

# UE Defense Counsel Guidelines

United Educators (UE) believes that successful insurance defense requires a three-way approach. UE works closely with our member institutions (i.e., insureds) and outside defense counsel to reach the best possible conclusion for each matter reported to us. In some cases that may mean seeing a claim through a summary judgment motion or trial (and even appeal), but in many others it means a negotiated resolution. UE must receive sufficient information about each matter for which we provide coverage to evaluate its merits. To that end, for each matter we require that defense counsel:

- Complete an early assessment and budget by the given deadline,
- On a quarterly basis, opine as to whether mediation or another form of ADR may be appropriate,
- Respond promptly to all UE requests (whether by email, phone, or letter) for information about the claim,
- Routinely provide copies of all pleadings and key documents,
- Promptly report any significant events that may cause a change in exposure for the member or UE,
- Consult with UE and the member about strategy decisions and before preparing or filing dispositive motions,
- Provide monthly appropriately detailed invoices for professional services to both UE and the member,
- Immediately notify UE and member of any settlement demands, and
- Obtain UE approval before engaging in any settlement discussions (including all offers, counteroffers, or acceptance).

These Guidelines govern all claims for which UE provides insurance coverage. Failure to comply with the Guidelines can have serious consequences. Inappropriate or unauthorized legal fees and costs will be disallowed, and in some cases UE's member may lose valuable insurance coverage. Egregious or repeated instances of failure to comply with the Guidelines will result in our revocation of defense counsel's appointment.

## Exceptions to the Guidelines

UE occasionally may approve departures from the Guidelines. Although it should be the exception rather than the rule, if you believe that a deviation from the Guidelines is necessary, you must bring the situation to UE's attention before incurring any additional expenses that are inconsistent with these Guidelines. It is counsel's responsibility to request any exceptions to the Guidelines in writing, and obtain the resolutions analyst's written approval, **in advance**. Otherwise, the unauthorized costs will be disallowed.

## Assignment and Staffing of Cases

UE typically appoints a particular attorney, not the attorney's firm, to represent a member. We consider the attorney we appoint (or approve) as the "Primary Attorney," who will have ultimate responsibility for all legal work in the matter.

Resolutions analysts will make direct contact with the Primary Attorney for appointment. After conflicts checks are completed the Primary Attorney, or his or her authorized designee, must accept the appointment in CounselLink. (The Resolutions Financials Team can assist law firms not registered with CounselLink, prior to appointment). By accepting the appointment, the Primary Attorney or authorized designee agrees to adhere to these Defense Counsel Guidelines and affirms that he or she has the authority to accept the appointment and agree to the Guidelines. After assignment of a new claim, the Primary Attorney or designee will submit a "Fee Offer" of current individual rates for each timekeeper expected to perform work on the claim, through CounselLink, for UE's review and approval. Generally, we expect the Primary Attorney to personally handle most of the significant work and appearances in the case. ***Unless UE approves a different arrangement in advance, each claim should be staffed by a maximum of two attorneys, generally one partner and one associate, assisted by one paralegal.***

If staffing changes or substitutions are necessary during the pendency of a claim, UE should be advised immediately. Defense counsel should not bill UE or its member for any transition time that a new attorney or paralegal spends becoming familiar with the matter.

Defense counsel should not bill for more than one attorney to attend or participate in witness interviews, depositions, court hearings/arguments, or settlement negotiations (including mediations). We expect the Primary Attorney to use "billing judgment" and make any appropriate adjustments to invoices before submitting them for payment. Submitted charges that exceed the approved CounselLink "Fee Offer" rate for a timekeeper will be reduced to the approved rate.

## Communication

Consistent with our belief that a team approach is essential and to avoid surprises for both UE and our members, we place great importance on communication among our resolutions analysts, defense counsel, and our members. In addition to requiring counsel to be responsive to our inquiries about the status of claims, UE also expects that we (along with the member) will be advised promptly of all important court dates, including but not limited to discovery deadlines, dispositive motion deadlines, trial setting conferences, settlement conferences, and trial dates.

UE often will participate in ADR or settlement conferences. When coordinating dates and selecting mediators/arbitrators, defense counsel must involve UE in all discussions.

