



NJSIG's FREQUENTLY ASKED THERAPY DOG COVERAGE QUESTIONS & ANSWERS

NJSIG has prepared this material based on questions received from our members and our broker community. These questions and answers describe NJSIG's general approach to therapy dog-related claims at this time, and should not be construed as legal advice, or as a coverage position on a specific claim. Each claim must be evaluated on its own merits, and the analysis will depend on the specific facts of a claim, as well as the state of the law.

Questions that have been discussed as examples of claims issues that might arise from the use of therapy dogs or other animals in school buildings include:

1. Would a member school district have coverage if a student tripped over a therapy dog owned by the school and was injured by the fall?

Yes, the member school district would likely have coverage under NJSIG's general liability policy should the student make a claim of negligence against the district. There is no exclusion for injuries caused by animals in NJSIG's 2022/2023 general liability policy. Thus, NJSIG would pay for an attorney to defend the claim, and pay for any settlement or damages that result, consistent with the applicable policy language. However, the student would have to overcome the protections that the New Jersey Tort Claims Act provides to public entities like the member school district.

2. Would a member school district have coverage if a therapy dog owned by the school bites a student?

Yes, the member school district would likely have coverage under NJSIG's general liability policy should the student make a claim of negligence against the district. There is no exclusion for injuries caused by animals in NJSIG's 2022/2023 general liability policy. Thus, NJSIG would pay for an attorney to defend the claim, and pay for any settlement or damages that result, consistent with the applicable policy language. However, the individual would have to overcome the protections that the New Jersey Tort Claims Act provides to public entities like the member school district. Furthermore, although New Jersey has a general dog bite law, it remains unresolved whether this statute even applies to public entities, like the member school district. See



NJSIG's FREQUENTLY ASKED THERAPY DOG COVERAGE QUESTIONS & ANSWERS

Gordon v. Twp. of Toms River, 2013 N.J. Super. Unpub. LEXIS 2014, at *10 n.3 (App. Div. Aug. 8, 2013) (“We note that N.J.S.A. 4:19-16 may not be applicable here because this statute is aimed at claims against private defendants rather than public entities and officials governed by the Tort Claims Act. See De Robertis v. Randazzo, 94 N.J. 144, 462 A.2d 1260 (1983); Zukowitz v. Halperin, 360 N.J. Super. 69, 821 A.2d 527 (App. Div. 2003); see also N.J.S.A. 59:9-2(b) (precluding the imposition of strict liability upon public entities and public employees covered by the Tort Claims Act).”).

3. Would a member school district have coverage if a therapy dog owned by the school is taken home by a school district employee and injures the school district employee during the evening by pulling them to the ground while they were taking the dog for a walk?

As with all workers' compensation claims, this claim would first be investigated by NJSIG for compensability. An injury will only be compensable under workers' compensation when it “is caused to an employee by [an] accident arising out of and in the course of his employment[.]” N.J.S.A. 34:15-1. The definition of “employment” includes situations in which an employee is physically away from the employer's premises but is still “engaged in the direct performance of duties assigned or directed by the employer[.]” N.J.S.A. 34:15-36; see Cooper v. Barnickel Enters., Inc., 411 N.J. Super. 343, 346 (App. Div. 2010). In the event the investigation indicated that the employee was “assigned or directed” to perform this duty by the member school district, and thus was injured in the course of their employment, the claim would likely be accepted as compensable. In the event that the investigation indicated that the employee was not “assigned or directed” to perform this duty by the member school district, and thus was not injured in the course of their employment, the claim would likely not be accepted as compensable. If the employee disagreed with the outcome of the investigation, they would have the option of contesting that compensability determination via the filing of a workers' compensation claim petition. NJSIG would then assign – and pay for – counsel to defend the member against that claim petition. In the event that a judge of the Division of Workers' Compensation determined that the employee was injured in the course of their employment, the claim would likely need to be accepted as compensable, and adjusted accordingly.



NJSIG's FREQUENTLY ASKED THERAPY DOG COVERAGE QUESTIONS & ANSWERS

- 4. Would a member school district have coverage if a therapy dog owned by the school is taken home by a school district employee each night, and after several weeks at home, the school employee approaches the member school district for back pay and future compensation for overtime for caring for the therapy dog while at home?**

No, the member school district would likely not have coverage under the NJSIG's errors and omissions ("E&O") policy should the employee make a claim for a violation of the Fair Labor Standards Act ("FLSA") against the district because claims for this type of employee wage dispute are specifically excluded from coverage. Specifically, there is an exclusion in NJSIG's 2022/2023 E&O policy that excludes: "Claim[s] alleging, based upon, arising out of or attributable to the Fair Labor Standards Act (except the Equal Pay Act), or any state or common law wage or hour law, including but not limited to laws governing minimum wages, hours worked, overtime compensation, and sums sought solely on the basis of a Claim for unpaid services, salary, wages or earnings. However, this exclusion shall not apply to back pay or front pay." Additionally, the policy states: "Claim shall not include: any action arising out of: (1) a collective bargaining agreement; (2) A complaint or filing with the Public Employment Relations Commission." (The exclusion's exception to back and front pay is intended to make clear that the policy would cover equitable remedies for wages allegedly lost as a result of employment discrimination, but not for wages allegedly lost due to a violation of state or federal wage statutes, collective bargaining agreements, etc.)

The FLSA question should be referred to the member's board attorney, as FLSA compliance with regard to animal handlers is a complex topic with significant history. For example, the U.S. Department of Labor has issued opinion letters on the topic of FLSA compliance for animal handlers. See https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2006_03_10_10_FLSA.pdf. In addition, the expansion of an employee's scope of duties to provide housing for a district-owned animal also could potentially implicate a collective negotiations agreement.



NJSIG's FREQUENTLY ASKED THERAPY DOG COVERAGE QUESTIONS & ANSWERS

5. Would a member school district have coverage if a therapy dog owned by a school district employee, who is authorized by the school to bring the therapy dog into the school, bites a student?

Yes, the member school district would likely have coverage under the NJSIG's general liability policy should the student make a claim of negligence against the district. There is no exclusion for injuries caused by animals in NJSIG's 2022/2023 general liability policy. Thus, NJSIG would pay for an attorney to defend the claim, and pay for any settlement or damages that result, consistent with the applicable policy language. However, the individual would have to overcome the protections that the New Jersey Tort Claims Act provide to public entities like the member school district. Furthermore, although New Jersey has a general dog bite law, it remains an unresolved whether this statute even applies to public entities, like the member school district. See Gordon v. Twp. of Toms River, 2013 N.J. Super. Unpub. LEXIS 2014, at *10 n.3 (App. Div. Aug. 8, 2013) (“We note that N.J.S.A. 4:19-16 may not be applicable here because this statute is aimed at claims against private defendants rather than public entities and officials governed by the Tort Claims Act. See De Robertis v. Randazzo, 94 N.J. 144, 462 A.2d 1260 (1983); Zukowitz v. Halperin, 360 N.J. Super. 69, 821 A.2d 527 (App. Div. 2003); see also N.J.S.A. 59:9-2(b) (precluding the imposition of strict liability upon public entities and public employees covered by the Tort Claims Act).”).