

LEGAL UPDATES

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Service

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COVID-19 Sample Notifications for Educational Institutions

Update on April 5, 2020:

On Friday, April 3, 2020, the U.S. Department of Education provided additional guidance regarding COVID-19-related Clery Act emergency notifications, among other topics. With respect to emergency notifications, the guidance reads:

Notifications Regarding an Immediate Threat to Health or Safety ([34 C.F.R.] § 668.46)

The Clery Act and its implementing regulations require institutions to notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on campus. The Department does not interpret the statutory language as requiring institutions to give regular, on-going updates on COVID-19 or to proactively identify positive COVID-19 cases within the campus community. The Department also does not interpret the statutory language to apply to positive COVID-19 cases among individuals who are not attending classes, working, or residing on campus or to require notifications to such individuals.

An institution may satisfy the emergency notification requirements of the Clery Act and § 668.46 as follows:

1. provide students and employees a single notification through the regular means of communicating emergency notifications informing them about COVID-19 and necessary health and safety precautions, as well as encouraging them to obtain information from health care providers, state health authorities, and the CDC's COVID-19 website; or

2. create a banner at the top of the institution's homepage containing that same information, including a statement about the global pandemic and a link to the CDC's website.

We continue to monitor U.S. Department of Education and other relevant guidance.

What should we do if we learn that a member of our school, college, or university community has been exposed to or tested positive for COVID-19?

First, contact your local health officials for guidance and follow relevant government agency guidance.

Second, consider whether the circumstances, including health official guidance and your institutional culture, call for notifying at least some portion of your community—under the Clery Act and/or through a more general institutional communication.

Several issues bear consideration:

If your institution has been closed for weeks or the person at issue has not been in the community, a notice may not be necessary and may serve only to exacerbate anxiety.

Maintain confidentiality. While certain health and safety exceptions may apply—for example, in communication with government officials or true health emergencies—almost all community notifications can be made without identifying individuals who have been exposed to or contracted the virus.

Ensure factual accuracy throughout any community communication.

Stay up-to-date on constantly shifting official and best practice guidance.

Strike the right tone. Notifications serve to alert those who need to have information. They can also serve to remind your community that it is supported by your institution, and to follow appropriate protocols.

The essential goals for any communication are to provide clear and accurate information and convey your support for your community which are in line with up-to-date guidance.

Regarding Clery Act communications, unofficial guidance from U.S. Department of Education (ED) officials suggests:

A confirmed COVID-19 infection on campus, or confirmed case of exposure to an infected individual may call for an “emergency notification” under the Clery Act;

Institutions should follow their usual protocols for emergency notifications, though they may cross-reference fuller, institutional communications.

ED will issue official guidance on this topic.

For institutional communications (as opposed to Clery emergency notifications), there are no official “magic words” at this time. Following is a sample institutional notification anticipating three common COVID-19 exposure scenarios, which should be adjusted to fit the facts and circumstances at hand.

To all members of the [INSTITUTION] Community:

The welfare and safety of our community during this time is [INSTITUTION’S] primary concern. We are writing to inform you of a recent development relating to COVID-19. [CONSIDER ADDING BRIEF DESCRIPTION OF WHAT INSTITUTION HAS BEEN DOING TO MONITOR THE SITUATION, KEEP FAMILIES/STUDENTS AND EMPLOYEES INFORMED, ETC.]

We recently learned of one [DESCRIBE PERSON’S CONNECTION TO THE INSTITUTION – PROSPECTIVE STUDENT, STUDENT, PARENT, EMPLOYEE, ETC.] who [DESCRIBE NATURE, TIMING, AND DURATION OF INTERACTIONS WITH THE INSTITUTION – CAMPUS VISIT, TAKING CLASSES, WORKING, ETC.] has ...

Scenario 1: Person Has Been Exposed to COVID-19 But No Symptoms and No Test

... [DESCRIBE NATURE OF EXPOSURE – E.G., ATTENDED A CONFERENCE WHERE ANOTHER ATTENDEE WAS DIAGNOSED WITH COVID-19]. Based upon the information available to us, we understand that this individual has been in contact with a COVID-19 positive person. This individual is not currently experiencing any COVID-19 symptoms and has not been diagnosed as having COVID-19. Public and [INSTITUTION] healthcare officials acted quickly and we understand appropriate protocols are being followed. [INSERT RELEVANT INFORMATION FROM HEALTH OFFICIALS – E.G., THE LOCAL HEALTH DEPARTMENT HAS EMPHASIZED TO US THAT NO ACTION NEEDS TO BE TAKEN BY THE CAMPUS COMMUNITY AT THIS TIME.]

