

Why you will benefit from legal expenses insurance

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As FICSA members and as legal professionals who assist staff members and consultants, we go to great lengths to inform colleagues about their rights and how those rights can be enforced through the legal process.

An issue that we do not discuss frequently is the importance of having legal expenses insurance that covers employment law matters in your international organization. Legal expenses insurance is a class of insurance that facilitates your access to law and justice, by covering the costs incurred in case of an unforeseen legal matter. Such costs normally include a lawyer's fees and related legal expenses.

Unfortunately, this issue is oftentimes only considered when a staff member approaches an attorney for assistance about a potential legal dispute. At this point in time, the dispute may have already started and the staff member may face deadlines, heightened stress and be in need of urgent help.

During a consultation, an attorney will seek to understand whether the potential dispute has merits, how much effort will be required to provide effective advocacy and also whether the potential client has the means to pay the attorney's fees. When a staff member has legal expenses insurance, the last question can usually be answered in the affirmative, as the insurance provider should cover an amount that will enable the attorney to sufficiently assist the client.

When potential clients do not have legal expenses insurance, this may impede them from obtaining competent legal advice. Pursuing a claim until its resolution may lead to thousands of US dollars (USD)

in legal fees. Some staff may elect not to pursue a meritorious claim out of fear that they will not be able to recuperate legal fees in litigation. Others may have to rely solely on legal assistance programs established by the international organization, where these programs exist. While the lawyers of such programs are competent, they may have resource and time constraints and not be available when you need them. In other instances, staff members may decide to pursue the matter on their own (i.e. pro se), which can lead to mistakes and additional pressure.

For staff members who can self-fund the costs of an attorney, they may be required to advance a significant sum to the attorney as a retainer to demonstrate their capability to settle the fees. This can lead to hardship and personal sacrifice.

Thus, having legal expenses insurance that covers employment law matters at your organization offers you the same peace of mind as other forms of insurance (e.g., health, dental, property, life and travel insurance). If something unexpected happens, you can get help. Given that you will spend more time at your job than you will travel or sit in a dentist's chair, it makes good sense (and good career sense) to invest in protecting your career.

For individuals on consultancy contracts, legal expenses insurance is particularly important because organizations provide consultants with less contractual rights and processes for enforcing these rights may be more difficult to access (e.g., conciliation and arbitration).

Here are five workplace situations in which you may wish to consult an attorney:

Reason 1: Workplace conflicts

During your career, you may work in several countries, with different teams and reporting to various supervisors – all within a multicultural environment. You may face high expectations and competing demands, coupled with limited resources. These factors among others could lead to an increased likelihood of a workplace conflict.

If a conflict disrupts your ability to perform your duties, a competent lawyer can help you resolve it. This could involve raising issues in a formal process (such as through an appeal or a complaint) or seeking an informal resolution. If you are a manager and colleagues under your supervisions have raised a complaint about your conduct, you also may want to consult an attorney independent of your organization for advice on how to best address these matters.

Reason 2: Investigations

If you have been requested to participate in a workplace investigation as a complainant, witness or a subject, an attorney can fully inform you about the investigation process, your rights during the investigation and any risks that the investigation may pose to you.

In the context of an investigation, it is particularly important for individuals who have been accused of misconduct (i.e. subjects) to seek legal advice as early as possible to protect their rights. This is because workplace investigations can result in severe disciplinary sanctions, up to and including termination of employment and they may even lead to referral of possible criminal matters to national authorities. There is no guarantee that anyone within the organization will be looking out for your rights. You should not expect an investigator to do so.

Reason 3: Changes to the Conditions of Your Employment

You may be facing changes to the conditions of your employment, such as being offered a new role at another international organization. Or you may have been denied the receipt of a contractual entitlement for a reason you deem questionable. In such circumstances, an attorney could review the matter and suggest ways to make sure your interests are protected and rules are correctly upheld.



