

Risk Management Division, General Services Department
Data Request Response to the Civil Rights Commission
September 25, 2020

1. How many civil rights lawsuits against public employees/public entities covered by your entity have been filed each year for the past five years? If possible, please provide a breakdown of how many of these were against police officers/departments? Corrections officers/correctional facilities? School employees/schools? Other government employees/entities?

FY16: 247
FY17: 275
FY18: 314
FY19: 285
FY20: 300

The breakdown by agency/entity is attached.

These claims include the following categories of civil rights claims:

- Claims brought against law enforcement officers pursuant to §41-4-12 of the Tort Claims Act
- Claims brought pursuant to 42 U.S.C. §1983 of the Federal Civil Rights Act
- Employment claims that include claims of discrimination

All claims are dated based upon the date of loss/incidence

2. What percentage of the lawsuits covered by your entity over the last five years have been civil rights cases?

FY16: 17%
FY17: 18%
FY18: 18%
FY19: 17%
FY20: 20%

3. What was the total amount of money paid out in settlements and judgments each year for civil rights cases over the last five years? If possible, please delineate how much was paid in settlement and how much in judgement.

Unfortunately, RMD data is not stored in a manner where a distinction between a judgement and settlement amounts can be queried electronically.

FY16: \$2,913,156

FY17: \$2,415,695
FY18: \$4,567,377
FY19: \$4,615,984
FY20: \$ 451,371*

*Immature

4. How much did you pay in plaintiffs' attorneys' fees and costs for civil rights cases each year for the last five years?

RMD is unable to track what a plaintiff's attorney is paid in a majority of cases. Therefore, an assumption of 30% of settlements and judgements is provided as an approximation.

FY16: \$582,631
FY17: \$724,708
FY18: \$1,368,713
FY19: \$1,384,795
FY20: \$135,411*

*Immature

5. How much did you pay in defense attorneys' fees and costs for each year over the last five years?

FY16: \$2,097,107
FY17: \$2,667,680
FY18: \$4,060,346
FY19: \$3,244,556
FY20: \$1,283,274*

*Immature

6. What coverage is provided for your civil rights cases and by whom? (e.g. private insurance, self-insure, excess policies)

The following coverage is self-insured through the Risk Management Division:

COVERAGE DEFINED

A. The Public Liability Fund will pay those sums for ultimate net loss that the covered parties become legally obligated to pay as damages because of the liabilities and waivers of immunity set forth in the New Mexico Tort Claims Act, caused by an occurrence, except as otherwise excluded under Section IV, below. The duty to defend under this Certificate of Coverage extends to liabilities and waivers of immunity expressly contained in the New Mexico Tort Claims Act. The duty to defend also extends to causes of action arising under

the New Mexico Fair Pay for Women Act, New Mexico Inspection of Public Records Act, New Mexico Whistleblower Protection Act, and the New Mexico Ethics Commission Act. There is no general duty to defend other claims.

B. The Director, acting on behalf of the General Services Department, Risk Management Division, through the Public Liability Fund, will have the right and the duty to defend the covered party against a claim or suit for damages covered under Section II, paragraph A, above. Such duty, however, shall cease upon final disposition of such claim or order issued by a court of competent jurisdiction. Governmental Entities are covered parties under the Certificate of Coverage. Employees of covered Governmental Entities, acting within the scope of their duties, are covered parties. Other parties defined by NMSA Section 41-4-3 (F) as Public Employees of covered Governmental Entities are covered parties. B. Any other entity to which the General Services Department, Risk Management Division has issued a Certificate of Coverage is also a covered party under this Certificate of Coverage.

C. Any Public Employee using an automobile owned or leased by a covered Governmental Entity or other Certificate of Coverage holder is also a covered party under this Certificate of Coverage.

7. Are insurance policies or certificates issued? If so, please provide sample copies. If not, please provide any other documents that set forth what is covered.

<https://www.generalservices.state.nm.us/uploads/files/RMD/PAC/FY21-Liability-Certificate-of-Coverage.pdf>

8. How are premiums determined and by whom?

Risk rate premium calculations are based on several factors including agency or university risk experience and exposure pursuant to the Risk Management Premium Rating Rule for Certain Risks (Rule 1.6.2). 70% of the total civil rights premium amount is allocated based on each department's percentage of claim experience (i.e., ratable losses) for the five most recent fiscal accident years. The remaining 30% is allocated based on each department's percentage of projected 2020/21 exposure (FTEs).

The actuarial firm, Aon, is contracted to do the actuarial reports and the rating plan annually.

9. Identify any actuarial consultants you have employed over the last five years and please provide any studies or reports they provided to you related to civil rights claims.

RMD has not commissioned any actuarial studies related to civil rights beyond the aforementioned premium development studies.

10. To the extent there is cost-sharing for civil rights lawsuits, how is the allocation determined between the governmental entity and you or your insurer?

RMD does not cover damage awards arising out of claims for past or future salary or wage loss, including multipliers, benefits, or claims for attorney fees.

- For verdicts, these damages are 100% paid by an agency
- For settlements, an agency is required to contribute an amount to be determined by the Director.

11. Describe any preventative measures you have taken to with your insureds to prevent future civil rights litigation.

All state employees are required to take an online civil rights annually. Additionally, RMD provides the following trainings through its Loss Control Bureau:

EEOC Training
Anti –Workplace Harassment and Sexual Harassment Training
ADA Training
Civil Rights Training
Respectful Workplace Training
Employee and Manger Diversity Training
Unemployment Training
Active Shooter Training
Safety OSHA Training
Workplace Investigations
Manager and Supervisor Professional Development Programs
Customized Leadership Development Programs

Curriculum for any specific training can be provide can be provided on request.