

Issue Date: 12/21/2005

REIMBURSEMENT FOR PROFESSIONAL LIABILITY INSURANCE

I. Purpose

This Management Directive (MD) provides policy concerning reimbursement to certain employees of the Department of Homeland Security (DHS) for the costs of obtaining professional liability insurance.

II. Scope

This MD applies to all of DHS.

III. Authorities

This following laws, regulations, orders, policies, directives, and guidance govern this MD:

- A. P.L. 104-208, "Making omnibus consolidated appropriations for the fiscal year ending September 30, 1997, and for other purposes," § 636, "Reimbursements Relating to Professional Liability Insurance."
- B. P.L. 106-58, "Treasury and General Government Appropriations Act, 2000," § 642
- C. DHS Delegation Order 0201.1, "Delegation to the Under Secretary for Management."

IV. Definitions

- A. **Costs of Insurance**: The premium for one year of qualifying professional liability insurance.

B. **Law Enforcement Officers:** Law enforcement officers are defined as employees the duties of whose position are primarily the investigation, apprehension, prosecution, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including any law enforcement officer who is covered by the special retirement provisions under Title 5 United States Code sections 8331 (20) and 8401 (17), or under Title 22 section 4823, pertaining to special agents of the Department of State and the Foreign Service. For purposes of this MD only, a law enforcement officer is also an attorney whose duties primarily entail criminal prosecution of persons suspected of offenses against the criminal laws of the United States, and employees who are occupying positions approved for secondary coverage as law enforcement officers, but whose individual service histories exclude them from the special retirement provisions.

C. **Managers/Management Officials.** An employee in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency. For the purposes of this Directive only, management officials are generally those individuals who create, formulate, establish, prescribe, decide upon, or settle general principles, plans or courses of action for an agency. This includes individuals who create, establish, or prescribe general principles, plans, or courses of action for an agency, and individuals who decide upon such general principles, plans, or courses of action, and individuals who bring about or obtain adoption of such general principles, plans or courses of action. A management official does not include an employee whose functions are limited to implementing, as opposed to shaping, an agency's policies.

D. **Professional Liability Insurance.** Professional liability insurance as defined in the statutes authorizing payment may include only:

1. Legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of such individual's official duties as a qualified employee; and
2. The cost of legal representation for the individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual while in the performance of such individual's official duties as a qualified employee, and other legal costs and fees relating to any such administrative or judicial proceeding.

E. **Supervisor**. A supervisor is an individual who has the authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. With respect to any unit which includes firefighters and nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority.

V. Responsibilities

A. **The Under Secretary for Management** has responsibility for establishing the policy direction and approving DHS’s policy for the reimbursement of the cost of employees’ obtaining professional liability insurance.

B. **The Chief Human Capital Officer** has responsibility for:

1. Recommending policy concerning reimbursement for the costs of obtaining professional liability insurance;
2. Providing policy and technical guidance concerning that policy; and
3. Certifying employees’ eligibility for reimbursement, based on the individual employee’s position and the insurance information submitted for employees other than those of:
 - a. U.S. Citizenship and Immigration Services
 - b. U.S. Customs and Border Protection
 - c. Federal Emergency Management Agency
 - d. Federal Law Enforcement Training Center
 - e. U.S. Immigration and Customs Enforcement
 - f. U.S. Coast Guard
 - g. U.S. Secret Service
 - h. Transportation Security Administration

C. **Human Resources Directors** have responsibility for:

1. Providing guidance to their individual organizations concerning the requirements of DHS’s Human Capital policies;
2. Working in conjunction with other offices, such as the Chief Financial Officer, to develop processes and procedures for employees’ reimbursement;
3. Assisting with determinations of eligibility of employees, insurance policies and costs for reimbursement.

- D. **Employees** have responsibility for:
1. Submitting all documentation required in support of a request for reimbursement; and
 2. Maintaining documentation of an approved request for reimbursement, as prescribed in this MD.

VI. Policy and Procedures

- A. In accordance with statute, DHS will reimburse eligible employees for a portion of the premium paid to obtain insurance coverage that meets the statutory definition of professional liability insurance.
- B. Employees who are law enforcement officers, supervisors and managers, as defined in the applicable Public Laws, are eligible for reimbursement.
- C. Total reimbursement will be one-half of the premium paid for professional liability insurance.
- D. Reimbursement may be made once every year for the plan year that is being claimed.
- E. If a premium was prorated and paid for a partial year, only half of the amount actually paid may be reimbursed.
- F. Only fully paid costs may be reimbursed. Accordingly, if an employee is paying for coverage on a bi-weekly basis through payroll deduction, quarterly, semi-annually, or in any other installment arrangement, reimbursement will only be made when the costs for a plan year have been fully paid.
- G. Liability policies that do not meet the requirements of the applicable statutes, such as umbrella liability policies or legal representation policies are not reimbursable. Likewise, the cost of any coverage obtained in a single policy that is in addition to that provided for by statute, as described above, is not reimbursable by DHS.
- H. Employees who become ineligible for coverage (for example, by moving to a non-eligible position) during a year in which reimbursement was made, are required to repay the portion of the premium covering the time period during which the employee is ineligible. The premium will be pro rated by dividing the number of full months of coverage (usually 12) by the amount DHS paid to the employee to achieve a monthly reimbursement amount. The number of the full months during which the employee is ineligible will then be multiplied by the monthly reimbursement amount to determine the amount to be returned to DHS.

I. Employees are required to maintain copies of all documents related to reimbursement for a period of three years following the plan year for which reimbursement was made.

J. Claims for reimbursement filed by employees after the issuance date of this MD will be subject to the policy described herein.

VII. Questions

Address any questions or concerns regarding this MD to the Office of the Chief Human Capital Officer.