Reason 4: Whistleblowing

Blowing the whistle on improper or illegal conduct occurring in the workplace is the right thing to do, but employees take risks when they do so. These risks include possible retaliation from the employees who engaged in the misconduct or sometimes from the employer itself. It is also possible that a whistleblower's own conduct in the matter may expose them to liability, including possible allegations that they themselves have breached professional obligations or confidences. A competent lawyer can assist an employee to report such matters safely and effectively, while adding trust to the whistleblowing process.

Reason 5: Concerns about a selection process

You may have been passed over for a desirable position, depriving you of an important opportunity for career advancement. If you have concerns that the recruitment process was flawed, a lawyer can advise whether you could successfully challenge the process.

Many readers will have experienced one or more of these situations in their careers, which underscores the value of being able to obtain timely legal advice at an affordable cost.

How to obtain legal expenses insurance

How can you obtain legal expenses insurance that covers your employment with the United Nations and other international organizations?

Legal expenses insurance through your staff association

As a first step, you should contact your organization's staff association. Some associations provide legal expenses insurance as a benefit for their members.

You should ask whether there are additional costs or co-payments required, what is the maximum amount of legal expenses that can be covered by the insurance and whether the association allows members to benefit from it automatically or if there are restrictions to coverage, either applied by the association or under the group insurance policy. Common restrictions include covering legal fees only if the legal dispute reaches an appeal stage or only providing insurance cover for cases where the insurance company considers that the case is of merit or the association deems it of common interest to its members. If you are a consultant, you also will need to ask whether this benefit is even applicable to you, by nature of your contract.

If your staff association provides you with legal coverage, you are in luck! If not, you should encourage your staff association to examine offering such a benefit to staff (and suggest that they contact FICSA for more information).

Legal expenses insurances as an individual

A guaranteed way to obtain legal expenses insurance is to take out a policy directly with an insurance provider. For individuals working in Switzerland, there are a number of companies that offer legal expenses insurance for personnel of international organizations (Fortuna, CAP and AXA-ARAG are a few examples). Generally speaking, these policies are relatively affordable (25 – 40 USD per month) and some are offered with no deductible and no minimum disputed sum. This means that disputes in which damages may be difficult to quantify could also be covered.

There are a few important points to keep in mind. First, the insurance policy normally insures you as soon as you take out the contract. However, if your

case is attributable to events or facts that originated before your policy came into force, or which arose as a result of events or facts that reasonably should have been known to you beforehand, your dispute may not be covered by the insurance.

Second, as your organization is immune from suit in a national court due to privileges and immunities, it is critical to be sure that your contract does not limit coverage only to legal disputes in a national court. As an example, some providers in Europe may limit coverage in this manner and staff members were unable to obtain a benefit in front of their organization's appeal board or the International Labour Organization Administrative Tribunal.

Third, you must also check whether your policy has any territorial limitations or exclusions. Some policies limit the territorial scope to the country in which the policy is written; others provide coverage worldwide.

Fourth, you should ensure that the policy lets you choose your lawyer. After all, your lawyer must not only communicate well with you, but he or she must also have knowledge of employment disputes in international organizations, which is a highly specialized area of law.

Finally, if you do obtain legal expenses insurance, you may be happy to find that your policy will provide legal security in other aspects of your everyday life such as in landlord/tenant matters, tax law and civil damages claims.

For these reasons, every employee of an international organization should consider setting aside 25–40 USD per month to secure legal expenses insurance. Consider it as an investment in your career.

Mr. Fishman has provided legal advice within the United Nations system, with an expertise in employment law, for nearly a decade. He served as a staff member in numerous international organizations, including the World Trade Organization, Special Tribunal for Lebanon and as part of the legal secretariat of the WHO Global Board of Appeal. He has training and experience in conducting United Nations harassment investigations and is a certified and experienced workplace mediator. Mr. Fishman stands ready to assist employees in disputes and appeals with their employer and to advise staff associations of international organizations on a range of topics, as well as by serving as an investigator or mediator. This article provides general information and is not legal advice.

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