

# WHO IS COVERED?

## PURPOSE

This policy details who is covered under the Risk Management statutes, specifically [A.R.S. §41-621](#) and [A.R.S. §41-622](#). These statutes are further defined in the [Rules and Regulations R2-10-101](#) through [R2-10-502](#).

## POLICY

It is the policy of the State of Arizona that no individual, corporation, sole proprietorship, group or association be covered unless they meet the statutory requirements in [A.R.S. §41-621](#) and [§41-622](#).

## RESPONSIBILITY

The Director of the Department of Administration has delegated to the Risk Manager of the Risk Management Division final authority on issues of this policy's determination.

## INTRODUCTION

All liability coverage provided by the Risk Management Division is set forth in the Risk Management statutes, specifically [A.R.S. §41-621](#) and [A.R.S. §41-622](#). The statutes are further defined in the [Rules and Regulations R2-10-101](#) through [R2-10-502](#).

## WHO IS COVERED

[A.R.S. §41-621](#) states that the Department of Administration shall obtain insurance or self-insure, the State and its Departments, Agencies, Boards and Commissions and all officers, agents and employee thereof against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization.

Liability coverage is also extended to volunteers acting at the direction of State officials, and within the course and scope of their state-authorized activities ([R2-10-107B](#)).

The State self-insurance is excess of any other valid and collectable insurance ([41-621C](#)).

The following guidelines were developed by the Attorney General's Office based on AG Opinion 190-009 of 12/27/90, and used by the Risk Management Division to determine whether a specific entity is a State Agency, Department, Board or Commission or "such others as may be necessary to accomplish the functions or business of the State" and thus are eligible for coverage under the State Risk Management Program:

The Agency, Board, or Commission must be a branch of State government, or an office, division, department, or entity into which State government is divided.

Branches of State government include those entities of the State subject to legislative review and sunset legislation, pursuant to [A.R.S. §41-2361](#) through [§41-2379](#).

The State Legislature is the funding source for the Agency, Board, or Commission.

The Agency, Board, or Commission exercise Statewide powers, as oppose to district, county, city, or other local powers.

## **ADDITIONAL INSUREDS**

Additional insureds are non-public entities requesting coverage under [A.R.S. §41-621](#) which will protect them from third party lawsuits or property damage resulting from the State's sole negligence.

Approved additional insured would be: Lessor where the State is the Lessee, or where the State is conducting business or needs to use private property to carry out its purposes.

Additional Insureds needing prior approval from the Risk Management Division:

- Contractors doing work for the State.
- Vendors selling products or service to the State.
- Professional services i.e. doctors, nurses, health care providers, architects, engineers, accountants, etc.

In all such instances RMS will require from the requesting agency director written justification that the need for third party coverage is in furtherance of **necessary** state business.

Additional insured wording:

**STATE'S SOLE NEGLIGENCE** - "The State of Arizona agrees to name [insert company, entity or individual] as an additional insured but only with respect to [insert contract or agreement name, number or title; or project; etc.], and agrees to insure and defend the covered party[ies] to the extent any claims arise from the sole negligence of the state its agencies, boards commissions, employees, officer or agents."

**STATE AND A/I JOINT NEGLIGENCE** - "The State of Arizona agrees to name [insert company, entity or individual] as an additional insured but only with respect to [insert contract or agreement name, number or title; project; etc.] and agrees to insure and defend the covered party[ies] to the extent any claims arise in whole or in part by an negligent act of the State of Arizona."

**FOR ASSUMPTION OF THIRD PARTY (A/I) SOLE NEGLIGENCE** - "The State of Arizona agrees to name [insert company, entity or individual] as an additional insured but only with respect to [insert contract or agreement name, number or title; project; etc.] and agrees to insure and defend the covered party[ies] to the extent of the law under [A.R.S. §41-621](#) et seq."

## **AGENTS OF THE STATE**

The question as to who is an agent of the state and thus covered by Risk Management has been an area of debate. Many agencies and universities have asked for very liberal interpretations in order to provide coverage to certain groups.

Although the definition of an "agent" can be very broad and could include professional people providing services on behalf of the state, Risk Management does **not** consider any of the following agents of the State for purposes of liability coverage:

Contractors of any type. They must provide their own insurance, indemnify (intermediate form) and hold the state harmless. Certificates of Insurance are required naming the state as an additional insured.

