

## Chapter 5

### DEFENSE AND INDEMNIFICATION

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[HISTORY: Adopted by the Board of Trustees of the Village of Champlain 7-28-1980 as L.L. No. 1-1980. Section 5-2B amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

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#### § 5-1. Definitions.

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

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

**VILLAGE** — The Village of Champlain, New York.

#### § 5-2. Defense of employees authorized.

- A. Upon compliance by the employee with the provisions of § 5-3 of this chapter, the village shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the 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, or which is brought to enforce a provision of 42 U.S.C. § 1981. Such defense shall not be provided where such civil action or proceeding is brought by or on behalf of the village.
- B. Subject to the conditions set forth in this chapter, the employee shall be represented by the Village Attorney or an attorney employed or retained by the village for the defense of the employee. The Village Board shall employ or retain an attorney for the defense of the employee whenever the village does not have a Village Attorney, the Village Board determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Village Attorney would be inappropriate or a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Village Attorney. Reasonable attorney's fees and litigation expenses shall be paid by the village to such attorney

employed or retained from time to time during the pendency of the civil action or proceeding, subject to certification by the Village Attorney or, if none, the Village Mayor 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 village. Any dispute with respect to representation of multiple employees by the Village Attorney or by any attorney employed or retained for such purposes or with respect to the amount of the fees or expenses shall be resolved in court.<sup>1</sup>

- C. Where the employee delivers process and a request for a defense to the Village Attorney, or, if none, then to the Village Mayor, as required by § 5-3 of this chapter, the Village Attorney or the Village Mayor, as the case may be, shall take the necessary steps, including the retention of any 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 village to provide a defense.

### **§ 5-3. Conditions for defense or indemnification.**

The duties to defend or indemnify and save harmless provided in this chapter shall be contingent upon delivery to the Village Attorney, or, if none, to the Village Mayor, of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he/she is served with such document and the full cooperation of the employee in the defense of such action or proceeding against the village 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 village provide for his defense pursuant to this chapter, unless the employee shall state, in writing, that a defense is not requested.

### **§ 5-4. Indemnification of employees.**

- A. The village shall indemnify and save harmless any employee whose defense was provided pursuant to this chapter in the amount of any judgment obtained against such employee or in the amount of any settlement or compromise approved by the Village Board. The village shall not indemnify and save harmless the employee:
- (1) Where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
  - (2) For any punitive or exemplary damages, fines or penalties.
  - (3) For money recovered from the employee pursuant to § 51 of the General Municipal Law.
- B. Any claim or compromise settlement which may be subject to indemnification by the village shall not be paid unless it is presented to and approved by the Village Board.
- C. Upon entry of a final judgment against the employee or upon settlement of compromise of a claim as approved by the Village Board, the employee shall cause to be served

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1. Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

upon the Village Mayor a copy of such judgment or settlement, personally or by certified or registered mail, within 30 days of the date of entry or settlement. Such judgment or settlement shall be processed and paid in the same manner as other judgments or settlements of claims are paid by the village.

**§ 5-5. Effect on worker's compensation.**

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 provisions of this chapter be construed to affect, alter or repeal any provisions of the Worker's Compensation Law.

**§ 5-6. Effect on civil service agreements.**

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

**§ 5-7. Effect on insurance policies.**

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.

**§ 5-8. Effect on other laws.**

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 conferred upon any unit, entity, officer or employee of the village or any right to defense and/or indemnification 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.

**§ 5-9. 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.