

## COVID-19 class actions against universities

April 21, 2020

In response to the COVID-19 pandemic, universities have had to make difficult, but important, decisions to protect the health of their students, among others. By necessity, these decisions have affected the way students are educated. The plaintiffs' class action bar has already begun filing class action lawsuits.

A variety of defenses are available to universities, but universities should expect that more putative class action lawsuits will be filed. The relief sought in many of these lawsuits (e.g., refunds of tuition and other institutional charges) could potentially implicate regulatory requirements, including those pertinent to federal student financial aid administration.

### ***Rosenkrantz et al. v. Arizona Board of Regents, No. 2:20-cv-00613 (D. Ariz.)***

On March 27, 2020, the parents of two students at the University of Arizona filed the first putative class action challenging universities' response to the pandemic. The parents' complaint asserts claims for breach of contract, unjust enrichment, and conversion against the Arizona Board of Regents (Regents). While the plaintiffs admit that the University of Arizona, along with Arizona State University and Northern Arizona University, appropriately transitioned to remote learning to combat COVID-19, they seek to hold the Regents responsible for alleged financial losses.

In particular, the plaintiffs seek refunds of the "unused" amounts they paid for (1) room and board and (2) certain on-campus services (such as the recreation center). According to the plaintiffs, "unused" should mean the prorated portion of these amounts, proportionate to the amount of time that remained in the spring 2020 semester when classes moved online and campus services ceased to be provided. While the University of Arizona allows students to choose between (1) a 10% credit for on-campus housing for the 2019-2020 academic year and (2) a 20% credit for on-campus housing for the 2020-2021 academic year, the plaintiffs deem this option inadequate.

### ***Dixon v. University of Miami, No. 2:20-cv-01348 (D.S.C.); Rickenbaker v. Drexel University, No. 2:20-cv-01358 (D.S.C.)***

On April 8, 2020, counsel from one law firm filed two putative class actions in federal court in South Carolina on behalf of students who paid un-refunded tuition or fees to the University of Miami and to Drexel University, respectively.

***Church v. Purdue University et al., No. 4:20-cv-00025 (N.D. Ind.)***

On April 9, 2020, a senior at Purdue University filed a putative class action in federal court in Indiana on behalf of students who, for the Spring 2020 semester, allegedly paid: (1) tuition for in-person instruction, but were transitioned to distance learning, (2) the costs of on-campus housing and meals, but were required to moved out early, and (3) other fees.

***Student A v. Liberty University, Inc., d/b/a Liberty University, No. 6:20-cv-00023 (W.D. Va.)***

On April 13, 2020, an anonymous student filed a putative class action alleging that, while Liberty University claims to remain open during the COVID-19 pandemic, it has stopped providing many on-campus services - without refunding the costs of those services. The plaintiff, who wishes to remain anonymous due to an alleged threat of retaliation, seeks to represent all individuals who paid room, board, parking fees, and other fees on behalf of students enrolled in on-the-ground classes for the Spring 2020 semester.

All five cases are in their infancy. But because of the size of the putative classes and relief sought, the amount in controversy in each case is significant - potentially in excess of the relief available to universities under the CARES Act.

**Implications**

- The lawsuits that have been filed suggest that the plaintiffs' class action bar is targeting universities. This means that the cases described above likely will not be the last putative class actions that challenge aspects of the transition to distance learning. We also expect that future cases likely will feature new theories of liability and target a range of policies.
- There are a variety of defenses available to universities, including defenses based on (1) the possible absence of damages, (2) the language of specific university agreements and policies, and (3) the predominance of non-common issues.
- As universities continue to respond to the challenges posed by COVID-19, universities should keep in mind that the plaintiffs' class action bar is monitoring those responses.
- We are available to assist in formulating responses and statements that address stakeholder concerns while not inadvertently increasing the risk of class action litigation or diminishing the potential effectiveness of defenses that are otherwise available. We are also available to consult on regulatory implications pertinent to requested refunds.

*The above represents our latest thinking in "real time" and will likely evolve over the coming weeks and months. Our teams of lawyers across the globe are continuing to compile the latest thinking and legal guidance on the coronavirus outbreak. To track our latest updates, which will include more specific discussions of particular contractual concepts, we encourage you to check the Hogan Lovells [COVID-19 Topic Center](#), which covers a wide variety of practice areas across the globe.*

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