§ 619. Civil actions against employees of the corporation. 1. As used in this section the following terms shall mean and include:

a. "Corporation counsel." The corporation counsel of the city.

b. "Employee." Any officer, director or employee of the corporation, a former officer, director or employee of the corporation, his or her estate or judicially appointed personal representative. The term employee shall not include an independent contractor.

2. At the request of the employee and upon compliance by the employee with the provisions of subdivision four of this section, the corporation shall provide for the defense of an employee in any civil action or proceeding in any state or federal court including actions under sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code arising out of any alleged act or omission which the corporation counsel finds occurred while the employee was acting within the scope of his employment and in the discharge of his duties and was not in violation of any rule or regulation of the corporation at the time the alleged act or omission occurred. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the corporation, the city or state or any agency of either.

3. The corporation shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his employment and in the discharge of his duties and was not in violation of any rule or regulation of the corporation at the time the alleged damages were sustained, the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee. Any judgment or settlement pursuant to this section shall be a cost of the corporation's functions and shall be payable from the moneys of the

corporation.

4. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon:

a. delivery to the corporation counsel at the office of the law department of the city by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he or she is served with such document, and

b. the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the corporation based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the corporation provide for his or her defense pursuant to this section. In the event that the corporation counsel shall assume an employee's defense and thereafter the employee fails to or refuses to cooperate in the formation or presentation of his or her defense, the court shall permit the corporation counsel to withdraw his or her representation ten days after giving written notice to the employee of his or her intention to discontinue such representation.

5. In the event that the act or omission upon which the court proceeding against the employee is based was or is also the basis of a disciplinary proceeding by the corporation against the employee, representation and indemnification pursuant to this section may be withheld:

a. until such disciplinary proceeding has been resolved, and

b. unless the resolution of the disciplinary proceeding exonerated the employee as to such act or omission.

6. Every action or proceeding instituted against an employee, including an action brought to enforce a provision of sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code, shall be commenced pursuant to the

provisions of section six hundred eighteen of this chapter and within one year and ninety days. No action or proceeding instituted against an employee other than one instituted pursuant to sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code shall be prosecuted or maintained against the corporation or an employee unless notice of claim shall have been made and served upon the corporation in compliance with section six hundred eighteen of this chapter and within ninety days after the claim arises.

7. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

8. The provisions of this section shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted, except that the provisions of subdivision six of this section shall apply only to actions and proceedings instituted on or after the effective date of this section.

9. The provisions of this section shall not be construed in any way to impair, alter, limit, modify, or abrogate or restrict any immunity available to or conferred upon the corporation or any employee, or any right to defense indemnification provided in accordance with, or by reason of, any other law.

10. Notwithstanding any inconsistent provision of this section, the provisions of this section shall not apply to any civil action or proceeding commenced after the effective date of this subdivision. Further, the corporation counsel may continue representation in any action or proceeding brought by or against such corporation prior to such effective date. The corporation counsel and the corporation shall be empowered to agree to the transfer of the defense or prosecution of any such action or proceeding to such other counsel as shall be agreed upon.