COMMON CAUSES OF ACTION
(or what could we be sued for)

- Tort claims
- Contract claims
- Discrimination/Harassment claims
- Section 1983 claims
- Wrongful Discharge
- Violation of privacy rights or due process
N.C. TORT CLAIM ACT
General Statute 143-291

State agencies, and employees and agents acting in their official capacity, may be sued for torts, *BUT ONLY*

- For ordinary negligence
- Caused by the state employee or agent (named)
- Acting within the scope of authorized service
- Statute of Limitations (3 years for negligence and 2 years for wrongful death)
Types of Tort Claims

- Negligence
- Negligent hiring
- Negligent supervision
- Negligent retention
FOUR ELEMENTS TO A TORT CLAIM

- A LEGAL DUTY OF CARE IS OWED TO THE INJURED PARTY;
- THERE MUST BE A BREACH OF THAT DUTY BY A STATE ACTOR;
- THE BREACH MUST BE THE PROXIMATE CAUSE OF THE INJURY; and
- THERE IS PERSONAL INJURY OR PROPERTY DAMAGE
Defenses and Protections Against Tort Claims

- Contributory negligence (limitations on children)
- Assumption of risk (known and voluntary)
- Waivers of liability and releases
- Worker’s compensation (employees only)
- Immunity for Volunteers Act
- Public Duty Doctrine
Contributory Negligence

- NC is one of the few remaining States that still recognizes contributory negligence of the plaintiff as a complete bar to recovery in tort.
- A child under the age of 7 is legally incapable of contributory negligence.
- A child between the ages of 7 and 14 is presumed incapable of contributory negligence.
TORT CLAIM LIMIT

Raised from $500,000 to $1 million for torts committed on or after August 27, 2007
Jurisdiction for Official Capacity
Tort Claims

N.C. Industrial Commission
(appeal to the Court of Appeals)
Jurisdiction for Individual Capacity
Tort Claims

Superior Court
(appeal to the Court of Appeals)
BREACH OF CONTRACT

Contracting party alleges that university did not meet obligations under contract

Must have authority to sign contract; otherwise state employee may be personally liable for the breach

Damages are typically for actual damages; not consequential or liquidated.
Discrimination/Harassment

- Title VII, Title IX, ADA, ADEA claims
- University as a federal contractor is the proper party to be sued in federal court
- Individuals are not liable under the civil rights act
- Damages capped at $300,000 for public universities plus attorney’s fees
42 U.S.C. 1983

Federal civil action for deprivation of constitutional rights
Key Points to a Section 1983 Case

- The State actor’s conduct must have violated a constitutional right
- The constitutional right must be clearly established
- Deliberately indifferent or egregious official conduct
- No damage cap
- Same statute of limitations
DEFENSE OF STATE EMPLOYEES ACT
General Statute 143-300.3 et seq.

THE STATE MAY DEFEND EMPLOYEES AND AGENTS IN LAWSUITS BROUGHT AGAINST THEM PERSONALLY FOR ACTS/OMISSIONS IN THE COURSE AND SCOPE OF THEIR AUTHORIZED EMPLOYMENT
Key Points of Defense

- Covers civil and criminal liability
- Attorney General authorizes providing the defense and has sole discretion to decide
- Employee must request the defense
- Covers employee in his/her official ("title") or individual capacity
Grounds for Refusal of Defense

- when the act or omission is not within the scope and course of employment (e.g. harassment);
- there was fraud, corruption or actual malice;
- there would be a conflict of interest with the State; or
- the Attorney General decides that it would not be in the best interests of the State.
Four Methods for Providing Defense

1. Attorney General’s Office
2. AG authorizes private counsel
3. AG authorizes the purchase of insurance which requires that the insurer provide the defense
4. AG authorizes agency counsel
Initiation or Settlement of a Lawsuit

The authority to initiate and settle lawsuits in the name of UNC, and on behalf of the constituent institution lies with the UNC Board of Governors.

UNC Policy 200.5 sets forth the rules for both initiation and settlements.
Payment of Judgments or Settlements

- State must have provided a defense
- UNCW is responsible for first $150,000
- State pool may pay next $850,000
- State’s excess liability insurance policy
- Personal insurance

- Settlements are public records (N.C.G.S. 132-1.3)
- BOG policy 200.5
- AG approval for amounts of $75k or greater
State’s Excess Liability Insurance

- $10 million per individual
- $10 million per occurrence
- $25 million annual aggregate
- Pays for judgments in excess of the tort claim limits

- Provides insurance for employees sued in their individual capacities
- Exclusions for pollution, asbestos, criminal acts, immoral acts, automobiles, watercraft, mold, terrorism, malpractice
OTHER TYPES OF INSURANCE

The State of NC is self insured

However, there are various, specific policies to cover certain activities such as motor pool vehicles, boats, student internships, study abroad, and medical malpractice

We are not authorized to purchase insurance

All insurance must be approved and purchased by the Department of Insurance
Notification

Contact the Office of General Counsel (962-4027) immediately upon potential or threat of litigation or service of actual lawsuit
Litigation Holds and E Discovery

Upon notification or threat of a lawsuit, the General Counsel will send a “litigation hold” letter to pertinent personnel.

All records, including emails, must be maintained and preserved pertaining to the potential or actual lawsuit.