

Chapter 10
DEFENSE AND INDEMNIFICATION

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| <p>§ 10-1. Definitions.</p> <p>§ 10-2. Defense of employees; obligations of town and employee.</p> <p>§ 10-3. Delivery of necessary documents.</p> <p>§ 10-4. Benefits limited to employees as defined; affect on Workers' Compensation Law.</p> | <p>§ 10-5. Extension of benefits based upon certain agreements.</p> <p>§ 10-6. Affect upon insurance.</p> <p>§ 10-7. Rights of immunity.</p> <p>§ 10-8. Applicability.</p> |
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[HISTORY: Adopted by the Town Board of the Town of Rochester 5-26-1981 by L.L. No. 1-1981. Amendments noted where applicable.]

§ 10-1. Definitions.

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

EMPLOYEE(S) — Any person holding a position by election, appointment or employment in the service of the town, but shall not include a volunteer, any person not compensated for his services or an independent contractor. It shall include a former employee, his estate or judicially appointed personal representative.

TOWN — The Town of Rochester.

§ 10-2. Defense of employees; obligations of town and employee.

- A. Upon compliance by the employee with the provisions of § 10-3 of this chapter, the town 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. Such defense shall not be provided where such civil action or proceeding is brought by or on behalf of the town.
- B. Representation.
- (1) Subject to the conditions set forth in this chapter, the employee shall be represented by the Town Attorney or an attorney employed or retained by the town for the defense of the employee. The Town Board shall employ or retain an attorney for the defense of the employee whenever:
- (a) The town does not have a Town Attorney;
 - (b) The Town Board determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate; or

- (c) A court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Town Attorney.
- (2) Reasonable attorney's fees and litigation expenses shall be paid by the town to such attorney employed or retained, from time to time, during the pendency of the civil action or proceeding subject to certification by the Town Supervisor 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 town. Any dispute with respect to representation of multiple employees by the Town Attorney or by an attorney employed or retained for such purposes or with respect to the amount of the fees or expenses shall be resolved by the court.
- C. Where the employee delivers process and a request for a defense to the Town Attorney or the Town Supervisor as required by § 10-3 of this chapter, the Town Attorney or the Supervisor, as the case may be, shall take the necessary steps, including the retention of an 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 town to provide a defense.

§ 10-3. Delivery of necessary documents.¹

The duties to defend provided in this chapter shall be contingent upon delivery to the Town Attorney or, if none, to the Town Supervisor of the original or a copy of any summons, complaint, process, notice, demand or pleading within 10 days after said employee is served with such document and the full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the town based upon the same act or omission and in the prosecution of an appeal. Such delivery shall be deemed a request by the employee that the town provide for his/her defense, pursuant to this chapter, unless the employee shall state, in writing, that a defense is not requested.

§ 10-4. Benefits limited to employees as defined; affect on Workers' Compensation Law.

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.

§ 10-5. Extension of benefits based upon certain agreements.

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.

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

§ 10-6. Affect upon insurance.

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.

§ 10-7. Rights of immunity.

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 town or any right to defense provided for any governmental officer or employee by, in accordance with or by reason any other provision of state or federal statutory or common law.

§ 10-8. 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.