July 15, 2021

Dear University and College Colleagues:

The purpose of this letter is to alert you to House Bill 244, passed by the General Assembly on June 28, 2021. H.B. 244 enacts R.C. 3792.04, a provision that prohibits institutions of higher education from requiring that persons receive a vaccine for which the United States Food and Drug Administration (FDA) has not granted full approval. R.C. 3792.04 further prohibits institutions of higher education from discriminating against unvaccinated persons, including by requiring unvaccinated persons to engage in or refrain from engaging in activities or precautions different from those taken by vaccinated individuals.

The Governor signed HB 244 on July 14, 2021. The effective date is October 13, 2021.

The law will prevent institutions of higher education from mandating any of the COVID-19 vaccines currently approved by the FDA for Emergency Use Authorization.

The relevant text from HB 244 is excerpted below:

Sec. 3792.04.

(A) As used in this section:

(1) "Public school" means any of the following: a city, local, exempted village, or joint vocational school district; community school established under Chapter 3314. of the Revised Code; STEM school established under Chapter 3326. of the Revised Code; or college-preparatory boarding school established under Chapter 3328. of the Revised Code.

(2) "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code.

(B) Notwithstanding any conflicting provision of the Revised Code, a public school or state institution of higher education shall not do either of the following:

(1) Require an individual to receive a vaccine for which the United States food and drug administration has not granted full approval;

(2) Discriminate against an individual who has not received a vaccine described in division (B)(1) of this section, including by requiring the individual to engage in or refrain from engaging in activities or precautions that differ from the activities or precautions of an individual who has received such a vaccine.
(C) This section does not apply to a hospital or other health care facility that is owned or operated by, or affiliated with, a state institution of higher education.

We wanted to alert you to this legislation as soon as possible to best enable your institutions to implement appropriate plans for fall semester and the 2021-2022 academic year.

State supported institutions of higher education are created under and required to act in accordance with Ohio law, including newly enacted R.C. 3792.04. While I recognize that the effective date of the Act is after the commencement of the fall semester, it would be wise for administrators and boards of trustees to carefully consider the wisdom of imposing a vaccine mandate contrary to the express will of the General Assembly.

In addition, there is an ethical question about a publicly funded institution of the State requiring individuals to take a vaccine for which the FDA has not granted full approval. I both have had COVID-19, and received a vaccination. It is appropriate to encourage vaccination. Requiring it, however, is a different matter. While individuals may make the decision to receive a vaccination available by Emergency Use Authorization, that decision is different from an institutional requirement prohibited by R.C. 3792.04.

My Office’s Education Section is available for consultation regarding this topic.

Sincerely,

Dave Yost
Ohio Attorney General

cc: Mia Yaniko, Chief, Education Section, Office of Ohio Attorney General
    Jonathan Fulkerson, Deputy Attorney General, Office of Ohio Attorney General