



DoD INSTRUCTION 1030.03

PROTECTIONS FOR DoD PERSONNEL AGAINST PERSONAL LIABILITY FOR PERFORMING THEIR OFFICIAL DUTIES

Originating Component: Office of the General Counsel of the Department of Defense

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Incorporates and Cancels: Deputy Secretary of Defense Policy Memorandum, "Additional Protections for Department of Defense Personnel against Personal Liability for Performing Their Official Duties," February 13, 2023

Approved by: Caroline Krass, General Counsel of the Department of Defense

Purpose: In accordance with the authority in DoD Directive 5145.01, this issuance establishes policy, assigns responsibilities, and prescribes procedures for applying DoD policy regarding certain protections for and financial support provided to current and former civilian employees and Service members who are subject to personal civil or criminal liability for matters arising from performance of their official duties.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

a. This issuance applies to:

(1) OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

(2) The following personnel (referred to collectively in this issuance as “covered personnel”):

(a) Current and former civilian employees of DoD Components.

(b) Current and former Service members, including members of the Reserve and National Guard involved in the performance of official Federal duties.

b. This issuance does not apply to contractor personnel.

1.2. POLICY.

a. To mitigate the uncertainty concerning the threat of personal civil or criminal liability for a decision made or action taken as part of one’s official duties, the DoD provides indemnification, settlement payment, and reimbursement of attorneys’ expenses related to personal liability under certain circumstances when it is in the interest of the DoD to do so.

b. This issuance governs the provision of additional support only in circumstances not already covered by applicable policies of a DoD Component. It supplements but does not supersede current rules, regulations, and policies governing requests for personal-capacity representation and indemnification. The information referenced in Paragraph 5.3. will be provided by the DoD Component only for any requests not already covered by applicable policies of the DoD Component.

c. This issuance supplements but does not supersede the provisions of:

(1) Chapter 171 of Title 28, United States Code (U.S.C.) (also known and referred to as the “Federal Tort Claims Act”).

(2) Section 1089 of Title 10, U.S.C. (also known and referred to as the “Gonzalez Act”)

(3) Sections 1037 and 1054 of Title 10, U.S.C.

(4) Any other relevant legal provision.

d. Covered personnel must follow any applicable policies of the DoD Component to which they were assigned at the time of the relevant conduct. Before submitting a request pursuant to this issuance, it is strongly recommended that the requestor consult with legal counsel for the DoD Component to which the requestor was assigned at the time of the relevant conduct.

SECTION 2: RESPONSIBILITIES

2.1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DOD).

The GC DoD establishes policy for and oversees the DoD program for providing certain protections and financial support pursuant to this issuance.

2.2. DOD COMPONENT HEADS.

The DoD Component heads ensure the procedures described in Paragraph 5.3. are followed.

SECTION 3: GENERAL PROVISIONS

3.1. TYPES OF PROTECTIONS.

a. Indemnification.

Upon request, the DoD may indemnify, in whole or in part, covered personnel for any verdict, judgment, or other monetary award rendered against such individual, provided the GC DoD (or the Secretary of Defense or their designee when the GC DoD is the individual making the request) determines:

- (1) The conduct giving rise to such verdict, judgment, or award was within the scope of the individual's official duties.
- (2) Such indemnification is in the interest of the DoD.

b. Payment for Settlement or Compromise of a Claim.

(1) Upon request, the DoD may pay for all or part of the settlement or compromise of a claim against covered personnel at any time, provided the GC DoD (or the Secretary of Defense or their designee when the GC DoD is the individual making the request) determines:

- (a) The alleged conduct giving rise to the claim was within the scope of the individual's official duties.
- (b) Such settlement or compromise is in the interest of the DoD.

(2) Absent exceptional circumstances, as determined by the GC DoD (or the Secretary of Defense or their designee when the GC DoD is the individual making the request), the DoD will not entertain a request to indemnify or to pay for settlement or compromise of a claim before entry of an adverse judgment, verdict, or other determination.

c. Reimbursement for Attorneys' Expenses.

