

Appendix C

Defense and Indemnification of Officers and Employees of the State and Public Entities

[Section 17 of the Public Officers Law \(POL\)](#) provides for the defense and indemnification of State officers and employees sued for acts or omissions that occurred while the individual was acting within the scope of his public employment. Officers and employees of public entities (e.g., municipalities) whose governing bodies have adopted a local law conferring the benefits of Section 18 of the POL upon its officers and employees are covered by that section. Sections 17 and 18 of the POL are similar in several respects, but there are also some important differences in the two statutes.

Both statutes provide for defense and indemnification of individuals sued for acts or omissions which occurred while the individual was acting within the scope of his public employment. Neither statute provides for defense or indemnification in criminal actions or in actions brought by or on behalf of the state or a public entity. Where a conflict of interest exists, both statutes provide, subject to certain conditions, for representation of the individual by counsel of his choice with reimbursement for the costs incurred. Both statutes specifically exclude independent contractors. However, [Section 7.35 of the Mental Hygiene Law](#) makes the provisions of Section 17 applicable to any physician, psychologist, nurse or certified social worker, licensed to practice pursuant to the New York Education Law, who renders professional treatment at the request of the Office of Mental Hygiene or an office facility.

The duty to indemnify and save harmless is

conditioned upon delivery of certain documents to specified individuals within a relatively short time period and, in the case of officers and employees of public entities, delivery of a written request to provide for their defense. In addition, both POL Section 17 and 18 require the full cooperation of the employee in the defense of the action, any related action against the State arising out of the same act or omission, and in the prosecution of any appeal.

Perhaps the most important – distinction between the two statutes is that under POL Section 17, the State may indemnify an individual where there is an award of punitive damages based upon a finding of recklessness. This is particularly relevant in “1983” actions. Under POL Section 18, officers and employees of public entities may not be indemnified for punitive damages imposed based upon a finding of reckless conduct. Under both Section 17 and 18, there is no duty to indemnify an individual where the damage or injury was the result of intentional wrongdoing.