

Dave Lewis has agreed to add the statement below under the “General Liability” section of the Risk Management Handbook.

Directors & Officers Liability/ Employment Practices Liability: Coverage Limit - \$5 Million

Exclusions and Coverage

*An insured person is defined as “any past, present or future member of the faculty, student teacher, teaching assistant, representative to an education association of which WKU is a member, and any president, chancellor, provost, treasurer, vice president, dean, personnel director, executive director, risk manager, university counsel or other comparable senior administrator of WKU, regardless of whether they are considered as an Employee of WKU or an independent contractor”. The following are also insured persons: “any past, present or future director, officer, trustee, employee, volunteer, or any committee member of a duly constituted committee of WKU, solely **when acting in his or her capacity as such**”.*

The coverage territory is world-wide.

A covered claim would be an employment practices wrongful act, as defined by the policy terms.

This policy EXCLUDES coverage for any of the following whether alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly:

A) Bodily injury, sickness, disease or death of any person.

B) Damage to or destruction of any tangible property, including loss of use thereof.

Immunity:

• Individual employees of Western Kentucky University may, in limited circumstances, may be found personally liable for their actions, regardless of whether or not that action was completed in the scope of their employment. Faculty and staff leading off-campus learning experiences should always exercise prudence and good judgment to avoid exposing students and other participants to undue risk when traveling regionally, nationally, or internationally.

The Kentucky Supreme Court’s most recent and authoritative statement defined official or public employee immunity as “immunity from tort liability afforded to public officers and employees for acts performed in the exercise of their discretionary functions. It rests not on the status or title of the officer or employee, but on the function performed.”

As a result, employees of Western Kentucky University enjoy qualified official immunity in certain situations.

Qualified official immunity only applies to the negligent performance by a public officer or employee of (1) discretionary acts or functions (i.e. those acts or functions that involve the exercise of discretion and judgment, or personal deliberation, decision and judgment), (2) made in good faith; and (3) which are within the scope of the employee's authority and job duties.

Note that the employee's act must not only be discretionary to be afforded qualified official immunity, the discretionary act must also have been performed in good faith. Qualified official immunity will not apply if the employee knew or reasonably should have known that the action he/she took within his/her sphere of official responsibility would violate the constitutional rights of another, or if the employee took the action with the malicious intention to cause a deprivation of constitutional rights or other injury.

Qualified official immunity will not apply to the negligent performance of ministerial acts. A ministerial act is defined as one that requires only obedience to the orders of others, or when the employee's duty is absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts. If the employee performs a ministerial act in a negligent manner, the employee will not be protected by qualified official immunity.

Examples of discretionary acts include rulemaking and hiring employees. Examples of ministerial functions are following and enforcing rules or policies that have already been promulgated.