

Coronavirus (COVID-19) FAQs for Higher Education Employers

By Monica H. Khetarpal, Susan D. Friedfel, Joseph J. DiPalma &

March 19, 2020

Meet the Authors



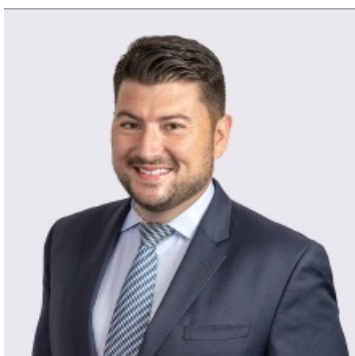
Monica H. Khetarpal

Principal
(312) 803-2529
Monica.Khetarpal@jacksonlewis.com



Susan D. Friedfel

Principal
914-872-8027
Susan.Friedfel@jacksonlewis.com



Joseph J. DiPalma

Principal

The threat from the coronavirus (COVID-19) outbreak means employers that are institutes of higher education (IHEs) are confronting some complex questions. To assist employers, this Special Report discusses some issues that may arise.

Employee Pay and Leave

1. Should universities rely on [Centers for Disease Control and Prevention \(CDC\) interim guidance](#) or [Department of Education \(DOE\) guidance](#) on employee issues?

They should consult both. The CDC has the latest information about COVID-19. Its latest interim guidance for administrators of IHEs was published on March 2, 2020. The latest interim guidance for administrators of K-12 schools was published on March 12, 2020. The DOE has more specific information on specific programs like the Family Educational Rights and Privacy Act (FERPA), a federal law that protects the privacy of student education records. The DOE's website provides a clearinghouse of information with website links. The CDC publications provide institutions with baseline information on the minimum that should be done regarding coronavirus prevention and reaction, which institutions should follow.

2. How should university employers handle paid and unpaid leave?

The U.S. government mandates quarantine for individuals returning from the Hubei province in China, and possibly the rest of China and Iran. As of March 15, 2020, the [CDC requires asymptomatic travelers](#) returning from China, Iran, South Korea, and most of Europe to stay home for 14 days after returning from travel, monitor their health, and practice social distancing. Social distancing is defined by the CDC as remaining out of congregate settings, avoiding local transportation (including rideshare), and maintaining six feet from others. If symptomatic, these individuals should self-isolate and engage in controlled travel.

If an employee is in quarantine, self-isolation, or is required to remain at home, whether they could use paid leave is determined by the institution's policy and, if applicable, collective bargaining agreement (CBA). Unless otherwise prevented by state law, an institution may require an employee to exhaust paid leave, including paid time off (PTO), for this period. However, there is a risk an employee can claim such a requirement is a negative consequence in a disability or race discrimination complaint. If an employee does not have any available paid leave for the entire quarantine period, some institutions have chosen to provide additional paid leave to encourage employees to self-identify and self-isolate. Others have provided advance paid leave, and still others have provided unpaid leave. Many institutions have left this issue unanswered because of the fluidity of the situation, preferring to evaluate returns to the campus and whether to pay for the leave or not on a case-by-case and individualized basis. Some states, counties, and localities have quickly promulgated requirements for employers to

Related Services

COVID-19
Disability, Leave and Health
Management
Higher Education

provide extra paid leave to employees who must isolate or quarantine themselves.

3. Can university employers ban employee leisure travel to highly affected areas?

Yes, they can. A court recently decided that, where an employer banned employees from business and personal travel to an area that was experiencing the Ebola virus, the employer may discipline an employee for violating that travel restriction. The employee claimed he was a victim of perceived disability discrimination in violation of the Americans with Disabilities Act (ADA). The court denied his claim. This case suggests that institutions could ban employee travel to certain areas because of the COVID-19 outbreak. While employers have told employees that returning from a Level 2 or 3 country means they cannot return to the community until they have isolated themselves for 14 days on unpaid leave, many institutions have not taken this punitive approach. Many institutions urge employees to heed governmental travel restrictions, advisories, and warning.

Mandatory Reporting, Testing

4. Can university employers require employees to self-report exposure to COVID-19 or positive test results?

Yes, an institution can ask employees to self-report if they may have had close contact with a COVID-19 case. CDC has deemed COVID-19 to be a pandemic, allowing an institution to require employees to self-report if they have a positive test result for COVID-19. An institution also may ask employees if they are experiencing symptoms of COVID-19 due to the designation of the virus as a pandemic following recent [Equal Employment Opportunity Commission \(EEOC\) guidance](#).