Absent other arrangements, in each matter UE should routinely receive copies (electronic format preferred) of:

- All substantive agency/court pleadings, briefs, and responses
- Copies of legal research or factual investigative reports
- Summaries of written discovery responses, including records, which address how the information may affect previous assessments of liability and damages
- Deposition transcripts and/or summaries with analysis of the impact of the testimony, when requested by the UE resolutions analyst
- Expert reports, and/or summaries with analysis of the impact of the expert's opinion, when requested by the UE resolutions analyst
- All settlement demands whether written or oral
- All releases, settlement agreements, dismissals or final judgments

## Communication With UE Members

Defense counsel should keep both UE and its member fully informed of developments in the claim. The member, as well as UE, should receive copies of case assessments, status updates, substantive motions, pretrial briefs, and mediation statements.

## Assessments and Budgets

The UE resolutions analyst will generally request an early assessment and litigation budget. (For certain claims that are not yet in litigation, such as EEOC charges or attorney demand letters, we typically request only a brief assessment and no budget.) UE will specify a due date; if the materials are not received by that date, and no extension has been arranged with the analyst, UE may disallow fees and costs incurred between the due date and the date the items are received. This means that those charges would not be paid by UE or credited against the member's self-insured retention.

Although UE understands that it may be difficult at an early stage to assess a claim or budget for it through trial, we believe it is very important to do so. In our experience, this exercise enables all of the concerned parties (UE, our member, and defense counsel) to obtain the information needed to evaluate the case properly at the earliest possible date and, if liability appears likely, to consider settlement.

### Assessments

Each assessment should include:

- The results of defense counsel's factual investigation of the claim, including any problems with witnesses or any documents damaging to the defense
- Legal and factual defenses to the claim, including any applicable immunities or caps on damages
- Whether counsel considers the claim a case of liability or exposure
- Monetary damages and any other relief that may be recoverable by the claimant
- The strengths and weaknesses of each party's position
- Counsel's recommended defense strategy (including anticipated discovery, motion practice, expert witnesses, ADR recommendations, and settlement strategies)
- The probable range of verdicts if the case is tried

For general liability claims, additional items that should be considered and addressed in the assessment include:

- Causation issues
- Joint and several liability
- Negligence
- Medical specials (past, present, and future)
- The possible range of non-economic damages

### Pretrial Assessments

UE requires a Pretrial Assessment (PTA) for claims that will be tried. We generally require completion of the PTA at least 45 days before trial. Our preferred format for the PTA will be provided by UE.

### Budgets

UE asks outside counsel to provide the most realistic budget possible through trial, including fees projected for any likely dispositive motion work. Budgets may specify any reasonable assumptions, such as the number of depositions anticipated or the anticipated course of action by adversary counsel. Consistent with UE's preferred format, budgets submitted within CounselLink will be broken down into the stages of litigation (e.g., discovery, pretrial pleadings and motions, trial preparation, and trial) and show approximately how many hours of work in each stage counsel anticipates being performed by the assigned partner, associate, and paralegal.

We will review and approve a budget for the litigation. We understand that developments in litigation may require increases, and we expect to be advised promptly when that occurs. If counsel exceeds the original budget **without** having first notified UE or timely submitting a supplemental budget, subsequent invoices will be rejected within CounselLink. In addition, any fees and costs incurred that exceed the original budget may be disallowed.

For more information, see the Initial Assessment Format in Appendix A.

## Billing Practices

Unless agreed otherwise with UE in advance, counsel should submit detailed invoices for professional services and disbursements (expenses) on a monthly basis to UE through CounselLink. Invoices must include the following information:

- A description of the specific task performed by an attorney or paralegal (if multiple tasks are aggregated in a single time entry, that time will be disallowed)
- All legal services must be itemized by Uniform Task Based Management System (UTBMS) codes
- A unique invoice number and invoice date
- Time billed for a specific task in increments no greater than .10 (one-tenth) of an hour
- Each timekeeper's name or ID, hourly timekeeper rate, and the timekeeper's title or level
- A summary of hours billed and the billing rate for each timekeeper on that invoice, accompanied by a summary of fees to date
- An itemized statement of expenses, including the number of photocopies billed

All invoices uploaded into CounselLink should also be sent to the member. This is necessary so that the member can pay invoices within its self-insured retention, if applicable. Once the self-insured retention is met, the resolutions' financials team will collaborate with the member to determine how future invoice payments will be handled.

