

MACOMB COUNTY HUMAN RESOURCES POLICY

Representation and Indemnification Policy

The County of Macomb, through Corporation Counsel's Office, provides legal representation and indemnification to its employees named as defendants in civil lawsuits. The representation component provides an attorney free of charge to the employee; the indemnification component provides payment of all approved costs associated with defending and resolving the case.

An employee's representation and indemnification is contingent on the following:

- 1) The lawsuit in which the employee is a defendant must arise from the employee's fair performance of their duties;
- 2) The employee must cooperate in their own defense;
- 3) The employee formally requests representation and indemnification using a form available at the Office of Corporation Counsel and presents any court documents received up to that time.

A test will be applied to determine whether the employee was acting in the fair performance of their duties as follows:

- 1) Was the employee serving a public interest or acting for the benefit of the community at the time and place of the underlying incident(s);
- 2) Was the employee exercising some manner of authority granted to them by virtue of their County employment position at the time of the underlying incident(s).

Examples of when an employee would not be covered by this policy:

- An employee is acting solely in their own self-interest
- An employee is exercising a right or entitlement common to all individuals (e.g. right to protect one's own home)
- An employee is acting in a malicious or corrupt manner

A determination on representation and indemnification covers all employees for their honest mistakes.

Additionally, it provides representation and indemnification when an employee fails to choose the best course of action from among competing reasonable courses of action.

This policy does not extend to providing representation or indemnification to an employee who is or was:

- 1) Charged or convicted with a crime related to the same incident which forms the basis of the civil lawsuit;
- 2) Engaged in an act of intentional misconduct (e.g. sexual harassment, discrimination, bullying);
- 3) Violated the County's Ethics Ordinance;
- 4) Acted in a personal capacity entirely for their own benefit or was otherwise involved in a private matter unrelated to the employee's employment (e.g. divorce, child custody dispute, property line dispute with a neighbor, automobile collision outside of working hours involving the employee's personal vehicle), etc.
- 5) Engaged in an act which causes them to be excluded from coverage by the County's insurance carrier(s)

In those civil litigation matters in which the Office of Corporation Counsel is unable to provide representation to an employee for any reason, Corporation Counsel has the exclusive authority to appoint outside counsel with the express approval by the Board of Commissioners as provided in Charter Article VII, Section 7.5.3.(b).

This policy does not preclude any employee of exercising their right to hire their own attorney at their own expense for any purpose.

Approved:



Office of County Executive

8-12-22
Date

Approved: August 12, 2022