

BLOG

Will Old Policies Protect Your School As Abuse Reporting Limits Extend?

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On February 14th of this year, New York Gov. Andrew Cuomo signed into law the [NY Child Victims Act](#), which extends the statute of limitations on reporting child sexual abuse. Previously, victims had until the age of 23 to file lawsuits in New York. Now, they can seek civil action against their abusers **and the institutions that enabled them** until they turn 55 years old.

Several other states have extended the time period for pressing criminal and civil claims of child sexual abuse, including Wisconsin, which raised its statute of limitations for civil claims to age of 35. Michigan, [in response to the Larry Nassar case](#), extended its limit of filing a civil case up to age 28. But New York now allows for the longest window thus far.



A victory in a long fight for justice for child sexual abuse victims, extending criminal and civil statutes of limitations is a trend that will continue to spread. As it does, we will see civil cases filed from incidents that occurred decades ago. Insurance carriers and insureds will then find themselves in an unprecedented situation facing extremely costly, complicated defenses and uncertainties over coverage.

New Exposure for Universities

Obviously, private and public K-12 schools will need to consider the new statute when assessing policies, but how will colleges and universities be impacted by the new statute? Though most college students are not legally considered children, higher education institutions run a lot of camps, community outreach, off-campus tutoring, day-care centers, seasonal programs and youth mentorships that put them in direct contact with minors.

Although some of these programs are run by third parties on their property, schools may still find themselves liable. To mitigate this exposure, universities need to ensure they are properly protected with solid indemnification wording in the agreement and that these third-parties have adequate insurance that will apply to this risk exposure.

For example, college coaches (particularly from NCAA schools) set up limited liability corporations (LLCs) to

run sports camps. If a lawsuit is opened, and if the coach or school can't show any records of a policy in force, the school, having the deep pockets and hosting the activity, may be on the hook. Even if the coach or school is able to find the policy, the LLC may only carry a \$1 million commercial general liability policy, or it may exclude sexual misconduct claims altogether.

Older Cases, Higher Costs

Because commercial general liability (CGL) coverage are claims occurred policies, defendants will have to rely on the policies they had in force at the time of the alleged incident. The question is, do these entities have copies of all their policies from 50+ years ago? If not and they are sued, they may need to hire an insurance archeology firm to locate them. Any policies older than 20 years, were almost certainly kept on paper instead of servers. Once policies are tracked down, issuer ownership will need to be determined since many carrier consolidations have occurred over years.

Even if institutions are able to track down their old policies, the uncertainties and expense will continue. Would those policies cover sexual abuse claims? Was there an exclusion in the original policy? We might see instances where an old CGL policy won't cover the claim.

Legal costs are one of the biggest concerns. Attorneys will have to spend time finding witnesses and investigating claims that occurred years ago. We recently saw the complications of rebutting decades-old abuse claims in the Senate confirmation hearings of Supreme Court Justice Brett Kavanaugh. Who's going to pay the legal bills? What was the defense costs coverage in the contemporaneous policies? Is there coverage under the current Directors and Officers (D&O) policy that might apply? If there is coverage under the D&O policy, does it contain a prior acts exclusion clause?

Insurance carriers will do whatever they can to not to pay claims or reimburse defense costs in these cases. From their perspective, the policies have been closed out. Reopening these dormant policy years means those carriers will be forced to set up reserves, which is incentive enough for them to seek ways to contractually deny these claims. Carriers can, like in the Penn State case, try to prove that the institution knew about the alleged abuse, did not report the incident timely to the insurer, failed to take appropriate action to address the alleged abuse and push the burden back onto the institution to show otherwise.

For schools that are owner-members of captives for CGL and D&O lines of coverage, they too need to take these extended statute of limitations laws into account to ensure their captives have adequate funds for potential claims that could arise in years that are currently closed out; similar to how they should be reserving for potential traumatic brain injury (TBI) claims. Failure to adequately reserve for these types of losses means the captive may have to impose a special assessment back to the owner-member institutions to cover these losses when then arise.

Ways to Mitigate Risk

There are many things universities can do to help victims of child sexual abuse. For starters, they need to pre-screen individuals having access to minors, provide post-hire and ongoing training, and continually assess their working-with-minors policies and procedures to ensure the safety of children. Policies including working with children in an open space, and with a witness present, are critical. Reminding people that if they see something, they need to say something, and report any incidents immediately to appropriate staff.

Universities must also make sure third parties coming on campus and utilizing their facilities are complying with their working with minors and Title IX policies.

Finally, they must empower and encourage victims to come forward sooner rather than later. By advocating for victims, schools not only can get incidents resolved quicker, but more importantly, will allow victims to get services they need sooner.

This law puts many institutions in uncharted territory with insurance coverage and legal ramifications. As the trend toward upping the age for statutes of limitations continues, universities will need to make sure they have the right policies in place now and in the future. Concerned about your coverage?

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