**Claims, Judgments, and UPPS No. 01.04.01**

**Settlements Against the University Issue No. 9**

 **Effective Date: 06/10/2022**

 **Next Review Date: 08/01/2026 (E4Y)**

 **Sr. Reviewer: Vice President for**

 **Finance and Support Services**

**POLICY STATEMENT**

*Texas State University is committed to following proper legal processes for claims and settlements resulting from claims filed against the university.*

**01. SCOPE**

01.01 This policy describes Texas State University’s procedures regarding the payment of claims or settlements by the university. It also explains the procedure for filing a claim against the university.

**02. LEGAL AUTHORITY**

02.01 The [Texas Tort Claims Act (Civil Practice and Remedies Code, Chapter 101](https://statutes.capitol.texas.gov/Docs/CP/htm/CP.101.htm)) provides that a governmental entity may be liable for property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within their scope of employment if such property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment, or if such personal injury or death was caused by a condition or use of tangible personal or real property.

a. The state's liability under the [Texas Tort Claims Act](https://statutes.capitol.texas.gov/Docs/CP/htm/CP.101.htm) is limited to $250,000 per person and $500,000 for any single occurrence for bodily injury or death, and $100,000 for any single occurrence for injury to or destruction of property.

b. Except when the university, its agents, or employees have received actual notice that death has occurred or the claimant received an injury or property damage, any person making a claim under the [Texas Tort Claims Act](https://statutes.capitol.texas.gov/Docs/CP/htm/CP.101.htm) must give notice to the university within six months from the date of the incident.

02.02 [Section 104.001 of the Texas Tort Claims Act (Civil Practice and Remedies Code, Chapter 104)](https://statutes.capitol.texas.gov/Docs/CP/htm/CP.104.htm) provides that the state will indemnify state employees for actual damages, court costs, and attorney’s fees adjudged against them for claims arising from an act or omission by the state employee in the course of their employment with the state.

02.03 The state may not expend funds appropriated by the [General Appropriations Act (GAA),](http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2018-2019.pdf) including those made in [GAA Article X](http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2018-2019.pdf), for payment of a judgment or settlement prosecuted or defended by the attorney general and obtained against the state or a state agency, except in certain cases described in [GAA Article IX](http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2018-2019.pdf), Sections 16.02 and 16.03.

* 1. The university is required to report any employment-related judgments or settlements that the Internal Revenue Service (IRS) defines as wages, to the IRS and the Social Security Administration (SSA).

**03. OPERATING PROCEDURES**

03.01 University faculty members and staff employees often supervise students and other employees who engage in potentially dangerous activities or use potentially dangerous equipment. In such instances, such supervisors must give instruction and training in proper safety procedures to be followed.

03.02 In such instances, faculty members and staff employees may have each person who participates in hazardous activities, such as university-sponsored foreign travel or field trips, or uses dangerous equipment sign a release relieving the university from liability. Employees should consult The Texas State University System (TSUS) Office of General Counsel for preparation of these releases.

03.03 No university faculty member, administrator, or other staff employee (other than the president of the university) has authority to make an admission of liability or bind the university to any settlement when another person suffers injury to their person or damage to their property.

03.04 Persons with knowledge of injuries to persons or damages to property that might result in university liability should report to the TSUS Office of the General Counsel, who will convey such information to the assistant vice president for Human Resources, the appropriate vice president, the safety officer, and, through the vice president for Finance and Support Services (VPFSS), to the president of the university.

03.05 Since university employees are eligible for workers’ compensation (whether or not loss of work time or medical expenses are involved), persons with knowledge should report all work-related injuries to the appropriate administrative head. [UPPS No. 04.04.43](https://policies.txstate.edu/university-policies/04-04-43.html), Workers' Compensation Injuries, Illnesses, and Claims, contains more detailed information.

**04. PROCEDURES FOR FILING A CLAIM FOR MONETARY DAMAGES AGAINST THE UNIVERSITY**

04.01 Claimants who seek monetary damages against the university should take the following steps, in sequence, to present that claim for payment:

a. Claimants may obtain [claim forms](https://gato-docs.its.txstate.edu/jcr%3A3e67ed17-fb76-4b7f-ab5f-102607464f13/CLAIM%20FORM.pdf) from the VPFSS office.

b. The claimant should complete the [claim form](https://gato-docs.its.txstate.edu/jcr%3A3e67ed17-fb76-4b7f-ab5f-102607464f13/CLAIM%20FORM.pdf) and attach sufficient documentation to support the amount of and the justification for the claim. Examples of supporting documents are written estimates of damages to property made by qualified experts, medical bills, police reports, and statements of witnesses describing the incident giving rise to the claim. The claimant should submit the form to the TSUS Office of General Counsel.

c. The TSUS Office of General Counsel will investigate the claim and recommend to the VPFSS whether the university should pay the claim. The VPFSS will notify the TSUS Office of General Counsel of their decision as to whether to pay or reject the claim. The TSUS Office of General Counsel will notify the claimant of the university's decision.

d. The TSUS Office of General Counsel will notify the claimant if additional information is required or if the claimant will be required to surrender the damaged property at the time the university pays the claim.

04.02 If the university determines that the claim will be paid, the university may pay from local sources; ordinarily, from the account most directly linked with the activity that caused the claim.