Scenario 2: Person Has Been Exposed to COVID-19 and Is Experiencing Symptoms but No Test Results

... [DESCRIBE NATURE OF EXPOSURE – E.G., HAD A FAMILY MEMBER DIAGNOSED WITH COVID-19]. Based upon the information available to us, we understand that this individual has been in contact with a COVID-19 positive person. This individual has also experienced COVID-19 symptoms and is therefore in the process of being tested for COVID-19. Public and [INSTITUTION] healthcare officials acted quickly and we understand appropriate protocols are being followed. [INSERT RELEVANT INFORMATION FROM HEALTH OFFICIALS – E.G., THE LOCAL HEALTH DEPARTMENT HAS EMPHASIZED TO US THAT NO ACTION NEEDS TO BE TAKEN BY THE CAMPUS COMMUNITY AT LARGE AT THIS TIME. IF YOU ARE KNOWN TO HAVE HAD DIRECT EXPOSURE TO THIS INDIVIDUAL IN INSTITUTION PROGRAMS, EMPLOYMENT, OR ACTIVITIES, WE HAVE PREVIOUSLY CONTACTED YOU DIRECTLY AND OFFERED ADDITIONAL GUIDANCE.] If this individual tests positive for COVID-19, we will determine what additional steps are necessary and appropriate to help protect the health and safety of our community.

Scenario 3: Person Has Tested Positive for COVID-19

... tested positive for COVID-19. Public and [INSTITUTION] healthcare officials acted quickly and we understand appropriate protocols are being followed. [INSERT RELEVANT INFORMATION FROM HEALTH OFFICIALS – E.G., THE LOCAL HEALTH DEPARTMENT HAS EMPHASIZED TO US THAT NO ACTION NEEDS TO BE TAKEN BY THE CAMPUS COMMUNITY AT LARGE AT THIS TIME. IF YOU ARE KNOWN TO HAVE HAD DIRECT EXPOSURE TO THIS INDIVIDUAL IN INSTITUTION PROGRAMS, EMPLOYMENT, OR ACTIVITIES, WE HAVE PREVIOUSLY CONTACTED YOU DIRECTLY AND OFFERED ADDITIONAL GUIDANCE.]

We understand that this is a challenging situation at several levels. We ask that you respect the privacy of this individual.

[INSERT DESCRIPTION OF RELEVANT PHYSICAL SAFETY STEPS BEING TAKEN BY THE INTITUTION – E.G., DESCRIBE ONGOING AND ADDITIONAL CLEANING PROTOCOLS, PHYSICAL DISTANCING FOR STUDENTS/EMPLOYEES (SUCH AS THROUGH STAGGERED SHIFTS, ETC.) We will continue to take steps to help protect the health and safety of our community.

We also take this opportunity to remind our community of some important information regarding COVID-19. [UPDATE AS NECESSARY BASED UPON EVOLVING CDC GUIDANCE]. In an effort to slow the spread of the virus, we are requesting your immediate attention to and

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compliance with the following health-authority-recommended practices – not only to ensure your own well-being, but the well-being of others:

Follow government mandates around travel, work, and leaving your home.

Engage in social distancing. Do not go to work or school. Keep distance from others (about 6 feet).

Avoid close contact with people who are sick.

Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, use an alcohol-based hand sanitizer.

Avoid touching your face, eyes, nose, and mouth with unwashed hands.

Cover your cough or sneeze with a tissue, then throw the tissue in the trash.

Clean and disinfect frequently touched objects and surfaces.

Get a flu vaccine.

Watch for cough, troubled breathing, or other signs of respiratory infection.

Monitor temperature for a fever above 100.4 degrees F (38 degrees C).

Those who develop a cough, fever, and difficulty breathing, should call their primary care provider or [INSERT CONTACT INFORMATION FOR ANY LOCAL HEALTH SERVICE/HOSPITAL] for further instructions. [RESOURCE – E.G., EAP, TELEHEALTH OPTIONS, COUNSELING HOTLINES] are available to support those experiencing anxiety or other mental health concerns which are so common in these times.

The CDC website (www.cdc.gov/COVID19) and [INSERT LOCAL RESOURCE SUCH AS HEALTH DEPARTMENT] contains all current recommendations for this evolving situation.

*Please know that we will be monitoring daily updated guidance and information to determine appropriate action. Regarding events and other campus-based programs: we will be keeping you informed about developments occurring in order to minimize the spread of the virus. **This is not a time to panic. It is, however, a time to be attentive, flexible, serious, and engaged regarding the steps we need to take as a community to care for ourselves and for one another.** Please be attentive to [INSTITUTION] communications addressing COVID-19 and additional steps we will be taking to address this rapidly evolving situation.*

What this means to you

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Schools, colleges, and universities can prepare for inevitable decisions about campus notifications by vetting draft templates and having those communications at the ready. Institutions should work with leadership, health officials, and counsel to develop messaging that conveys appropriate information in line with evolving guidance—particularly Clery Act guidance—in a tone that supports your institution and community as a whole.

Contact Us

Husch Blackwell continues to monitor the evolving situation and its implications for our clients. Should you have any questions, please do not hesitate to contact Anne Cartwright or your Husch Blackwell attorney.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.