

63G-7-902 Defending government employee -- Request -- Cooperation -- Payment of judgment.

- (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:
 - (a) during the performance of the employee's duties;
 - (b) within the scope of the employee's employment; or
 - (c) under color of authority.
- (2)
 - (a) Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend the employee:
 - (i) within 10 days after service of process upon the employee; or
 - (ii) within a longer period that would not prejudice the governmental entity in maintaining a defense on the employee's behalf; or
 - (iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.
 - (b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.
- (3) The governmental entity may decline to defend, or, subject to any court rule or order, decline to continue to defend, an action against an employee if it determines:
 - (a) that the act or omission in question did not occur:
 - (i) during the performance of the employee's duties;
 - (ii) within the scope of the employee's employment; or
 - (iii) under color of authority; or
 - (b) that the injury or damage on which the claim was based resulted from conditions set forth in Subsection 63G-7-202(3)(c).
- (4)
 - (a) Within 10 days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.
 - (b) A refusal by the entity to provide a defense is not admissible for any purpose in the action in which the employee is a defendant.
- (5) Except as provided in Subsection (6), if a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim.
- (6) A governmental entity may conduct the defense of an employee under a reservation of rights under which the governmental entity reserves the right not to pay a judgment if any of the conditions set forth in Subsection (3) are established.
- (7)
 - (a) Nothing in this section or Section 63G-7-903 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301(3) and Section 63G-7-802.
 - (b) When a governmental entity declines to defend, or declines to continue to defend, an action against its employee under any of the conditions set forth in Subsection (3), it shall still provide coverage up to the amount specified in Section 31A-22-304.

