

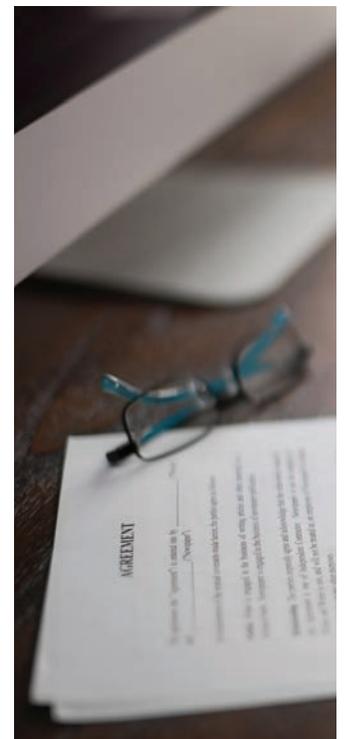


Prevention and Protection for Education™ Trustees and Officers Liability Coverage

Trustees and Officers liability coverage, sometimes known as Directors and Officers (D&O) coverage, is included with United Educators' (UE) Educators Legal Liability (ELL) policy.

UE's ELL policy treats directors, trustees, and officers of educational institutions as a separate category of individual insureds, with unique rights and protections. These include:

- Defense and indemnity (damages) for errors and omissions (wrongful acts). UE's policy defines "wrongful acts" to include actual and alleged wrongs. Wrongful acts include acts performed in the discharge of duties to the educational institution or its affiliates, or on their behalf.
- An order of payments provision so that, if policy limits are insufficient to cover a loss, trustee obligations are paid before those of the institution.
- Coverage for trustees' spouses, domestic partners, and estates (for the acts of the trustees).
- Severability: Statements or knowledge of other trustees or officers are not imputed to individual trustees in determining availability of coverage.
- Non-rescindable: Under UE's policy, coverage for trustees cannot be rescinded for any reason.
- Blanket coverage for serving on other 501(c)3 nonprofit boards on the institution's behalf, in excess of any indemnity or coverage provided by the other organization.





- No specific exclusions for securities or debt financing, often an important consideration for trustees and officers (the equivalent of side A coverage).
- Discrimination and student-related issues, including coverage that is sometimes referred to as employment practices liability (EPLI).
- Coverage after leaving the board if the claim is made during the policy period and the institution is still insured by UE.

Frequently Asked Questions

Q: Why is Trustees and Officers coverage important?

A: Several trends have significantly increased the legal exposure of individuals entrusted with board responsibilities. This heightened exposure makes it difficult for trustees to take the tough and sometimes controversial actions needed to govern effectively. These trends include:

- **Diversified revenue streams** that include research activities, government contracts, subsidiaries, increased hospital and clinical care.
- **Increased financial stress** on the institution and its supporting foundations and endowments.
- **Changes in mission and operating conditions**, often brought on by financial stress, that affect donors, alumni, faculty, and students.
- **Increased scrutiny** of governance decisions by the media, students, and parents facilitated by 24/7 media exposure.
- **Litigation trends** for events such as accreditation loss, Title IX and civil rights violations, and failure to educate.

Q: Do trustees face personal liability?

A: Potentially. Trustees face liability for their own actions and for their fellow trustees. For example, a board committee on which a trustee serves may be implicated in a conflict of interest or a statute violation (such as an open meetings statute). A trustee who is not personally involved may still need legal defense and incur substantial expenses until he or she is dismissed from the action or found not to be at fault.

Lawsuits against the institution name the institution as defendant and may also name the board of trustees. Claims or suits against trustees as individuals are more likely to involve a dispute among board members or between the board and the administration. They may also occur in cases in which the board has taken a particular action involving individual trustees.

Q: Can the institution indemnify trustees?

A: In most cases, indemnification by the institution is the first line of defense for a trustee. UE's ELL policy requires the institution to indemnify all individual insureds, including trustees and officers to the full extent permitted by law. Institutional bylaws and state laws may also specify indemnification requirements and limitations. It is usually necessary for the board to authorize such indemnity.

In the event that indemnification is permitted by law but the institution is unable to indemnify, UE's policy provides for direct payments on behalf of an insured trustee for damages and defense costs.

Q: How are trustees defended?

A: UE uses law firms with expertise in defending educational institutions and their leaders. If attorneys selected by UE are used, defense costs are paid in addition to the policy limit.

If a material conflict of interest arises between the board member and the institution, the individual will receive separate legal representation appointed by UE.

Q: What other types of liability insurance should trustees and officers consider?

A: UE's ELL policy provides errors and omissions coverage for trustees and officers, the most common form of liability that they may face.

Trustees may also be named individually in general liability (GL) claims for bodily injury or property damage. Although that would be unusual, trustees are insureds under UE's GL policy. Other claims where trustees might be named with the institution are covered by environmental insurance or professional liability (for example, medical malpractice) insurance. These are specialty policies that go beyond the scope of UE's coverage.

As a matter of public policy, insurance generally does not cover liability of individual trustees and officers for their own intentionally harmful or unlawful acts.





For more information, visit www.UE.org or call (301) 907-4908.

This document is intended to provide a general summary of coverage provided by United Educators' policies. The information contained on this document does not amend or extend the actual policy of insurance. Coverage is provided only by the terms, conditions, and limitations in the actual insurance policy issued by United Educators. Copyright © 2018 by United Educators Insurance, a Reciprocal Risk Retention Group. All rights reserved.

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