



UNIVERSITY of  
DENVER

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POLICY MANUAL  
EMPLOYEE INDEMNIFICATION

**Responsible Departments:** Enterprise Risk Management and the Office of General Counsel  
**Recommended By:** Provost, VC Legal Affairs and General Counsel, SVC Business and Financial Affairs, Director of Enterprise Risk Management, and Interim VC Human Resources and Inclusive Community  
**Approved By:** Chancellor

**Policy Number**  
RISK 2.50.010

**Effective Date**  
12/10/2021

**I. INTRODUCTION**

The Indemnification provided in this Policy shall be applicable to Claims made or commenced after the adoption of this Policy, whether arising from acts or omissions committed or occurring before or after such adoption, and to persons employed by the University of Denver on or after the date that this Policy is adopted. The University's decision to provide Indemnification to an Employee is conditional on satisfying the terms and conditions of this Policy.

**II. POLICY OVERVIEW**

**A. Indemnification**

The University provides Indemnification to an Employee from a Claim in which the Employee is or may be a party when the University determines in its sole discretion that the following conditions are satisfied:

1. The Employee's acts or omission upon which the Claim is based occurred within the course and scope of the Employee's duties and authority.
2. The Employee acted in good faith and in a manner reasonably intended by the Employee to further the interests of the University.
3. The Employee's acts or omission did not constitute fraud, dishonesty, gross negligence, recklessness or willful misconduct or other similar improper motivation and were not committed in knowing disregard or violation of the University's policies or directions. However, if an Employee's actions were in order to protect life, safety or security or under similar circumstances, such actions shall not be grounds for denying the Employee the benefits of this Policy, provided that the actions were

reasonably believed by the Employee to be permitted by applicable law and all other requirements of this policy are met.

The Office of Business and Financial Affairs will evaluate the relevant facts associated with the Claim and decide in consultation with the Office of General Counsel whether the University will provide Indemnification to an Employee.

#### **B. Control of the Defense**

The University shall have the right to control the defense of the Claim for which it provides Indemnification, including but not limited to the right, in the University's sole discretion, to select attorneys for the Employee and decide whether or not to settle the Claim and if so, the terms of the settlement.

The Employee receiving Indemnification will cooperate continuously and fully with the University in the defense of the Claim.

#### **C. Other Rights**

The Indemnification provided by this Policy shall not be deemed exclusive of any other rights to which an Employee may be entitled to by law, express agreement or otherwise. This Policy supersedes any prior policies or arrangements for Indemnification of Employees (except where the Employee is also an officer of the University and is entitled to Indemnification in that capacity pursuant to law or governance documents). The Indemnification provided pursuant to this Policy shall inure to the heirs and personal representatives of the Employee.

#### **D. Policy Changes**

The University reserves the right to alter, amend or rescind this Policy, provided that any such action shall apply only to Claims based on acts or omissions committed or occurring thereafter.

### **III. PROCESS OVERVIEW**

#### **A. Notice**

The Employee must advise the University of any Claim within a reasonable time by delivering the original or copy of the summons, complaint, notice, demand, letter or other pleading related to the Claim to the Office of General Counsel. Furthermore, an Employee must notify the University within a reasonable time after an incident or occurrence that could reasonably be expected to lead to a Claim. The Indemnification provided by this Policy may be denied or limited if the University determines, in its sole discretion, that the Employee willfully and knowingly failed to notify the University of the Claim or the incident or occurrence

which led to the Claim.

## **B. Punitive Damages**

The Indemnification provided pursuant to this Policy shall not extend to an award of punitive or exemplary damages (those damages imposed to punish a defendant as opposed to those imposed to compensate the injured party) against an Employee unless the University shall, in its sole discretion, determine that the Employee actually believed that the act or omission upon which the Claim was based was in the best interests of the University. In the event of such a determination, the Indemnification for punitive damages shall be limited to an amount the University's Board of Trustees determines to be appropriate in the light of relevant circumstances, including but not limited to the availability of funds for Indemnification.

## **C. Reimbursement**

The University has the sole discretion to determine whether, in the event of a Claim, it elects to assume the defense of the Employee.

1. If the University elects to assume the defense and subsequent developments reveal the acts or omissions of the Employee would not qualify for Indemnification in accordance with this policy, the Employee shall reimburse the University for the reasonable costs and attorneys' fees that the University previously paid.
2. Conversely, if the University elects not to assume the defense of the Employee, the University will reimburse the Employee for the reasonable costs and attorneys' fees Employee incurred in defending the Claim if developments reveal the acts or omissions of the Employee would qualify for Indemnification in accordance with this Policy.
3. If the Employee settles the Claim without the consent of the University, such settlement shall constitute a waiver of Employee's ability to seek Indemnification.

## **D. Insurance**

The University may, in its discretion, purchase and maintain insurance on behalf of its employees against liabilities asserted against them, whether or not such liabilities would be within the scope of the Indemnification provided in this Policy. To the extent that such insurance provides coverage to an Employee against a Claim, the insurance shall be deemed to fulfill the Indemnification obligations provided pursuant to the terms of this Policy. If insurance coverage is or may be applicable to a Claim, the University may make appropriate adjustments in the provisions of the defense to align with the pertinent provisions of the

insurance coverage.

#### IV. DEFINITIONS

- A. **“Claim”** - a lawsuit, legal action, demand or external proceeding initiated against an Employee that relates to the Employee’s work for the University. A Claim does not include any internal University proceeding pursuant to University policy or procedure, such as a grievance proceeding, an investigation into a whistleblower complaint, the Guidelines Relating to Appointment, Promotion, and Tenure ("APT"), or an investigation or hearing related to a complaint of pursuant to the University’s Discrimination and Harassment Policy.
- B. **“Employee”** – any person employed by the University, including persons no longer employed by the University when the Claim is made, provided that the act or omission upon which the Claim is based was committed or occurred while the person was employed by the University.
- C. **“Indemnification”** - payment by the University of any fines, penalties, monetary awards (except punitive damages), settlements and other expenses incurred by the Employee in connection with a Claim, including reasonable attorneys’ fees and expenses associated with the defense of the Claim.

<b>Revision Effective Date</b>	<b>Purpose</b>
12/10/2021	<i>Revised to align policy with practice and change Responsible Department(s)</i>