



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM
Peter Hans, President

July 15, 2020

MEMORANDUM

TO: Community College Presidents
Business Officers
Chief Financial Officers

FROM: Jonathan R. Harris, *NCCCS General Counsel*
Mary Shuping, Attorney, *Director of Government Relations*

RE: COVID-19 Liability Protections for Community Colleges

Summary of the Liability Protections for Colleges

The General Assembly has enacted several laws limiting COVID-19 liability. These laws apply broadly and include community colleges. A more detailed explanation of each provision is included below, but generally, colleges are protected from claims regarding:

1. Tuition and fees for Spring 2020 semester
2. The transmission of COVID-19 on campus
3. The PPE and other equipment the college donated or manufactured in response to the pandemic

Claims Regarding Tuition & Fees for Spring 2020 Semester¹

Immunity: Community colleges are immune from claims regarding tuition and fees if **all** of the following apply:

1. The claim arises out of or is in connection with tuition and fees paid for the spring 2020 academic semester;
2. The claim alleges losses or damages arising from an act or omission by the college during or in response to COVID-19, the Governor's COVID-19 emergency declaration ([EO 116](#)), or the Governor's COVID-19 essential business executive order ([EO 121](#));
3. The college's act or omission was reasonably related to protecting the public health, safety, or welfare in response to [EO 116](#), [EO 121](#), or CDC guidance; and,

¹ Article 37 of Ch. 116 of NCGS ([SL 2020-70: SB 208](#))

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4. The college offered remote learning options during spring 2020 that allowed students to complete their coursework.

Immunity Provision Does Not Apply:

1. To losses or damages arising solely from breach of a contractual provision that allocates liability in the event of a pandemic.
2. Where the college acted in bad faith or maliciously.

Applicable Dates: Applies to acts or omissions occurring on or after March 10, 2020 until June 1, 2020.

Claims Regarding the Transmission of COVID-19

Liability Safe Harbor²

- **Immunity:** Community colleges are immune from claims alleging a college's act or omission resulted in contraction of COVID-19. This immunity includes violations of the notice requirement (below) or an individual's failure to comply with the rules, policies, or guidelines contained in the notice.
- **Notice Required:** Colleges are required to provide reasonable notice of actions taken by the college to reduce the risk of transmission to individuals who are on property owned or controlled by the college.
- **No Immunity:** There is no immunity for gross negligence, willful or wanton conduct, or intentional wrongdoing.
- **Does Not Apply:** Does not apply to Workers Compensation claims.
- **Applicable Dates:** Applies to claims arising on or after July 2, 2020 through 180 days after rescission of [EO 116](#) (Governor's emergency declaration)

"Essential Business" Immunity³

- **Immunity:** "Essential businesses" that provide goods or services are immune from claims from customers or employees for injuries or death alleged to have been caused as a result of the customer or employee contracting COVID-19 while doing business with or while employed by the essential business.
 - Section 2.C.17 of [EO 121](#) includes "educational institutions" as essential businesses "for purposes of facilitating remote learning, performing critical

² Article 8 of Ch. 99E of NCGS ([SL 2020-89; HB 118](#))

³ Article 48 of Ch. 66 of NCGS ([SL 2020-3, Sec. 4.14; SB 704](#))

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research, or performing essential functions provided that Social Distancing Requirements ... are maintained to the greatest extent possible.” “Essential functions” is not defined; however, community colleges continued to perform the essential function of providing instruction for critical public health and safety needs. See Numbered Memo [CC20-21](#).

- **No Immunity:** There is no immunity for gross negligence, reckless misconduct, or intentional infliction of harm.
- **Does Not Apply:** Does not apply to Workers Compensation claims.
- **Applicable Dates:** Applies to claims filed on or after March 27, 2020 and until [EO 116](#) expires or is rescinded.

Claims Regarding Donated PPE & Equipment⁴

Immunity: Educational institutions that manufacture, produce or distribute PPE, testing equipment or ventilators, or process COVID-19 testing results are immune from claims from any customer, user, or consumer for any injuries or death alleged to have been caused as a result of the COVID-19 pandemic or while doing business with the educational institution.

No Immunity: There is no immunity for gross negligence, reckless misconduct, or intentional infliction of harm.

Does Not Apply: Does not apply to Workers Compensation Claims.

Applicable Dates: Applies to claims filed on or after March 27, 2020 and until [EO 116](#) expires or is rescinded.

Conclusion

These liability protections are broad and cover the most common areas of liability concern reported to the System Office by colleges. The System Office suggests that colleges share this memo with their local college attorney in the event that questions regarding liability arise during the upcoming academic year.

⁴ Article 48 of Ch. 66 of NCGS ([SL 2020-3, Sec. 4.14; SB 704](#))