In some circumstances, as detailed in Section 4, the DoD may, upon request, provide reimbursement for the cost of certain legal representation by private counsel, provided:

- (1) The GC DoD (or the Secretary of Defense or their designee when the GC DoD is the individual making the request) determines that the representation relates to alleged conduct by the individual which is within the scope of the individual's official duties.
- (2) The approvals in Section 4 are obtained.

3.2. AUTHORITY TO GRANT REQUESTS.

- a. The Deputy General Counsel (Legal Counsel) is authorized to approve requests up to \$75,000. This authority may not be further delegated.
- b. Only the GC DoD may approve requests for more than \$75,000.
- c. If the GC DoD is the individual requesting indemnification or payment in any amount, the GC DoD will submit the request to the Secretary of Defense or their designee for decision. This designee will be no less senior than an Under Secretary of Defense or official of equivalent seniority.

3.3. FISCAL REQUIREMENTS.

Any payment by the DoD pursuant to this issuance to indemnify, to settle or compromise a claim, or to provide reimbursement for private counsel will be for a sum certain and must be contingent upon the availability of appropriated funds of the DoD Component to which the individual was assigned at the time of the relevant conduct.

3.4. EXCLUSIVE REMEDY.

Before granting a request, the GC DoD (or the Secretary of Defense or their designee when the GC DoD is the individual making the request) must determine whether a remedy against the United States is provided by law and is exclusive of any other civil action or proceeding for money by reason of the same subject matter against the individual whose act or omission gave rise to the claim.

3.5. REVIEWABILITY OF DECISIONS.

Determinations made pursuant to this issuance will be in the sole and unreviewable discretion of the decision maker. No requestor has a right to indemnification or payment pursuant to this issuance.

3.6. CONTACT INFORMATION.

To submit a notice or request to Deputy General Counsel (Legal Counsel) or to ask questions related to making a request pursuant to this issuance, e-mail osd.pentagon.ogc.mbx.dod-indemnification-policy@mail.mil

SECTION 4: LEGAL REPRESENTATION

4.1. REPRESENTATION AND REIMBURSEMENT CIRCUMSTANCES.

a. Representation by the Department of Justice.

The Department of Justice may represent covered personnel or, if Department of Justice counsel is unavailable, provide private counsel or reimburse covered personnel's private counsel expenses, in civil, criminal, professional licensure, and congressional proceedings, in accordance with Sections 50.15 and 50.16 of Title 28, Code of Federal Regulations.

b. Reimbursement by the DoD.

Covered personnel may request, pursuant to the procedures in Sections 5 and 6, that the DoD provide reimbursement for certain costs of legal representation by private counsel in a proceeding related to the individual's performance of their official duties. These include:

(1) Reimbursement by the DoD for Representation in Litigation.

In unusual cases when representation by the Department of Justice or reimbursement for private counsel by the Department of Justice is unavailable, the DoD may provide reimbursement for private counsel representation in Federal or State court litigation with the:

(a) Relevant approval in Paragraph 3.2.

(b) Additional approval of the Attorney General or their designee, who will determine whether reimbursement is in the interest of the United States.

(2) Reimbursement by the DoD for Representation in a Congressional or Other Non-Litigation Proceeding.

With the relevant approval in Paragraph 3.2., the DoD may provide reimbursement for representation of covered personnel in a proceeding other than Federal or State court litigation. This may include reimbursement for representation in a congressional or administrative proceeding, including proceedings before the U.S. Office of Special Counsel.

(3) Reimbursement by the DoD for Representation in an Investigation or Prosecution by a Department of Justice Special Counsel.

The DoD may provide reimbursement for representation in an investigation or prosecution by a special counsel appointed pursuant to the authority of the Attorney General only when:

(a) The individual is a witness and not a subject or target of the investigation or prosecution.

(b) The GC DoD and the Attorney General or their respective designees both determine that reimbursement is in the interest of the United States and personally approve the reimbursement.

c. When Reimbursement by the DoD Is Unavailable.

Except as provided in Paragraphs 4.1.b.(1) through 4.1.b.(3), the DoD will not provide reimbursement for representation in:

- (1) A Federal criminal investigation or prosecution.
- (2) An investigation, audit, inspection, or other proceeding by a Federal inspector general.