UE expects to receive the final bill (which should be marked as such) within 60 days after a claim is completely resolved.

### Permissible Expenses

UE will cover the actual cost of the following expenses:

- Photocopying (maximum .10/page including color copies)
- Charges for cellular, conference services, local or long distance calls
- Approved out of town travel (including the lowest available coach class airfare and reasonably priced hotels/meals)
- If necessary for out of town travel, reimbursement for a rental car up to mid-size class
- Mileage will be reimbursed at the current IRS rate for use of a personal vehicle for approved out of town travel
- Deposition transcripts
- Computerized legal research services, including but not limited to Westlaw, LexisNexis, or PACER
- Medical records acquisition fees
- Court filing fees
- Expert witness fees
- Witness expenses
- Approved outside vendor costs

### Prohibited Expenses

UE does **not** cover, and counsel should not bill for, the following expenses that we consider overhead:

- Conflicts of interest review
- Work that is clerical or secretarial in nature, regardless of the personnel performing the task
- Scheduling appointments, events, depositions, conferences, deliveries, or travel
- Calendaring/docketing
- Time spent photocopying
- Word processing/typing
- Data entry/processing
- Postage
- Shipping and other overnight delivery services (with limited exceptions for necessary court filings)
- Messenger/courier services
- Document scanning or printing
- Dictating or transcribing
- File maintenance including opening, updating, closing, and storing physical or electronic files

### Prohibited Expenses (continued)

- Labeling, collating, bates stamping, indexing, coding, or binding documents
- Overtime expenses including overtime hours, meals, and transportation
- Training of firm personnel, attendance at seminars, continuing legal education or conferences, or professional association fees
- Library charges, subscriptions, books, periodicals, or publications
- Office rent/utilities, space usage, or supplies
- Local travel (within 50 miles of office) including mileage, parking, car rental/car, and tolls
- Meals (unless related to approved out of town travel, trials, meetings, or depositions)
- Database management/imaging (unless we have given prior approval)
- Entertainment or personal expenses, group outings or hospitality, or client entertainment
- Preparation of timesheets or invoices, or responding to billing inquiries or audit inquiries
- Interest on unpaid invoices, or in-house accounting fees
- Technology costs including internet service, hardware, software, licenses, database administration/maintenance, storage, imaging, and support
- Preparation of budgets
- Personal travel
- Limousine service; however, taxi cab or ride share services (Lyft, Uber, etc.) are allowed

### Excessive Billing

UE will not pay for more than ten (10) hours of time spent by any one timekeeper on any one matter in a given day, unless approved in advance. Exceptions include: preparation of motions, ADR attendance, or court appearances. In addition, UE will not pay for work performed that exceeds originally agreed-upon parameters of the requested defense representation, such as revising internal member policies or conducting in-service trainings.

### Vague and Untimely Charges

“Block billed” descriptions (multiple activities grouped under a single time charge) are prohibited. Similarly, incomplete or vague charge descriptions are unacceptable, such as disbursements billed as “miscellaneous.” Invoices with charges dated in the future will be rejected. Charges for time expended or costs incurred, more than 90 days prior to the billing cycle, are considered untimely in most circumstances and may not be paid. Invoices that are duplicative of previous bills will be rejected. Invoices will be accepted for up to 90 days after UE has advised that a claim has been closed.

### Experts and Jury Consultants

UE must approve the use of any expert witnesses or jury consultants in advance. In order to approve an expert, a fee schedule, curriculum vitae, and W-9 must be promptly provided to the resolutions analyst. If the expert/consultant requires a retainer fee, the retainer agreement must be submitted with the aforementioned approval documents. Counsel must also provide the claim handler with an estimated budget for their work and consult us if any budget increases appear necessary. This budget should not be submitted via CounselLink.

### Internal Conferences

Defense counsel should not bill for more than one timekeeper attending an internal office conference on the case. Billing by additional timekeepers for the same meeting generally is disallowed. In addition, the time entry must describe the specific issue discussed. General entries such as “discussed status” do not meet this standard and will likely result in the time being disallowed.

