive and review file materials to determine appropriateness of coverage under The Regents' self-insurance programs;
 2. Plan and complete an independent preliminary case investigation and establish a strategic claim action plan, in accordance with Program standards. Pursuant to the contract with the Office of the President's Office of Risk Management, report and recommend adjudication of every claim submitted to the Program; and
 3. In conjunction with the Office of the President, Office of Risk Management and the Office of General Counsel, identify, select and approve UC defense panel.