

*Division of Risk Management
Florida Department of Financial Services*

*General Program
and
State Liability Claims Information*



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Presenter

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Division of Risk Management Program Responsibilities

-  *Provides six major types of “insurance” coverage to State of Florida agencies by administering a self-insurance fund per Chapter 284, F.S.*
-  *Processes claims filed against state agencies for these coverages.*
-  *Collects premiums from participating state agencies to pay claims.*
-  *Purchases private insurance as necessary to control risk exposure of state agencies.*
-  *Provides assistance to state agencies in the areas of loss prevention/loss control.*

Major Coverage Lines Provided

-  *Workers' compensation (state employee injuries).*
-  *Property (state owned buildings and contents).*
-  *General liability (state agency premises and operations).*
-  *Auto liability (state employees on state business).*
-  *Federal civil rights (actions of state officials alleged to have violated someone's constitutional rights).*
-  *Employment discrimination (discriminatory employment practices).*

Organization of Risk Management

Office of the Director

Claims Administration

 *Property and Liability Claims (general liability, auto liability, federal civil rights, employment discrimination, property claims).*

 *State Employees' Workers' Compensation Claims (workers' compensation for injured state employees).*

Loss Prevention

 *Property (building inventory and evaluation, excess insurance).*

 *Loss prevention/loss control services.*

 *Financial support services (premium calculation and collection).*

What/Who is Extended Coverage?

-  *State-owned buildings and contents.*
-  *Workers' compensation (employees, volunteers, and "statutory" employees).*
-  *Liability – state employees, agents and volunteers in course and scope of their employment or duties.*
-  *State-owned automobiles, rented or leased autos, and personal autos used in the course and scope of employment.*

Limits of Liability

-  *Property – pay actual cash value or cost of repairs (whichever is less) less deductible of \$2,500.*
-  *Workers' Compensation – pay medical, indemnity (lost wages), and death benefits according to Chapter 440.*
-  *General Liability and Automobile Liability- \$200K per person, \$300K per occurrence.*

Limits of Liability

-  *Federal Civil Rights – no monetary limits.*
-  *Employment Discrimination – subject to limits stated in Title VII, Federal Civil Rights Act of 1991, Florida Civil Rights Act of 1992 and other applicable acts and statutes.*

Reporting Claims to Risk Management

-  *WC Claims normally reported by agency WC coordinators or supervisors to our managed care provider – AmeriSys.*
-  *Property claims reported by agency property coordinators.*
-  *Liability claims reported by claimant, their attorney, agency legal office, field personnel, etc.*

Managing Claim Files

-  *Property claims are assigned to staff in the Property and Liability Claims Section for adjustment.*
-  *WC claims are assigned to either a WC Examiner (no lost time) or a WC Specialist (lost time claims).*

Managing Claim Files

-  *Liability claims are assigned to a Risk Management Program Specialist or Insurance Specialist II.*
-  *Specialist will request investigative report from agency.*
-  *May utilize outside vendor (York STB) for field investigative work.*
-  *Determines facts, liability and damages.*
-  *Normally consults with agency about resolution of claim.*

Managing Litigation Files

-  *RM retains a lawyer to defend action (s.284.385).*
-  *RM notifies agency general counsel when suit is sent out for defense.*
-  *Governor's agencies are provided drafts of all substantive motions or pleadings for review prior to filing.*
-  *Agency legal counsel are kept advised of case developments.*

Managing Litigation Files

-  *Mediation is ordered in most cases (agency will usually send a representative).*
-  *Agency legal counsel is consulted about case management and case resolution (s.284.385).*
-  *Agency usually sends a representative to attend trials.*
-  *Agency consulted on post-trial decisions.*

Negligence Claims

-  *Negligence is the commission or omission of an act that a reasonably prudent and careful person would or would not do.*
-  *Negligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.*
-  *Authority or basis for negligence claims is F.S. 768.28, the state's waiver of sovereign immunity.*
-  *Negligence claim coverages include general liability, auto liability and professional malpractice.*

Establishing and Proving a Claim Alleging Negligence

-  *The claimant/plaintiff must establish or prove 3 elements:*
 -  *There was the existence of a legal duty from the defendant to the plaintiff.*
 -  *That the defendant breached this duty.*
 -  *This breach of duty was the proximate cause of the damages sustained.*
-  *The defense of tort actions involves disputing any one of the 3 elements listed above.*

Examples of Negligence Claims

-  *Failure to maintain premises (offices, parking areas, boardwalks, roads, sidewalks, etc.) in a reasonable safe condition.*
-  *Failure to obey traffic laws.*
-  *Failure to provide medical care according to established protocols.*
-  *Arresting a person without probable cause.*
-  *Failure to follow agency rules, policy, procedures and guidelines resulting in someone being injured, killed, or damaged.*

Facts About Negligence Claims

-  *Claims must be presented to the agency and DFS in writing within 3 years from the date of occurrence.*
-  *State has 6 months to investigate before suit can be filed.*
-  *Monetary limits are \$200K per person, \$300K per occurrence.*
-  *State employees cannot be named personally as long as they were acting in course and scope of employment and were not willful, wanton, malicious, etc.*

Personal Liability of State Employees

-  *State employees who act outside course and scope of employment or act in bad faith, with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property can be personally liable for damages.*
-  *Risk Management may deny coverage to state employees or defend under a Reservation of Rights letter.*

Personal Liability of State Employees

-  *If Risk Management denies coverage and employee prevails (wins the case), Risk Management will reimburse employee for attorney fees and costs per s.111.07, F.S.*
-  *If Risk Management provides coverage and a defense and the employee is determined to be outside course and scope, Risk can recover attorney fees and costs paid on behalf of the employee (s.111.07, F.S.).*

Auto Liability Claims

-  *RM coverage is for liability only – no coverage for damage to state vehicle, rented or leased vehicle, or employee's personal vehicle.*
-  *Agency must collect for damage to state vehicle when other party is at fault.*
-  *Enterprise assumes all losses for vehicles rented under contract with the state.*
-  *RM covers liability of state employees using their personal vehicle in course and scope of employment.*

Auto Coverage – Course and Scope

-  *Most state employees are not allowed to use a state car to commute from home to office. Exceptions are agency heads, sworn law enforcement officers, employees subject to call outs for protection of life or property, and employees who work from home (F.S. 287.17 and FAC Chapter 60B-1.008).*
-  *Using state vehicle to go to lunch, doctor, or for personal errands (cleaners, WalMart) is not in course and scope (sworn law enforcement officers excluded).*
-  *Using state car on out-of-town trips for non-essential trips (go to a movie, the mall, etc.) is not in course and scope.*
-  *Employees who have a state car may be able to purchase a “non-owned automobile” rider to cover liability when auto is not used in course and scope.*

Tips for Preventing Negligence Claims

-  *Maintain premises and equipment in a safe condition. Have a scheduled maintenance program.*
-  *Warn of all dangerous conditions and defects.*
-  *Establish policies and procedures for operations and train employees to follow these policies and procedures, state laws, rules, etc.*
-  *Encourage employees to act as a reasonable person would act.*