### Billing for Basic Research

UE appoints or approves defense counsel primarily on the basis of their expertise in areas of law germane to the particular claim. Counsel should not bill either UE or its members for basic research on areas where we would reasonably expect the attorney’s firm to have adequate experience and existing research—for example, local rules, the plaintiff’s burden of proof in a Title VII discrimination claim, or the notice standard in a premises liability case. Generally, all research should be discussed with the resolutions analyst in advance, unless the total research will be completed within less than four hours for each subject matter.

### Billing by Summer Associates and Law Clerks

As a rule, defense counsel should not bill for summer associate or law clerk time, which we consider part of a firm's overhead and training costs. However, if counsel believes that a summer associate or law clerk can make a valuable

contribution in a particular case (e.g., a discrete research project on a novel issue of law), approval for that work should be sought from the UE resolutions analyst in advance. If the resolutions analyst approves the summer associate or law clerk work, he or she may cap the time that will be covered.

### Mediations and Settlements

UE encourages mediation in general. Defense counsel should consult with the UE analyst in advance of scheduling any mediation. UE requires that counsel complete a written pre-mediation analysis of the claim no later than 30 days prior to the mediation. This analysis should include:

- A brief summary of the facts,
- An overview of the applicable law,
- A discussion of liability that applies the governing law to the facts,
- The likelihood of prevailing on any dispositive motions or at trial,
- History of any negotiations between the parties,
- Claimed damages,
- Medical specials,
- Wage loss (past, present and future),
- Likely range of jury awards, and
- Settlement ranges for comparable claims.

**All settlements, regardless of whether they are achieved through mediation, require UE's prior approval.** Accordingly, any settlement demands received by counsel should be reported promptly to the UE resolutions analyst as well as to the UE member. We require written justification before giving authority for the settlement. Defense counsel should not initiate any settlement discussions or make any settlement offers without consulting UE in advance. Failure to do so could result in the loss of the member's insurance coverage for the amount of the offer.

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### Prevention and Protection for Education™

United Educators (UE), a reciprocal risk retention group, is a licensed insurance company owned and governed by nearly 1,600 members representing thousands of schools, colleges, and universities throughout the United States. Our members range from small independent schools to multi-campus public universities. UE was created in 1987 on the recommendation of a national task force organized by the National Association of College and University Business Officers. Our mandate is to provide schools, colleges, and universities with a long-term, stable alternative to commercial liability insurance.

EduRisk™ from United Educators provides members with risk management resources to help prevent incidents that put people and institutions at risk. And, when claims do occur, UE protects our schools, colleges, and universities with education-specific coverage and an experienced claims management team. This prevention and protection philosophy enables UE to reduce the overall cost of risk for our policyholders.

For more information, visit [www.UE.org](http://www.UE.org) or call (301) 907-4908.

## Appendix A Initial Assessment Format

**Member/Client:**

**Plaintiff/Charging Party:**

**The result of counsel's factual investigation:**

### Liability

- Does counsel consider this a case of liability and basis for opinion?
- What are the strengths and weaknesses of the case?
- Credibility of defense witnesses:
- Does documentation support the defense? Are there any troublesome documents?
- What are the suitability of dispositive motions and chance (percentage) for success?
- Is expert testimony likely to be needed?

### Damages

- What is counsel's estimate of potential damages exposure, to include:
  - Economic damages (including backpay and front pay)?
  - Likelihood of emotional distress damages and punitive damages?
  - Prejudgment interest?
  - Availability of plaintiff's attorneys' fees?
  - For EEOC/state agency charges (if applicable, damages available from the agency)?
- What is the probable range of verdicts if the case were to be tried?

### Settlement

- Do you have recommendations for ADR? If not, why not?
- Do you expect settlement demands from plaintiff?
- Have there been any negotiations to date?

### Defense strategy

- What defense strategy do you expect to undertake over the next six months to a year:
  - Additional investigation?
  - Anticipated discovery and expected discovery disputes?
  - Motion practice?
  - Use of experts?

**What is your opinion of plaintiff's counsel (ability and general reputation)?**

**What is your opinion of the judge?**

**Have any other unique issues been presented or are there any extraordinary costs that may be required?**