4.2. CONSIDERATIONS RELATED TO LEGAL EXPENSES.

In evaluating whether the requested legal expenses are fair and reasonable, the criteria in Paragraphs 4.2.a. through 4.2.c. will be considered. These criteria are not exhaustive and requests will be evaluated based on all relevant circumstances, at the sole and unreviewable discretion of the GC DoD or Deputy General Counsel (Legal Counsel).

a. Nature of Retention.

Whether the services for which reimbursement is sought directly relate to matters within the scope of Paragraph 3.1. Examples of charges which will not be reimbursed are those associated with:

- (1) Actual or potential administrative claims or civil actions against the United States on behalf of the requestor.
- (2) Requests made pursuant to the Freedom of Information or Privacy Acts or civil suits against the United States pursuant to those acts or on any other basis, to secure documents for use in connection with matters within the scope of Paragraph 3.2.
- (3) Any legal work that advances only the private individual interests of the requestor.
- (4) Certain administrative expenses noted in Paragraph 4.2.c.

b. Billable Hours.

(1) In evaluating reasonableness, the number of attorneys submitting billable hours will be considered on a case-by-case basis. Generally, the Office of the GC DoD will consider billable hours submitted by up to one partner and one associate. The need for additional attorney support should be documented in writing. The Office of the GC DoD expects a thorough explanation of each service performed and will not consider general descriptions such as “research” or “correspondence.”

(2) The DoD will not reimburse attorney fees or legal expenses incurred in submitting a request for indemnification pursuant to this issuance, including attorney time spent drafting an indemnification request and preparing supporting documents.

(3) While not directly applicable, the DoD considers the hourly rates calculated by the U.S. Attorney's Office for the District of Columbia, Civil Division (<https://www.justice.gov/usao-dc/civil-division>) as the high end of reasonable rates for the local legal market. Increased hourly rates may be considered in extraordinary circumstances with additional written justification.

c. Expenses.

(1) The DoD will consider authorizing payment for itemized overhead expenses only if actually incurred (e.g., postage, tolls, travel). The DoD will not consider a standard fee or percentage as "overhead."

(2) Fees for computer-assisted research must be reasonable as determined by the Office of the GC DoD.

(3) Travel expenses will be limited to amounts approved for official travel in accordance with the Federal Travel Regulations. Hours billed for time spent while traveling will not be reimbursed unless the travel time is used for tasks related to the matter, and the tasks are specifically identified in the billing statement. Additional justification is required if the individualized costs associated with meals, incidentals, or lodging for out-of-town travel exceed the U.S. Government per diem rate, as published by the U.S. General Services Administration.

SECTION 5: PROCEDURES FOR REQUESTING INDEMNIFICATION, PAYMENT FOR SETTLEMENT OR COMPROMISE OF A CLAIM, OR REIMBURSEMENT OF ATTORNEYS' EXPENSES

5.1. INITIAL NOTIFICATION REQUIREMENTS.

a. Timing.

In a matter where the protections of Paragraph 3.1. may be sought pursuant to this issuance, covered personnel will provide prompt written notice to DoD that such a matter has been initiated or is pending.

b. Contents.

The notice must include:

- (1) The requestor's contact information.
- (2) A copy of any written documents associated with the proceeding.
- (3) Any offer to settle or compromise the proceedings.

c. Where Notice Will be Provided.

(1) For those currently employed by the DoD, notice will be provided through supervisory channels to the:

(a) Chief legal officer of the applicable DoD Component to which the requestor was assigned at the time of the relevant conduct.

(b) Office of the Deputy General Counsel (Legal Counsel) via e-mail to osd.pentagon.ogc.mbx.dod-indemnification-policy@mail.mil.

(2) Covered personnel not currently employed by the DoD will provide notice directly to Office of the Deputy General Counsel (Legal Counsel) via e-mail to osd.pentagon.ogc.mbx.dod-indemnification-policy@mail.mil.

5.2. SUBMISSION AND CONTENTS OF REQUESTS.

a. Required Procedure and Information.

Requests will be submitted to the individuals referenced in Paragraph 5.1.c. A request must contain:

- (1) All documentation relevant to the proceedings or legal action, including:

- (a) The complaint.
- (b) Answer and any other pleadings.
- (c) Copies of the verdict, judgment, award.
- (d) Offers and demands for settlement or compromise.

