



Legal Impacts of COVID

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Responsibilities of the Modern Campus CFO – 2020 Redux?

- Housing and tuition refunds
- Class action lawsuits
- Financial reporting
- State and federal stimulus programs
- Interpreting executive orders
- Cost reduction measures
- Space use and technology infrastructure
- Unexpected emergency expenses
- Remote work challenges
- Student enrollment and retention decreases
- Shared governance and budget decisions
- Title IX changes
- Speech and expression
- Campus policing and accountability
- D&I trainings

... But wait, there's more!

- Vaccine mandates
- Decisions in COVID-related litigation
- Student and employee mental health needs
- Continued enrollment declines and demographic shifts
- Employee vacancies and tightening labor market
- Continued emphasis on shared governance, institutional policies and business terms
- Labor organizing in higher education

Vaccine Mandates

- Legal and policy developments
 - Institutional COVID policies (*Spring/Summer 2021*)
 - Executive Order 14042 (*September 9, 2021*)
 - Safer Federal Workforce Task Force COVID guidance (*September 24, 2021*)
 - EEOC Guidance (*updated October 25, 2021*)
 - OSHA Emergency Temporary Standard for larger employers (*forthcoming*)
- Moving targets
 - Legal challenges to mandates
 - Navigating exemptions to vaccine mandates and determining accommodations for employees and students

Trends in COVID Tuition and Refund Litigation

- Contract, unjust enrichment, and conversion claims
 - Not a total win for plaintiffs or defendants
- Framing the narrative
 - Response to unprecedented health threat v. essential on-campus, in-person work and study requirements
- Challenging the “financial windfall” narrative
 - Shrinking budgets, decreasing revenues, unexpected costs
- Recommendations for the future
 - Increase scrutiny of contract terms and remedies
 - Continued review of marketing materials, course catalogs, invoices, etc.

Supporting Mental Health

- Mental health needs among students and employees exacerbated by pandemic
 - 23.8% of college students reported experiencing moderate psychological distress; 24% of college students reported experiencing serious psychological distress (ACHA National College Health Assessment 2021)
- Challenges with service and support delivery systems and funding availability
- U.S. DOE Guidance on Support Student Social, Emotional, Behavioral, and Mental Health Needs, October 19, 2021
 - Impacts on marginalized groups
 - ADA and 504 compliance reminder
 - Models and examples

What's on the horizon after COVID-19?

- Impacts on our people (both students and employees) return, retirement, career changes, mental health
- Shared governance
- Changes to student evaluations, teaching styles, semester schedules
- Need for increased fluency in matters of politics, speech, and race/marginalized identities

Trends related to employee populations and student enrollment

- Significant turnover continues in the faculty ranks including tenured or experienced faculty
- “Deep meaningful relationships with a mentor” is most often cited as the best learning experience
- The number of students entering college directly after high school dipped 6.8% in 2020 ... an unprecedented 1 year drop
- The total enrollment of students in undergraduate and graduate school dropped 2.5% after COVID (most of the drop comprised of undergraduate students)

Shared Governance and Other Institutional Policies and Business Terms

- Global pandemic provided legal and practical space to make administrative and operational decisions with no or little input or advance notice
- Important to return to following your campuses' procedures
- Important to write clearer contractual terms for employment as well as student experiences (tuition, residence hall, conduct, study abroad)

The Pace of Change will Remain Fast for

- Student evaluation processes likely merit more attention
- Increased professional development and support for teaching styles, virtual office hours, and flexibility
- Changes in semester schedules (and possible impact on revenue)

Rising Tide of Labor Organizing in Higher Ed

- Student workers
- Graduate students
- Faculty
- Student athletes
- Other staff

Student workers and some student athletes can unionize

- Hamilton College, Kenyon College examples
- Recent change at NLRB withdrawing Trump-era rule
 - Graduate assistants who teach or research can organize
- Recent NLRB's GC memo on student athletes

Faculty organizing efforts on the rise ...which faculty?

- True “adjuncts” and many temporary faculty
- “Meaningful” participation in governance
- What difference does it make?
- Proactive steps to take



Questions?

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