

Practice Update

Higher Education Institutions Navigate Coronavirus Uncertainties

March 19, 2020

As the Coronavirus Disease 2019 (COVID-19) pandemic continues to spread throughout the nation, higher education institutions are continuing to grapple with a myriad of quandaries and questions. Below is a selection of such issues that have recently arisen, as well as additional considerations higher education institutions must undertake as they think through such issues.

- **Tuition and Room and Board Refunding:** Though the Department of Education has offered some guidance to higher education institutions in dealing with COVID-19, the issue of tuition and room and board refunding has yet to be addressed in a comprehensive manner. On March 10, 2020, more than 30 U.S. Senators issued a [joint letter](#) to Department of Education Secretary Betsy DeVos, asking for clearer guidance on a host of issues, including federal financial aid and student borrowing (which, in turn, assists in subsidizing the aforementioned). Without formal guidance, certain institutions have decided to refund students on a pro-rated basis for their room and board charges for the remainder of the semester based on the day they were instructed to leave campus housing.
- **Federal Work Study (FWS):** Higher education institutions are further tackling the issue of whether they are still able to pay students FWS funds, particularly where students are not able to

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access campus employment due to campus closure, as well as when a campus is not closed, but a student nonetheless elects to vacate campus on their own accord. The Department of Education issued guidance on the issue, stating that institution may "... continue paying the student federal work-study wages during that closure if it occurred after the beginning of the term, the institution is continuing to pay its other employees (including faculty and staff), and the institution continues to meet its institutional wage share requirement." The National Association of Student Financial Aid Administrators issued additional guidance, holding that students may still be paid with FWS funds if the school does not close, but still sends all students home and moves classes to an online format due to COVID-19. However, federal FWS law does not permit students to be paid FWS funds where the student decides on their own accord to leave campus or switch to online courses.

- **Graduation and Other Culmination Events:** Higher education institutions are additionally grappling with whether to move forward with commencement ceremonies, as well as other culmination events. Most recently, the University of Michigan cancelled all spring 2020 graduation events, joining additional institutions which have elected to outright cancel such ceremonies, such as Brigham Young University, Grinnell College, and Grambling State University. Moreover, the nation's medical schools are grappling with whether to cancel or curtail their "Match Day" celebrations, which is the day (scheduled for March 20, 2020) in which more than 30,000 graduating medical students find where they will spend the next three to seven years training in residency.
- **Furloughing of Employees:** In light of a likely reduction of revenue, higher education institutions are grappling with how to afford faculty, staff, and operational employees. One option for addressing this issue is to furlough

certain employees. Outside of the higher education sector, both Marriot Hotels and MGM Resorts have announced plans to furlough employees.

As higher education institutions navigate their way through the COVID-19 pandemic, and its accompanying issues mentioned above, there still leaves collateral consequences and considerations to be addressed. For example:

- When issuing tuition and room and board refunds, what will be the overall financial impact on the institution, as wide scale refunding is typically not accounted for in institutional budgeting? Additionally, from a student perspective, will the refunded amount in tuition count as income for the student, thus limiting their ability to access such funding in future school terms?
- What procedures and notice protocols are in place to address students who receive FWS funding, but elect, on their own accord, to leave campus or switch to online courses? What right, if any, does a student have in appealing any decisions to not pay FWS funds when they make such decisions on their own accord?
- When cancelling graduation and other culmination events, are there any contractual provisions with vendors to ensure institutions are able to terminate such contracts, and additionally receive any paid funds due back?
- Prior to furloughing employees, have all statutory (e.g. Fair Labor Standards Act, Worker Adjustment and Retraining Notification (WARN Act), etc.) and collective bargaining agreement requirements been satisfied?

Akerman's Higher Education and Collegiate Athletics Practice will stay abreast of updates related to COVID-19, including any new guidance, as well as operational trends within the higher education industry in responding to COVID-19. In the interim,

Akerman is here to answer and address any questions or concerns around these topics.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.