

TOWN OF WESTMORELAND

LOCAL LAW 3 of the year 2007

A LOCAL LAW to provide for the defense and indemnification of town employees.

Be it enacted by the Town Board of the Town of Westmoreland as follows:

Section 1. Title.

This chapter shall be known as the "Defense and Indemnification of Town Employees Local Law."

Section 2. Purpose.

The purpose of this chapter is to encourage members of the public to participate in town government and public service by providing such persons with a defense and indemnification in any civil action or proceeding that arises out of such government or public service.

Section 3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

EMPLOYEE - Any commissioner, member of a public board or commission, officer, employee, volunteer expressly authorized to participate in a town-sponsored volunteer program or any other person holding a position by election, appointment or employment in the service of the town, whether or not compensated. The term "employee" shall include a former employee or his estate or judicially appointed personal representative.

TOWN - The Town of Westmoreland.

Section 4. Prerequisites.

The duty to defend or indemnify and save harmless prescribed by this chapter shall be conditioned upon delivery by the employee to the Town Attorney of the town or to the Town Supervisor of a written request to provide for defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading, within ten (10) days after he is served with such document and the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission and in the prosecution of any appeal.

Section 5. Defense.

- A. Upon compliance by the employee with the provisions of §4 of this chapter, the town shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the town.
- B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the Town Attorney or other counsel designated by the town determines that a conflict of interest exists or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his choice; provided, however, that the Town Attorney or other counsel designated by the town may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the town to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the Town Board.
- C. Any dispute with respect to representation of multiple employees by a single counselor the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.
- D. Where the employee delivers process and a written request for a defense to the town under §4 of this chapter, the town shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

Section 6. Indemnification.

- A. The town shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his public employment or duties; provided, further, that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the Town Board.
- B. Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this chapter shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

C. Nothing in this chapter shall authorize the town to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee pursuant to §51 of the General Municipal Law; provided, however, that the town shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.

D. Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement personally or by certified or registered mail within thirty (30) days of the date of entry or settlement upon the Town Supervisor of the town, and, if not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the town.

Section 7. Eligibility.

The benefits of this chapter will inure 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.

Section 8. Effect of civil service agreement.

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.

Section 9. All rights of employees preserved.

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

Section 10. Applicability.

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.

Section 11. Repealer.

Local Law No. 2 of 1987 of the Town of Westmoreland is hereby repealed.