

LEGAL UPDATES

PUBLISHED: MARCH 22, 2020

Service

Higher Education

Colleges, Universities and COVID-19 – Legal Issues for Leadership

Institutions of higher education navigating COVID-19 face guidance, mandates, and laws that shift hour by hour. Husch Blackwell's COVID-19 response team is providing answers to key issues impacting operational matters across industries. As our Education attorneys work to support institutional leaders with the unique situations presented at their schools, we are developing tools to provide effective, efficient response.

Colleges and universities are looking for solutions for continuing programs that are the same (in terms of excellence and service) but different (in terms of format, location, or other particulars). Following is a list of issues for higher education administrators to consider as they move their institutions to a new normal.

Health, safety and government orders

Following federal (including CDC), state, and local requirements and guidance around shelter, social distancing, and physical preventive measures

Changing protocols for health and safety as programs and campuses shift operations, including Clery Act and campus security requirements

Restricting employee and student travel: duration, and implications of requirements around personal travel

Monitoring, assessing, and addressing employee and student health and potential direct threat to workplace and education environments

Issuing notices of health risks, including Clery Act emergency notifications, such as potential COVID-19 exposure in institutional programs and activities

Providing student healthcare services: availability of telehealth options and insurance coverage, health center operations and student counseling

Quarantines: addressing and enforcing on-campus quarantines; ensuring coverage for essential employees subject to quarantines

Responding to government mandates to vacate campus

Answering government requests or orders to surrender campus facilities for government purpose (e.g., dormitories as temporary hospitals)

Workplace and student employment issues

Identifying employees who can/may work from home

Facilitating remote work

Establishing compensation parameters and durations for those who cannot work remotely or must reduce hours

Assessing needs for employee furloughs, layoffs, or restructuring

Onboarding new employees in altered operations

Determining parameters for student workers: in-office and remote

Addressing issues related to out-of-state remote employees, including tax and licensure issues

Assuring compliance with employee privacy concerns and rights around monitoring and inquiring about symptoms and illness, reasons for absence, availability to work, and personal travel history and plans

requiring or administering medical exams, tests, and documentation

exposure in the workplace

excluding those who have been exposed from the workplace

issuing necessary notifications

using personal protective equipment

adopting infection control practices at work and elsewhere

Addressing employee refusal to work/travel purely due to personal concerns about outbreaks or exposure

Extending tenure and other progression clocks

Academics and remote learning

Meeting expectations of and notifying U.S. and state departments of education

Meeting expectations of and notifying regional and programmatic accreditors

Determining the length of the academic year

Shifting to remote learning: modalities, content, institutional resources, and duration

Preparing and equipping faculty and students for remote learning: resources and training for faculty and students, supplemental supports, technology and disability accessibility concerns

Equipping advisors to address shifts in academic requirements

Addressing grading (taking current grade, pass/fail, testing) and academic progression issues

Providing ongoing contact and IT resources: support, system capacity, and security

Determining application and admission requirements and timelines

Room and board

Assessing impact of closed housing on international students and students without safe, secure housing off-campus

Continuing operations: alternative options for students (e.g., securing off-campus housing); health and safety issues for remaining students; security and supervision of ongoing operations; potential student acknowledgements/waivers addressing risks of remaining in housing

Issuing partial refunds: ability to pay, contractual obligations and exceptions, risk balancing, and financial aid implications

Student development, co-curricular and extra-curricular activities

Enforcing conduct codes: in remote work and learning environments, in limited physical staffing scenarios

Cancelling athletic, large scale, and other on-ground events

Issuing refunds for planned activities: ability to pay, contractual obligations and exceptions, and risk balancing

Future athletic eligibility

Athletic and other activity-specific scholarship implications

Title IV – student financial aid

Informing the U.S. Department of Education of changes impacting aid, including election to shorten academic year

Using professional judgment to increase aid awards where appropriate

Deciding Federal Work Study issues: availability of on-ground or on-line work for students, paying students who are unable to do their work, institutional share, and community service requirements

Following credit balance policies and requirements in cases of refunds to Title IV aid recipients

Addressing state and private scholarship and aid requirements considering program adjustments

Returning Title IV Funds for students who withdraw from all courses

Research

Authorizing essential employees to continue research

Caring for research animals

Collaborating with health industry and private equity around research and development, including agreements, intellectual property, non-profit considerations

Maintaining laboratory safety with skeletal workforce presence

Immigration

Determining whether foreign nationals can work from home

Onboarding new international employees (e.g., remote documentation and I-9 verification)

Confirming that international students maintain status in remote learning programs or if moving off campus

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Maintaining current immigration authority reporting

Nondiscrimination

Addressing requests for reasonable accommodations in a remote work and learning environments

Maintaining effective nondiscrimination office complaint and resolution processes

Privacy and data security

Monitoring and addressing cyber-security risks around remote work, learning, and services

Contracts and insurance

Exploring potential for mutually-agreed adjustments to obligations

Analyzing and invoking applicable force-majeure clauses

Addressing long-term contractual arrangements—such as for construction, foodservice, and instructional materials—in times of shifting needs

Assessing availability and applicability of business interruption and other insurance

Financial, institutional structure and governance

For each of the list items above, identifying budget sources and resource availability

Considering financial exigency and financial hardship declarations: institutional definitions, fiscal calculations, shared governance, and board decision making processes

Accessing governmental resources for financial relief for students and institutions

Evaluating bond and other financing opportunities

Determining impact of recent developments on plans or opportunities for institutional merger, acquisition, or other structural changes

Developing communications plans

Adjusting succession plans

Planning strategically for next steps in best-case, likely, and worst-case scenarios across operations—including assigning ownership of determining, and implementing, those steps

What this means for you

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There are few one-size-fits all solutions. Some legislative relief and regulatory guidance will be forthcoming. Despite the press of rapid developments and swelling emotion, many decisions around these issues need not be made in the moment. Colleges and universities should focus on reasonable, informed decision-making, balancing safety, mission, and risk priorities. Document that you have done your utmost to do so. Keep monitoring new legislation and guidance. Keep supporting one another. We will continue to watch developments and share tools and resources going forward.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.