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How Will the COVID-19 Good Samaritan Expansion Bill Impact Ohio Colleges and Universities?

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In the midst of the global pandemic, uncertainty is everywhere; however, the Ohio General Assembly recently passed legislation in the form of House Bill 606, also known as the Good Samaritan Expansion Bill, to provide some solace and certainty to Ohio businesses, individuals, and entities. Schools – and in particular colleges and universities – are experiencing a collective sigh of relief in light of this new legislation. Signed by Governor Mike DeWine on September 14, 2020, the bill provides immunity, for civil lawsuits related to the spread of COVID-19, to "people," which, under the statutory definition, includes a "school," "non-profit or for-profit entity," or a "state institution of higher education." This definition encompasses colleges and universities, as well as primary and secondary schools.

Colleges and universities have faced a myriad of challenges since the start of the coronavirus, and things have only become more complicated since the new academic year began in the fall. As educational institutions do their best to navigate issues related to students' return to campus, including in-person versus virtual classroom environments; sports – including whether to have seasons and whether fans will be allowed to attend in any limited capacity; student housing – including quarantining students testing positive with the virus; clubs and organizations, etc., the dark storm cloud of potential litigation loomed. H.B. 606 was designed to give schools shelter from that storm by providing them with legal immunity from lawsuits for damages for injury, death, or loss to persons or property if the damages were caused by exposure to COVID-19. Additionally, the bill expressly prohibits class actions.

First among the key reasons cited within the bill for its necessity is the variance in advice from public health experts and scientists as we learn more about this new virus. The text of H.B. 606 discusses the example of wearing masks, which was not widely recommend until months into the pandemic. This sort of constantly evolving guidance creates a pit in the stomach of college administrators who are trying to do the right thing to keep students safe, often resulting in analysis paralysis. By passing this bill, lawmakers provide colleges and universities with the ability to implement plans more confidently and better serve their students. The bill also addresses the reality that individuals who go into the public are taking a risk and have a responsibility to protect themselves. Historically, the responsibility of protecting the public against airborne illnesses has never fallen to businesses, schools, or

other entities.

It is important for schools to note that this bill, while relatively expansive, does not provide a complete blanket protection from suit. The legislation protects only against lawsuits related to certain diseases, including MERS-CoV, SARS-CoV, or SARS-CoV-2 or any mutation thereof. It does not, however, provide protection against claims less directly associated with the spread of the virus, such as claims that arise out of alleged breach of contractual obligations necessitated by the pandemic. For example, the Act does not protect colleges or universities against the recent spate of tuition-reimbursement lawsuits stemming from the cancellation of on-campus classes in the Spring 2020 semester. For more information on such litigation, see our May Client Alert, "What Colleges and Universities Should Know about Tuition- and Fee-Reimbursement Lawsuits," here.

The bill is also limited in its applicable time window. While it will become effective in December, it will apply retroactively to March 9, 2020. Looking forward, it covers schools until September 30, 2021. While we all hope to be past the worst of this pandemic by then, it is important for schools to keep the current deadline in mind and keep their eyes open for changes in the future.

Finally, the bill is limited in its scope. Schools do not have immunity from suit for the spread of the virus if they demonstrated reckless disregard or intentional misconduct in protecting against its spread. Reckless conduct is described as disregarding a substantial or unjustifiable risk, with heedless indifference to the consequences, where the conduct is likely to cause exposure to the virus. Accordingly, and since this legal phrase has not been applied by the courts in this context, prudent schools must not only implement defensible plans to protect students, staff, fans, and others who might interact with the campus, but also regularly review and update their plans, if necessary, should conditions on campus change.

While uncertainty will remain on campus during this pandemic, H.B. 606 delivers legal clarity in providing colleges and universities with qualified immunity from tort liability from the spread of COVID-19.

To review the Act, click here.

Additional Information

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