

### Question

Do your pools offer a legal assistance coverage/service for issues that have not reached litigation status or are not covered, i.e. land use, contracts, etc.?

### Background

Our pool is thinking about offering either (1) a certain number of attorney hours to our members or (2) a certain dollar amount of legal services to our members. This service would be provided by a select few of our defense attorneys. Our concern is our members (1) are not receiving the appropriate legal advice from their city attorneys or (2) they are not calling them because it costs money. Have any pools dealt with this issue and what does coverage language state in this regard?

### Answers

#### *Specific Programs*

- Property and Casualty Coverage for Education (PACE) has a program for [Pre-Loss Legal Services](#) with two attorneys on staff. Contact [Lisa Freiley](#), General Counsel/Director PACE Administration, for more information.
- CIS has a PreLoss program that offers legal services to avoid claims. There must be some connection between the issue the member is calling about and a covered claim. The pool provides members with: review of contract indemnity and insurance provisions; a contract review guide; boilerplate indemnity provisions; PreLoss attorneys that may work in tandem with the city's labor counsel; personnel training seminars at member sites; and regional trainings twice a year. The pool does not: cover contract claims; provide labor relations advice; advise on land use matters, even though it's possible a covered due process claim could result; or provide investigation services. Contact [Kirk Mylander](#), General Counsel, for more information about the CIS PreLoss program.
- Rhode Island Interlocal Risk Management Trust has a program that attempts to head off potential employment related claims before they're filed that costs the pool \$500 per matter. Contact [Andrew Murray](#), General Counsel, for more information.
- League of Minnesota Cities Insurance Trust has two loss control programs that may be helpful, [Contract Review Service](#) and [Land Use](#).

### *General Information*

- [Marcos Mendoza](#), Assistant Director for Legal & Regulatory Affairs at the Texas Association of School Boards Risk Management Fund, shared TASB does not have coverage for pre-litigation matters generally. However, they do define a claim, and thus will assign counsel, if a demand has been made on a member in which litigation is reasonably anticipated. The pool does not provide such pre-litigation coverage for matters that are excluded, such as land use claims, contracts, and the like. They do provide, on a case-by-case basis, contributions to matters that are in the administrative phase (for which the pool has no coverage) if it appears to be a good settlement and will save TASB in the long run.
- [Robyn Miller](#), Corporate Counsel at Kentucky League of Cities Insurance Services, said the pool offers their insureds legal help with employment issues on the front end (firings, discipline, workers' comp, etc.) with a firm that is one of their panel counsel, which saves money if a claim is avoided. The pool has had great results with this approach, but has on rare occasion hired counsel to assist in a "non-covered" matter.
- [Ed Dutton](#), Director of Claims and Legal Services at Park District Risk Management Association, stated PDRMA has offered legal assistance at no charge to members for many years, but limited to certain areas and/or types of assistance. For example, the pool will review certain contracts that the members are contemplating entering into, but will not negotiate those contracts on their behalf, and instead will seek to assist the member's corporate counsel on specific issues (e.g., insurance requirements, indemnity clauses, adding clauses or wording that will assist us at a later point to invoke our statutory tort immunities, etc.). PDRMA's two staff attorneys talk with the pool's members daily, especially with regard to risk management advice and how and when to use the extensive materials (including specific types of training, sample contracts, sample insurance requirements and indemnification clauses, etc.) that the pool creates, in order to avoid or minimize the risk of claims.

For employment-related risks, several years ago PDRMA developed a "HELP Line" program. The motivation was to help members control their employment risks on a pre-claim basis by providing them with 24/7 access to competent employment legal counsel at no cost to the members, and the goal had been to ensure that the members were obtaining timely, competent employment law advice (on everything from hiring, discipline and discharge issues to FMLA, ADA, ADEA, and similar questions). In addition to two in-house attorneys, the pool has a strong relationship with a 50-attorney outside firm that specializes exclusively in employment law from the management side. The program has been extremely successful, both from a member usage and satisfaction standpoint and from a cost-control/claim avoidance standpoint.

PDRMA denies both a defense and indemnity if the member has not contacted the pool prior to taking adverse employment action which could be expected to result in a claim (e.g., a discharge) and/or the member is provided with specific legal advice in an employment matter and disregards it. PDRMA drafted this coverage amendment in 2003, in conjunction with the HELP (employment legal consultation and advice) program, and the results have been very favorable in avoiding employment claim "messes" from occurring.

On the health coverage side, the pool contracted with an outside firm with expertise in ACA compliance a few years ago, and funded a limited number of hours at the pool's expense to allow each member of the Health Program to consult on key compliance issues (e.g., determining the number of "full time employees" under the 30 hour threshold). If any member had more expansive needs, the

billing responsibility shifted to the member, but at a much-reduced rate that PDRMA negotiated with the outside firm.

- [Brian Hopkins](#), Legal Counsel at the Montana Association of Counties, shared that because Montana does not have employment at will and all unpaid suspensions or terminations must be based on good cause and due process provided (see the *Loudermill* case out of Ohio) the pool has a full time General Counsel and Personnel Services Administrator. The Trust's policy requires that Legal Counsel must pre-approve all unpaid suspensions and terminations, which has worked out well in terms of minimizing personnel liability. Another big part of the Legal Counsel role is general advice on local government law. When litigation is filed, or even the threat of litigation, the pool refers the matter to in-house Defense Services who represent the insured County. Legal Counsel advises the pool and theirs is advising the insured. State law requires a strict separation of these functions. If the counties don't consult ahead of time on adverse personnel actions, the pool will provide litigation defense but not indemnification. It is referred to as the "Hammer Clause" in the policy.
- [Sonya Guggemos](#), Senior Staff Counsel at Minnesota Counties Insurance Trust, shared that MCIT does not provide legal advice to members as the vast majority of their membership have elected County Attorneys who are the member's legal counsel by statute. MCIT's three staff attorneys do provide risk management advice on contracts, general governance (sunshine laws) and trouble shoot certain employment matters with members. Sometimes it is a fine line, but typically it involves giving the member a road map (and potentially some resources) to share with their County Attorney and/or legal counsel to obtain a legal opinion. Regarding paying for consultation with private attorneys on our defense panel pre-loss, many pool members do have retainers with private labor/employment counsel and utilize them. Typically if one of our defense counsel advises the member (at the member's cost) on the underlying discipline and /or termination and that act required the attorney do some investigation work, that eliminates them from defending the covered employment claim if it reaches the litigation stages.