5. What is the correct course if a student or employee shows symptoms of COVID-19 infection (e.g., excessive coughing)?

To avoid ADA issues, an institution should focus on whether the individual is showing symptoms of the virus to avoid the inquiry being deemed disability related. An employer can send an employee home from work if it believes they are sick and have respiratory illness symptoms, such as coughing, fever, and shortness of breath. A pandemic declaration permits an institution more leeway to reasonably ask employees and students for more specific information, including COVID-19 symptoms, and send an individual home because of those symptoms.

6. What if a student or employee notifies the university that they have COVID-19 or were exposed to someone who has a confirmed case or confirmed exposure?

The CDC recommends that the institution contact the local health department and the CDC for guidance. The individual should remain off campus until they are certified as being disease free and no longer contagious. With the assistance and guidance of the local health department, the institution should try to determine the source of the infected employee's exposure or whether it was the result of community transmission. Also, the local health department will determine whether any other persons had close contact with the individual and notify them.

7. Can universities require students and employees have their temperatures taken?

Yes, even though such screenings could be deemed a medical examination that violates

the ADA, the EEOC pandemic guidance allows employers to measure an employee's body temperature. This information should be treated as confidential medical information. However, body temperature is only one indication of COVID-19 infection, together with coughing and shortness of breath. Moreover, some infected individuals do not have fevers.

Maintaining Operations

8. What are the best systems and tactics for continuing online learning during school cancellations?

First, know the students' technological capabilities and what support is available to them. Then, have an online learning hub and be familiar with it. Communicate often and consistently with faculty and students and ask them for feedback. Remember ADA accommodations apply to virtual learning and creative new accommodations may be required.

9. What guidance should universities look to when deciding whether to cancel events?

The CDC guidance for IHEs and K-12 schools provide such guidance. Generally, if there is sustained community spread (as in California, New York, and Washington state), the CDC recommends cancellation of events with 50 or more persons. Institutions should stay up-to-date with all local gathering restrictions, as many states have banned large events for the next few weeks and President Donald Trump has recommended limiting all gatherings to 10 people. This social distancing practice is meant to slow the spread of infection to allow the health care facilities to get basic control of the crisis.

10. How should institutions handle the use of their facilities by outside groups?

If the scope of the transmission is significant, institutions should consider restrictions on the use of facilities by outside groups to prevent contamination. Increased cleaning of facilities is recommended with or without use of facilities by outside groups. Contracts should be reviewed to determine the financial consequences for cancellations. Institutions should work with the outside groups to limit financial penalties considering this emergency health crisis.

11. How will universities be notified of any positive COVID-19 tests in their communities?

Generally, the local health department is responsible for notify the institution of positive results for COVID-19 testing. The information should be treated as confidential medical information, and the identity of the employee or student should not be shared with others.

University and Student Life

12. Does a university have any legal rights to isolate students who return from infected areas?

As with employees, an institution has the right to bar students who return from infected areas to campus. However, such actions should be monitored to ensure consistency and no disparate impact on any protected category like race or national origin.

13. Do universities have any liabilities as to student housing and meal plans if a campus fully transitions to online-only education?

This would depend of the institution's specific meal plan and housing policies. An institution's Residence and Board contracts may address shutdowns. Keep students and parents informed while reviewing all of the issues and keep them updated with any new information while focusing on ensuring continuity in education objectives.

14. Should universities track their cleaning and sanitization efforts?

Yes. The CDC guidance recommends increased cleaning and disinfecting of facilities, especially following a confirmed case in the community. Institutions should track sanitization efforts that meets or exceeds minimum standards set by the CDC, regardless of whether they are performed by employees or vendors.

Insurance Concerns

15. Can insurance provide coverage to an institution that may cover COVID-19-related losses or expenses?

Yes, general liability, employment practices liability, and workers' compensation insurance could cover COVID-19-related losses and expenses. Institutions should contact their insurance company or broker with questions about coverage under their specific policies.

16. Can workers' compensation insurance cover employee claims?

Such insurance may, depending on whether the illness or injury occurred at work or during work time. Causation may be critical. State laws also may affect coverage. Institutions should contact their workers' compensation carrier with questions about coverage.

For additional guidance, please contact a Jackson Lewis attorney or the dedicated [COVID-19 Task Force](#).

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.