04.03 The university requires that the claimant sign a release prepared or approved by the TSUS Office of General Counsel if the claim is paid.

**05. PROCEDURES FOR JUDGMENT OR SETTLEMENT PAYMENTS**

05.01 No university faculty member, administrator, or other staff employee (other than the president of the university), has authority to bind the university in a settlement agreement.

05.02 President’s Cabinet members must notify the VPFSS prior to engaging in negotiations towards potential legal settlements. President’s Cabinet members are authorized to work directly with the TSUS Office of the General Counsel to conduct such negotiations and to participate in legal proceedings that may result in a judgment. Prior to finalizing a settlement, President’s Cabinet members must inform the VPFSS, who will obtain approval from the president. In all instances, presidential approval is required.

05.03 The TSUS Office of the General Counsel will provide a copy of the final settlement or judgment agreements to the assistant vice president for Human Resources for action.

05.04 Types of settlement or judgment payments include, but are not limited to:

a. Severance Pay – a payment made by an employer to an employee upon termination of employment. Employment tax regulations provide that any payments made by an employer to an employee, on account of separation from the service of the employer, constitute wages for employment tax purposes (FICA and income tax withholding) and taxable income for reporting purposes, regardless of whether the employer is legally bound by contract, statute, or otherwise, to make such payments.

b. Back Pay – compensation paid to an individual for remuneration due at the time of settlement or court award and relates to a period when the individual performed no services for the employer. Back pay is wages for employment tax purposes (FICA and income tax withholding) and taxable income for reporting purposes, except when received on account of a personal physical injury or physical sickness. Back pay is allocated to periods in which the individual should have received wages for social security benefit purposes only, not the computation of FICA tax.

c. Front Pay – payment paid to an individual to compensate for remuneration the individual would have received after the settlement date or court award. Front pay is wages for employment tax purposes (FICA and income tax withholding) and taxable income for reporting purposes. Back pay and front pay paid to individuals who are not hired as employees because of violation of workers’ rights or civil rights statutes are still wages for employment tax purposes.

d. Compensatory or Consequential Damages – compensatory damages include compensation for personal physical injuries, physical sickness, and medical care related to emotional distress resulting from bodily injury. Consequential damages are compensation for damage, loss, or injury that are consequences or results of a negligent act. Compensatory or consequential damages related to personal physical injury or sickness are excludable from gross income and are not wages for FICA or income tax withholding purposes. Compensatory damages may include taxable awards not related to physical injury, sickness, or employment-related disputes.

e. Attorney Fees – the IRS’s position is that, generally, fees awarded to prevailing plaintiffs under federal and state statutes belong to the plaintiff and not the attorney; therefore, attorney fees constitute an item of gross income to the client and may be subject to taxation.

**06. TAXABILITY OF JUDGMENT OR SETTLEMENT**

06.01 The university cannot provide tax advice to individuals and recommends that individuals receiving a judgment or settlement consult with a tax advisor. The Office of Payroll and Tax Compliance will determine the correct treatment of employment-related judgment and settlement payments using the four-step process outlined in IRS published guidance:

a. determine the character of the payment and the nature of the claim that gave rise to the payment;

b. determine whether the payment constitutes an item of gross (taxable) income;

c. determine whether the payment is wages for employment tax purposes; and

d. determine the appropriate reporting for the payment and any attorney fees ([Form 1099](https://www.irs.gov/pub/irs-pdf/f1099msc.pdf) or [Form W-2](https://www.irs.gov/pub/irs-pdf/fw2.pdf)).

* 1. Role of the TSUS Office of General Counsel – A judgment or settlement payment may consist of wage and non-wage elements. The TSUS Office of General Counsel will assist in determining the elements of the payment in the settlement agreement. Every effort will be made to ensure the settlement agreement addresses any tax issues.
	2. The TSUS Office of General Counsel will notify the assistant vice president for Human Resources who will be responsible for and work with the Office of Payroll and Tax Compliance before an employment-related settlement or judgment payment is paid to a claimant in order to determine whether or not the payment should be paid through the payroll process.
	3. The Office of Payroll and Tax Compliance is responsible for properly paying employment-related settlement or judgment payments that are defined as wages by the IRS to the claimant through the payroll process, deducting and paying appropriate taxes, issuing tax reports according to federal regulations to the claimant using a [W-2](https://www.irs.gov/pub/irs-pdf/fw2.pdf), and to the attorney using a [1099-MISC](https://www.irs.gov/pub/irs-pdf/f1099msc.pdf), if applicable.
	4. Accounts Payable – may disburse payments not defined as wages by the IRS. The Office of Payroll and Tax Compliance is responsible for reporting settlement or judgment payments on a [1099-MISC](https://www.irs.gov/pub/irs-pdf/f1099msc.pdf) statement to the claimant and the attorney, if applicable.

**07. REVIEWERS OF THIS UPPS**

07.01 Reviewers of this UPPS include the following:

Position Date

 Vice President for Finance and August 1 E4Y

Support Services

 Director, Payroll and Tax Compliance August 1 E4Y

**08. CERTIFICATION STATEMENT**

This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Vice President for Finance and Support Services; senior reviewer of this UPPS

President