Vendors of any type. They must indemnify the state and provide insurance for their protection and name the state as an additional insured.

Special Interest Groups of any type. Those groups that support state agencies physically or financially are not covered by the Risk Management statutes.

University Clubs. Those clubs which are not part of the educational curricula and are not sponsored by the University, i.e., parachute clubs, ski clubs, or other social clubs.

Co-sponsorship of an activity between the State and a non-State entity does not create an agency relationship. No State Department, Agency, Board or Commission may assume any liability of non-State entities or persons.

## **SUPERIOR COURT EMPLOYEES**

Superior Court employees are covered under [A.R.S. §41-621](#) as a result of the [Acevedo vs Pima County Adult Probation Department](#).

Examples of coverages extended to Superior Court employees include:

- Public liability for acts, errors or omissions.
- Automobile liability for County and State owned vehicles driven by court employees within the course and scope of employment.
- Workers' Compensation coverage.
- Auto physical damage for County or State owned vehicles driven by court employees.
- Auto liability for an employee's private passenger auto while driven within the course and scope of employment. The State's auto liability is excess over any valid and collectible insurance on the employee's vehicle.

We provide no property coverage for County owned buildings and contents.

## **PROVIDER INDEMNITY PROGRAM (PIP)**

[A.R.S. §41-621 \(B\)](#)

This statute gives Risk Management authority to either purchase insurance or to self-insure. The providers of these programs and clients participating in these programs are covered. The State sponsored programs are as follows:

- Foster Care,
- Services for the Developmentally Disabled,
- Independent Living, and
- Respite Sitter Services.

The State feels that it is responsible for the negligent and intentional acts of its clients because of the custodial relationship it has with them through contract or court order. These clients come from the Department of Economic Security, Department of Corrections, Department of Youth Treatment and Rehabilitation and the Office of the Courts and are placed in one of the four programs listed above.

Coverage for the provider is limited to negligent acts of the provider which are the result of the direct or incidental care of a client.

### **What does PIP cover?**

- Bodily injury/property damage caused by a client;
- Bodily injury/property damage caused by a provider resulting from the direct or incidental care of a client;
- Damage to personal property of an individual provider if the damage is caused by a client;
- Loss, stolen, or damaged jewelry to a maximum of \$1,000 per occurrence annually.

### **Exclusions of Coverage**

- Mysterious disappearance of property;
- Intentional, unlawful or illegal acts of the providers,
- Automobile Physical Damage, as the result of permissive use of an auto by a client;
- Benefits covered by workers' compensation, unemployment or disability laws;
- All claims, including defense costs, which result from allegations of physical abuse, sexual abuse or sexual molestation by the provider;
- Damage to personal property is not covered for contract providers required by their contract to carry insurance;
- Juvenile offenses that are so serious that they are prosecuted in an adult court.

## **AUTO LIABILITY COVERAGE**

The Administrative Rules and Regulations, specifically [R2-10-107.2.a](#) through [f](#), define when a driver is considered to be in the course and scope of employment while driving a State owned or County vehicle and thus covered by State Risk Management.

- While driving on authorized State Business.
- While driving to and from work.
- While driving to and from lunch on a working day.
- While driving outside the area of regular employment on authorized State Travel.
- While driving at any other specifically State-Authorized time outside regular employment hours.

- While driving to and from meals while on out-of-town travel.

There is no coverage for an employee while driving a state-owned or non-state-owned vehicle outside the course and scope of employment. See [R2-10-107.3](#).

An employee will not be considered within the course and scope of employment while driving a non-State owned vehicle. See [R2-10-107.4a](#) through [c](#).

- While driving to and from work;
- While driving to and from lunch in the area of employment and not on officially authorized State business;
- While driving on other than State-authorized business.

### **UNINSURED / UNDER-INSURED MOTORIST COVERAGE**

The Risk Management Division does not provide uninsured or underinsured motorist coverage. If a state employee is injured in an auto accident while in the course and scope of employment and the responsible party is uninsured/underinsured the state employee will not receive compensation from the state beyond that which is provided by state Workers' Compensation statutes.

If a state employee is driving a personal vehicle and in transporting individual(s) that are not state employees, no underinsured/uninsured motorist coverage would be available.