(2) A description of the requestor's alleged conduct leading to the proceedings or legal action or about which a congressional committee or special counsel wants to know more, and an explanation as to how the relevant conduct was carried out by the requestor in good faith and within the scope of their official duties.

(3) A statement of the amount requested.

(4) Documentation of the requestor's payment of any amounts for which reimbursement pursuant to this issuance is being sought, if applicable.

(5) An acknowledgement statement signed by the requestor, indicating their understanding that the DoD's acceptance of the request for processing does not constitute an acceptance by the DoD of any obligation to make such a payment.

(6) For requests seeking reimbursement of attorneys' expenses, the request must include the information detailed in Paragraph 6.2.

b. Failure to Include Required Information.

Failure to submit any of the required information may result in the request being returned to the DoD Component or the requestor.

5.3. DOD COMPONENT RESPONSIBILITIES.

a. Required Information from DoD Component.

Upon receipt of any requests from covered personnel currently employed by the DoD, the relevant DoD Component head will submit to the Deputy General Counsel (Legal Counsel):

(1) The DoD Component head's recommended disposition of the request with a detailed analysis supporting the recommendation.

(2) A copy of the notification through supervisory channels of the matter to the chief legal officer of the relevant DoD Component and Office of the Deputy General Counsel (Legal Counsel).

(3) A statement as to whether any financial support is available under applicable DoD Component policies and, if so, whether such support was provided.

(4) A statement as to whether appropriated funds of the relevant DoD Component are available for the requested payment.

b. Provision to Office of the GC DoD.

Following the submission of a request by covered personnel no longer employed by the DoD and upon request of Deputy General Counsel (Legal Counsel), the relevant DoD Component head will provide the information in Paragraph 5.3.a. to the Deputy General Counsel (Legal Counsel).

SECTION 6: ADDITIONAL PROCEDURES WHEN REQUESTING REIMBURSEMENT OF ATTORNEYS' EXPENSES

6.1. REPRESENTATION BY THE DEPARTMENT OF JUSTICE.

a. The Department of Justice may represent a covered person or, if Department of Justice counsel is unavailable, provide private counsel or reimburse a covered person's private counsel expenses, in civil, criminal, professional licensure, and congressional proceedings, in accordance with Sections 50.15 and 50.16 of Title 28, Code of Federal Regulations.

b. Before submitting a request pursuant to this issuance, it is strongly recommended that a requestor contact legal counsel for the DoD Component to which the requestor was assigned at the time of the relevant conduct concerning potential representation by or support from the Department of Justice.

c. Except in unusual cases when representation by the Department of Justice or reimbursement for private counsel by the Department of Justice is unavailable, reimbursement of attorneys' expenses generally will not be provided pursuant to this issuance for representation in Federal or State court litigation, in either civil or criminal proceedings.

6.2. CONTENTS OF REQUEST.

a. Required Additional Information.

Any request for reimbursement of attorneys' expenses pursuant to this issuance must follow the procedures in Section 5 and contain:

- (1) The name of and any retainer agreement with private counsel.
- (2) Any and all processes and pleadings served on the requestor related to the matter, including a request from a congressional committee or a special counsel for the requestor to be interviewed.
- (3) All legal invoices reflecting fees for which payment is sought.
- (4) A statement as to whether the Department of Justice was asked to provide representation or reimbursement and a copy of the response to that request, if applicable.

b. Failure to Include Required Information.

Failure to submit any of the required information may result in the request being returned to the DoD Component or the requestor.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
GC DoD	General Counsel of the Department of Defense
U.S.C.	United States Code

G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
covered persons or personnel	Current and former civilian employees of DoD Components and current and former Service members including members of the Reserve and National Guard involved in the performance of official Federal duties.
requestor	Individual seeking indemnification, settlement payment, or reimbursement of attorneys' expenses related to personal liability for matters arising from performance of their official duties.

REFERENCES

Code of Federal Regulations, Title 28

DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),”
December 2, 2013, as amended

Federal Travel Regulations, current edition

United States Code, Title 10

United States Code, Title 28, Chapter 171 (also known and referred to as the “Federal Tort
Claims Act”)