



**January 28, 2021**

**[Vaccination Paper](#)**

Now that the national distribution of the COVID-19 vaccinations has begun, we are beginning to receive a variety of related questions. The Novus Law Firm has expanded its guidance to address all types of vaccinations, including COVID-19. The title of the updated paper is [Vaccination Guidelines for Students and Employees](#). The paper discusses the best practices for monitoring student vaccinations including evidence of vaccinations, considerations for mandating vaccinations, waivers, and students who fail to comply with your institution's policy. Best practices and mandating vaccinations for employees are also discussed. Novus added a section addressing how your incidental professional medical liability insurance applies. In addition to separate sample vaccination policy templates for students and employees, the paper includes a waiver template for students.

**[BIPA](#)**

Many institutions use thumbprint or retina scan readers to collect biometric information from students and employees to control access to secured areas and facilities, such as housing and laboratories. Institutions also employ biometrics to varying degrees for cashless transactions, timekeeping, utilization of meal plans, and providing access to student or employee services. More recently, in the wake of the COVID-19 pandemic and the pivot to virtual instruction, institutions have begun using facial and voice recognition software to monitor for academic misconduct during assessment activities such as examinations. Third-party service providers may also collect and store biometric information on behalf of the institution. EIIA has partnered with The Novus Law Firm to produce a new white paper and policy template, [Understanding and Mitigating Risk from the Use of Biometric Information Collection](#), to help Members understand this risk exposure. State legislatures have begun passing regulations regarding collecting biometric data. In response, Members should be aware that effective March 1, 2021, the Axis cyber liability/NSPL policy will exclude coverage for the Illinois Biometric Information Privacy Act (BIPA). This risk exposure was brought to the forefront through a class action suit naming one of our EIIA member institutions, alleging that the institution failed to develop and adhere to protective privacy policies and procedures. Illinois institutions, in particular, should note that Axis is willing to consider insuring this coverage, but each institution will have to have this exposure separately underwritten. If you are interested in this coverage at an additional cost, please reach out to Elaine Marino at [emarino@eia.org](mailto:emarino@eia.org).

**[Reporting Campus Crime \(Clery Reporting\)](#)**

On October 9, 2020, The U.S. Department of Education's Federal Student Aid Office (FSA) announced that it was rescinding the 2016 Handbook for Campus Safety and Security Reporting (2016 Clery Handbook) and publishing a new [Clery-related Appendix of the FSA Handbook](#). The Novus Law Firm has updated our guidance white paper, [Reporting Campus Crime: A Guide to Clery Act Reporting](#), to reflect this new guidance. The definitions of Clery geography, crimes, and campus security authorities have changed. Whether the Biden

administration will rescind or amend this action is yet to be seen. Therefore these changes need to be immediately followed since Members need to record and gather data throughout the year for their annual Clery report. Persons responsible for Clery reporting for their campus should review these changes and the various policy templates in this document's appendix.

### **[Revenue Generating Research](#)**

As higher education budgets tighten, institutions are offering a variety of new services. Research services provided as professional services that generate revenue (i.e. for a fee) and not a part of your institution's coursework – or – not published may be outside of the scope of professional liability coverage provided under the educators' legal liability policy. This includes research funded through a grant. An additional standalone professional liability policy may need to be purchased for these activities. To learn more, contact your EIIA Risk Management Director.

### **[ERM – Ask the Right Question](#)**

The pandemic has raised greater awareness of the need for enterprise risk management (ERM) on campus. Members are at various stages in implementing their ERM program; some have established programs while others are still trying to get started. One common thread for all ERM programs is identifying and evaluating how to deal with risk. When identifying risks, some institutions may ask the question, "Can it happen here?" A recent [article](#) in the National Safety Council's Safety and Health Magazine suggests that you really should be asking "*How* can it happen here?" Using this approach prevents overlooking risks that your campus may face and focuses on evaluating how to control the risks - the goal of ERM programs. While the article discusses using this approach for safety, the concepts of anticipation, questioning, diligence, resilience, and learning discussed in the article can be easily adapted to your ERM program. Members are encouraged to consider incorporating this question into their ERM programs.

### **[EIIA Legal Services Program Update](#)**

There is a [new program summary sheet](#) for the EIIA Legal Services Program. Each Member purchasing their educator's legal liability policy through EIIA is entitled to ten hours of pre-claim consulting with the Novus Law Firm. Novus provides advice for Members on issues of federal employment law as it relates to higher education and student law issues. The new summary sheet includes a description of the program, attorney bios, and directions on how to access the new calendaring link that allows Members to instantly book appointments for calls and videoconferences.

### **[Educator's Legal Liability \(ELL\) Defense Counsel](#)**

Before any allegations or events that may result in a claim occur, all Members should determine which defense counsel they would like to defend their educator's legal liability (ELL) claims. When you report an ELL claim, the insurance company will select defense counsel from its panel counsel list unless there is a prior agreement to use another firm. If you think you will want to use defense counsel other than the panel counsel, notify your EIIA Risk Management Director now. This will allow the insurance company time to review the firm/attorney's fees, experience, and history and to ensure that your preferred defense counsel aligns with the insurance company's philosophy. There is no guarantee that your

defense counsel will be approved, but it is better to know ahead of time which legal firm will provide counsel, rather than wait until your institution is under the stress of defending a claim.

### [Independent Contractors Update](#)

On January 6, 2021, the Department of Labor (DOL) announced [a final rule](#) clarifying the standard for employee versus independent contractor under the Fair Labor Standards Act (FLSA). The effective date of the final rule is March 8, 2021. The rule affirms that the “economic reality” test should be used to determine whether an individual is an independent contractor or an employee. There are two core factors to consider: (1) the nature and degree of control over the work and (2) the worker’s opportunity for profit or loss based on initiative and/or investment. Three lesser factors should also be considered: (3) amount of skill (or training) required for the work; (4) permanence of the working relationship between worker and employer; and (5) whether the worker’s job or role is integral to the employer’s core business. This rule is notably less restrictive than many state laws (such as the ABC test), which still must be followed. Be aware, this rule may be short-lived. The Biden administration can delay or withdraw the final rule before implementation. We will keep you apprised of any developments that come with the transition of the Biden administration.

### [1099-NEC](#)

Beginning with the 2020 tax year, Form 1099-NEC should be used to report nonemployee compensation. We remind Members the accelerated due date for filing [Form 1099-NEC](#) for nonemployee compensation is January 31. The automatic 30-day extension for forms that include NEC was eliminated.

### [Getting to Know EIIA Campuses](#)

- 134 Members participate in the Property and Casualty Master Insurance Program.
- 42 campuses have an employee whose sole responsibilities are dedicated to risk management functions such as insurance, safety, loss control, etc.
- 20 campuses have an employee with the term “risk” in their job title.

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*This document is presented to EIIA members strictly as a guideline. As individual circumstances may vary, the contents and concepts presented should be reviewed and amended as necessary to properly address your institution’s unique exposures. Additionally, it is recommended that the contents and concepts presented be reviewed in the full context of its use with legal counsel prior to implementation.*

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