

Think you can sue for damages if you or a family member contracts COVID-19 from a state-owned college campus? Think again.

Television broadcasts are peppered with law firm commercials urging you to contact them if you have experienced problems due to hazardous products and environmental dangers. According to classaction.org, class actions suits include cases involving mesothelioma (asbestos), silicosis (silica or quartz particles), chronic traumatic encephalopathy (brain damage from college contact sports injury); talcum powder (ovarian cancer), Zantac (various cancers), proton pump inhibitors (kidney damage); medical devices (breast implants), hernia mesh surgeries (pain and infections).

In each of these cases, the defendant is a private company or organization; however, seeking personal injury damages from a public school or state entity presents a unique challenge. In an article on the [legal website Nolo.com](http://www.nolo.com), author and editor E.A. Gelten explains:

Under a rule known as “sovereign immunity,” you generally can’t sue any level of government—including public school districts and their employees—unless the government says you can. All states have passed laws making some exceptions to that immunity.”

You can find the law related to suing the Pennsylvania state government in the [Pennsylvania Consolidated Statutes Title 42, Section 8522](#). This act allows injured people to make a claim if the negligence of a government employee has harmed them. The exceptions to this law are limited, and none of the exceptions address injury to negligence resulting from exposure to disease. The only exception that is marginally related to illness pertains to medical care. In the [medical-professional liability exception](#), litigation is permitted against acts of “health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse, or related health care personnel (PA 42 8522). In other words, if someone contracts COVID-19 at a Pennsylvania State System of Higher Education (PASSHE) school, you may have a case against the university medical personnel, but only if you can prove their care was negligent.

PASSHE’s legal department does not seem concerned with facing legal action. In [an article summarizing an exchange between a PASSHE Board of Governor’s member and the PASSHE head legal counsel](#) at the June board of governor’s meeting, *Inquirer* report Sue Snyder captured this exchange:

Board member Janet Yeomans asked what liability colleges will face if they bring students back and an outbreak occurs, resulting in deaths and financial losses.

“What kind of protection do we have, do we need to have against that?” she asked.

Andrew Lehman, the system’s counsel, said that as a public entity, the system has sovereign immunity protection.

“There are not liabilities in which the legal office is unduly alarmed,” he said.

Not *legal* liabilities. But what about moral and ethical liabilities and social responsibility? As is often the case, companies act first to protect themselves, with consumer protection an afterthought. This statement is not an indictment against those who self-protect – we all do it – we obey laws to avoid fines or prison, and we buy health, auto, and home insurance to protect us from damages arising from fire, theft, and disease. But in this case, the driving push toward a Fall 2020 return to on-campus classes seems to be the state’s fear of economic insolvency, not the health and welfare of its consumers.

A significant issue facing families is the health risk presented when college students return home during school breaks. Many colleges have developed plans for students to return to on-campus classes in the Fall 2020 semester but will terminate on-campus sessions in November when most students leave campus to go home for Thanksgiving break. The logic underlying this decision is that ending on-campus courses at the start of Thanksgiving break will prevent students who contract COVID-19 at home from returning to campus to spread the disease. But what about students who contract COVID-19 while on campus who are asymptomatic and return home at Thanksgiving to spread the disease to their families? Yes, these students can quarantine after returning home to reduce the risk. Still, risk exists nonetheless, and it is an unnecessary risk that can be avoided by offering online courses throughout the Fall 2020 semester.

Governor Wolf's [most recent targeted mitigation order](#), effective July 16, 2020, states that:

Unless not possible, all businesses are required to conduct their operations in whole or in part remotely through individual teleworking of their employees in the jurisdiction or jurisdictions in which they do business.

Where telework is not possible, employees may conduct in-person business operations, provided that the businesses fully comply with all substantive aspects of the business safety order, the worker safety order, and the masking order.

In the PASSHE system, teleworking IS possible. The evidence that this statement is true and factual is provided by two of the state schools – West Chester University and East Stroudsburg University – continuing to conduct business through teleworking. Any university claiming that teleworking is not possible is essentially saying that it does not have the 21st-century knowledge, resources, or expertise to survive in a digital world. That is an alarming self-indictment and cause in and of itself to seek education at another institution.

I do not think anyone wants to be in a position where they needlessly suffer a devastating loss of health or life. Thus, as the saying goes, “An ounce of prevention is worth a pound of cure.” In other words, instead of chasing after legal damages that you will likely never see, there are a few alternatives to help you keep your families safe. One option is to take a break from school in the Fall 2020 semester and resume coursework in the Spring 2021 semester when there will presumably be a vaccine and sufficient testing resources. Another option would be to transfer to a different college that will be conducting online classes in the Fall 2020 semester. At the time of writing this article, only West Chester University and East Stroudsburg University have announced they will be offering a fully online program for all students in the Fall 2020 semester. If you do not like the idea of transferring, you may be able to take general education courses online at other schools to earn credits you can transfer back to your school. If none of these choices is feasible or desirable, you may want to talk to an attorney and see what legal options exist if you or your child attend on-campus courses and contract COVID-19, or return home at Thanksgiving and despite quarantining, infect other family members. An attorney can advise you on what documentation to keep and what you need to do to advocate for the health and welfare of your family.

Students and their families can and will need to make college choices based on safety, including transferring to other schools that offer safe online access. But the options for university faculty and employees are far more restricted. There are only so many jobs available for university personnel during

an economic depression. So, where does this leave the faculty and other staff of these universities? Unfortunately, in a bad place, unless their unions step up and do what they are supposed to do – protect the workers. These unions may in a better position to protect university students and employees than any one individual. The Pennsylvania unions for PASSHE system personnel have been active on this front; but until the colleges recognize the potential harm in their economically-driven decision, those who are caretakers for their medically fragile family members, each minute spent on campus presents a life-threatening health risk to their loved ones.