### **COLLISION DAMAGE TO STATE EMPLOYEE VEHICLES**

If a state employee, while in the course and scope of his employment, damages his own vehicle the State does not pay for collision damage.

### **COUNTY VEHICLES**

Risk Management will cover auto liability claims for Superior Court employees who are involved in auto accidents regardless of whose auto [State, County or (personal auto on an excess basis only)] is being driven if the employee is performing duties at the direction of the court. The Risk Management Division has agreed to pay for collision damage to county vehicles.

### **EXCLUSIONS**

See [Risk Management Rules, Chapter 10, revised 1993](#).

### **WORKERS' COMPENSATION**

[A.R.S. §41-621](#) states that all officers, agents, and employees thereof are covered for workers' compensation.

Pertinent information about certain volunteers covered by [A.R.S. §23-901.5 \(e\)\(f\)\(m\)\(n\)](#) is sent to Risk Management by the various agencies utilizing their services. Reported on a quarterly basis are names, social security numbers, etc.:

- [A.R.S. §23-901 \(m\)\(n\)](#) Emergency and Military Affairs volunteers participating in a search or rescue operation or a search or rescue training operation carrying an assigned mission identifier

(assigned by the Division of Emergency Services as required in [A.R.S. §35-102.01](#)), without compensation. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the Division of Emergency Services in a given month multiplied by the appropriate Risk Management formula.

- Department of Public Safety has two classifications (for volunteers covered by [A.R.S. §23-901.5\(e\)](#)) (and) (different compensation benefits.) For “Peace Officer” reserves, the salary equivalent to the first month’s salary of a regular duty officer is used. For the Department of Public Safety reserves, not peace officers, the basis for computing premiums and compensation benefits is \$400 a month.
- [A.R.S. §23-901 \(1\)](#) Volunteer workers of a licensed health care institution may be deemed to be employees and entitled to the benefits provided by this statute. The basis for computing wages for premium payments and compensation benefits for such volunteers shall be \$400 per month.

Volunteers for Department of Health Service, Arizona State Hospital are covered and pay a monthly premium to Risk Management.

- [A.R.S. §23-901 \(o\)](#) Regular members of the Arizona Game and Fish Department reserve, organized pursuant to [A.R.S. §17.214](#). The basis for computing wages for premium payments and compensation benefits for a member of the reserve is the salary received by game rangers and wildlife managers of the Arizona Game and Fish Department for their first month of regular duty. Game and Fish sends in a quarterly premium statement with the member’s name, social security number and hours worked along with their premium payment.
- [A.R.S. §23-901 subsection 5\(f\)](#): Any person placed in on-the-job evaluation, on-the-job training, or Level 3 or 4 of the Arizona Works Program under the Department of Economic Security’s vocational rehabilitation program shall be deemed to be an employee of such department for the purpose of coverage under the state workers compensation laws only. The basis for computing premium payments and compensation benefits shall be \$200 per month. Any person receiving vocational rehabilitation services under the Department of Economic Security’s Vocational Rehabilitation program whose major evaluation or training activity is academic, whether as an enrolled attending student or by correspondence, or who is confined to a hospital or penal institution, shall not be deemed to be an employee of the Department for any purpose. Any dividend which the Department’s vocational rehabilitation program may be entitled to receive from the State Compensation fund because of favorable loss experience for any policy period shall not revert to the State General Fund, but shall be applied to the Department’s current premium obligations for workers compensation coverage for such program.
- [A.R.S. §46-349 \(h\)](#): Participants placed in Level 3 or 4 are considered employees for purposes of [Title 23, Chapters 4 and 6](#), except that workers compensation benefits shall be provided by the Arizona Works agency from temporary assistance for needy families monies pursuant to [46-352, subsection H](#).
- [A.R.S. §23-901 \(j\)](#) A member of the Arizona National Guard, Arizona State Guard or unorganized militia shall be deemed a state employee and entitled to coverage under the Arizona workers’ compensation law at all times while such member is receiving the payment of his military salary from the State of Arizona under competent military orders or upon order of the Governor.

## **AUTHORITY**

- [Arizona Revised Statutes §41-621](#).

- [Arizona Revised Statutes §41-622.](#)
- Other Statutes as referred to in this section.