

COVID-19 Legislative Liability Protection: Higher Education Talking Points

Adapted from talking points developed by the American Council on Education

Legislative Request:

We urge Congress to enact the SAFE TO WORK Act on its own or as part any upcoming COVID-19 relief package. The act would create a timely and temporary safe harbor from COVID-19 exposure liability for colleges and universities engaging in hundreds of careful and reasoned COVID-19-related decisions and actions in compliance with local, state, and federal public health standards.

The act will help ensure that colleges and universities can devote their resources to safety and preventing the spread of the virus, as well as supporting many other students, faculty, and staff needs, rather than have to hold substantial funds in reserve for anticipated litigation expenses.

The act's goal is to incentivize entities to follow government guidelines because doing so will protect them from civil liability, not to deny relief to those harmed by bad actors that flout or ignore government guidelines. We believe the act is appropriately calibrated to limit the prospect of frivolous or meritless litigation related to COVID-19 while ensuring the courthouse doors remain open to individuals with legitimate claims.

Legislative protections that provide clarity and confidence for colleges and universities need to be put in place before the full force of the litigation wave hits, not afterwards.

Summary Points:

- COVID-19 is a national problem requiring a national solution. Colleges and universities draw individuals from all over the country and the world.
- Higher education's need for timely, temporary, and targeted liability protections is clear. Congress must act now.

Justification:

Higher education's breadth, economic impact, and role as engine of mobility

There are more than 4,000 colleges and universities in the United States, educating nearly 24.5 million students, employing nearly 4 million Americans, and generating an estimated \$650 billion in economic impact—three percent of America's GDP.

- The catastrophic impact on campus operations and revenues has had a terrible ripple effect on the economies of surrounding communities.
- Encouraging and supporting higher education's critical role as an economic engine and as an inextricable part of the fabric of our country's communities is essential to educating

and training America's future workforce, preserving employment for millions, and restarting our nation's economy.

- America's colleges and universities are expansive operations that are engaged in every sector of the critical infrastructure necessary to support American communities. They are more like small cities than single-sector businesses. They operate hospitals and medical centers, full-service utility companies, and telecommunications and computing networks.
- The unprecedented nature of the COVID-19 pandemic poses unique challenges for colleges and universities, which, unlike most traditional businesses, must consider the best way to address safety concerns across multiple operational settings with practical limits on an institution's ability to monitor and govern community members' compliance with shared expectations and obligations toward each other.

The chilling effect of uncertainty

Our overriding concern is keeping students, faculty, staff, visitors, and local communities safe. But despite their best efforts to prevent community transmission, colleges and universities cannot guarantee protection against COVID-19 exposure.

- This uncertainty around legal liability for institutions and those who work for them offers an opportunity for after-the-fact lawsuits challenging reasoned decision-making.
- Without temporary, limited liability protections, colleges and universities face enormous transactional costs associated with defending against speculative legal claims around alleged COVID-19 issues, even when they have done everything within their power to keep students, employees, and visitors safe. In addition, these coronavirus-related litigation costs will almost certainly contribute to the permanent closure of institutions that otherwise would have continued to operate as educators and employers.