



Reed Smith LLP Higher Education team priority issues

The outbreak of COVID-19 has disrupted nearly every facet of everyday life, including higher education. Reed Smith's higher education team is committed to assisting its clients in addressing any issues that arise during the current pandemic. To assist institutions of higher education in addressing this constantly evolving situation, Reed Smith has identified the following areas of potential concern. This list is non-exhaustive and ever-evolving.

Reed Smith is a dynamic international law firm, with 3,000 people, including more than 1,700 lawyers across 30 offices, dedicated to helping clients move their businesses forward.

Accessibility

- Note that Title II of the Americans with Disabilities Act (ADA) applies to public colleges and universities, regardless of whether they receive federal funding.
- Note that Title III of the ADA applies to private, postsecondary institutions, which are considered places of public accommodation under the law.
- With respect to remote learning, be mindful that ADA regulations require that "auxiliary aids and services" be provided in accessible formats.
- Academic institutions have accessibility obligations to employees as well as students during a pandemic; under the ADA, employers are required to provide reasonable accommodations to qualified employees with disabilities, unless doing so would cause undue hardship.

Labor and Employment

- Review collective bargaining and employment agreements.
- Review the Family and Medical Leave Act (FMLA) and leave policies.
- To the extent not controlled by relevant agreements, define "remote," "on-site," and "essential" workers.
- Ensure the ability to remotely monitor employment time, work, etc.
- Consider the impact on H-1B workers.
- Consider the impact of any workforce adjustments, including potential discrimination claims.

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- Consider workplace safety issues under Occupational Safety and Health Administration (OSHA) guidance and other applicable laws and regulations.

General Liability

- Review Department of Education COVID-19 guidance on Title IX (<https://www.ed.gov/coronavirus?src=feature>) and explore options for continuing Title IX investigations and proceedings even with campus closures.
- In contrast to general practice, there is likely now to be a heightened duty to protect students, such as by enforcing applicable emergency orders, maintaining the cleanliness of facilities and monitoring and adhering to additional guidance from federal, state, and local health agencies.
- Identify national, state, and local orders for which compliance is mandatory, such as quarantine orders.
- Continue to be mindful of Family Educational Rights and Privacy Act (FERPA) obligations, but note the emergency exception – see 34 CFR, sections 99.31(a)(10) and 99.36.
- Review force majeure clauses in contracts, including grant and vendor agreements.

Insurance Coverage

- Be mindful of claim notice requirements – timing is a key consideration.
- Review commercial general liability policies – is insurance available to cover third-party property damage and bodily injury?
- Review agreements to determine whether insurance is available to cover costs associated with government-imposed travel restrictions or quarantines.
- Consider availability and scope of event cancellation insurance.
- Consider cyber liability insurance given the increased strain on network resources due to remote learning and the opportunity for bad actors to disrupt operations.
- Review policies for coverage regarding claims against administration, contingency plans, and operational interruption.

Reed Smith's higher education lawyers will continue to monitor federal, state, and local workplace developments related to COVID-19. If you have questions or would like additional information on the material covered in this piece, please contact Casey Ryan (cryan@reedsmith.com) and Jeff Weimer (jweimer@reedsmith.com).