

Chapter 6

DEFENSE OF TOWN EMPLOYEES

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[HISTORY: Adopted by the Town Board of the Town of Windsor 1-8-86 as L.L. No. 1-1986.¹ Amendments noted where applicable. Amended 4-2-97, LL No. 1-1997]

§ 6-1. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEES - Any person holding a position by election, appointment or employment in the service of the town, but shall not include a volunteer, any person not compensated for his services or an independent contractor or its employees. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

TOWN - The Town of Windsor.

¹This ordinance also superseded former Ch. 6, Defense of Town Employees, adopted 11-5-80 as L.L. No. 1-1980.

§ 6-2. Provisions for defense of town employees.[Amended 4-2-97, LL No. 1-1997]

A. Upon compliance by the employee with the provisions of § 6-3 of this chapter, the town shall provide for the defense of the employee in any civil action, in any state or federal court arising out of any alleged act or omission which alleged in any complaint to have occurred while the employee was acting, or in good faith purporting to act, within the scope of his public employment or duties. Such defense shall not be provided where such civil action or proceeding is brought by or on behalf of the town.

B. Subject to the conditions set forth in this chapter, the employee shall be represented by the Attorney for the Town or an attorney employed or retained by the Town for the defense of the employee. If the Town Board or a court of competent jurisdiction should determine that a conflict of interest exist, and that the employee cannot be represented by the Attorney for the Town, then reasonable attorney's fees and litigation expenses shall be paid by the Town, to such attorney employed or retained, from time to time, during the pendency of the civil action or proceeding, by said Town, subject to certification by the Attorney for the Town, that the employee is entitled to representation under the terms and conditions of this chapter. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Town. Any dispute with respect to representation of multiple employees by the Attorney for the Town, or an attorney employed or retained for such purpose, or with the amount of expenses, shall be resolved, in the first instance by the Town Board, or if such Board is not able to effect a resolution thereof, by the Court.

C. Where the employee delivers process and a request for a defense to the Attorney for the Town or the Town Supervisor, as required by § 6-3 of this chapter, the Attorney for the Town or Town Supervisor, as the case may be, shall take the necessary steps, including the retention of an attorney under the terms and conditions provided in Subsection B of this section on behalf of the employee to avoid entry of a default judgment, pending resolution of any question relating to the obligation of the Town to provide a defense.

§ 6-3. Conditions.[Amended 4-2-97, LL No. 1-1997]

The duties to defend provided in this chapter shall be contingent upon delivery to the Attorney for the Town, or, to the Town Supervisor, of the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after the employee is served with such document, and the full cooperation of the employee in any defense of any such action or proceeding and the defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the Town provide for his defense, pursuant to this chapter, unless the employee shall state in writing that a defense is not requested.

§ 6-4. Limitation of applicability.[Amended 4-2-97, LL No.1-1997]

The benefits of this chapter will pertain only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this chapter be construed to affect, alter, or repeal any provisions of the Workers' Compensation Law.

The Town may, refuse to defend, or otherwise indemnify any employee, if the Town Board so decides.

§ 6-5. Extension of benefits to certain employees restricted.

The benefits of this chapter shall be extended to an employee of a negotiating unit for which an agreement has been negotiated pursuant to Civil Service Law, Article 14, only if such agreement expressly so provides.

§ 6-6. Effect on insurers.

The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

§ 6-7. Construal of provisions.

As otherwise specifically provided in this chapter, the provisions of this chapter, shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or any right to defense provided for any governmental officer or employee by, in accordance with or by reason, any other provision of state or federal statutory or common law.

§ 6-8. Effect on pending proceedings.

The provisions of this chapter shall apply to all actions and proceedings specified herein which have been commenced, instituted or brought on or after the effective date of this chapter.

§ 6-9. When effective.

This chapter shall take effect immediately upon the filing in the office of the Secretary of State.