

PACE Informational Questions and Answers

Last updated 1/15/2021

Thanks to the efforts of OSBA and its partners, the Oregon Legislature passed HB 4402 at the December 2020 special legislative session which provide school districts, charter schools, community colleges and ESD's with limited liability protection from COVID-19 related claims.

Since the passage of HB 4402, we have been receiving many questions about how it impacts liability insurance coverage with PACE. The short answer is that it does not change PACE's liability coverage exclusion for communicable disease. However, the liability protections provided by HB 4402 may help protect your district from liability for things that PACE does not cover. You should consult with your legal counsel when making decisions related to COVID-19.

Following are some of the frequently asked questions we have been receiving. **The answers below are for example purposes only. Any actual coverage determinations are subject to the terms, exclusions, conditions, limitations, and definitions in the PACE Educators Liability Coverage Document and are subject to any immunities and/or tort caps that may apply.**

1. What is the PACE communicable disease exclusion?

*Any liability for **Damages**, including any expense, cost, loss, legal fees, liability or legal obligation that in any way, in whole or in part, arises out of, relates to, or results from any alleged or actual transmission of a **Communicable Disease**.*

*This exclusion applies even if the claims against any **Participant** allege wrongdoing in the:*

1. *Supervising, hiring, employing, training or monitoring of others that may be infected with or spread of a **Communicable Disease**;*
2. *Testing for a **Communicable Disease**;*
3. *Failure to prevent the spread of the disease; or*
4. *Failure to report the disease to authorities.*

*The **Trust** shall have no duty or obligation under this **Coverage Document** to defend, respond to, investigate, or indemnify any **Participant** against any injury or damage, loss, claim, suit, or other proceeding alleging **Damages** to which this exclusion applies. This exclusion also applies to any obligation to defend, to share **Damages** with, repay, contribute, or indemnify anyone else from which **Damages** are sought.*

See the PACE Educators Liability Coverage Document for defined terms that are in bold above.

The key term is alleged or actual transmission of a communicable disease. Not everything associated with the COVID-19 emergency is excluded and the following are some examples.

2. If my district is sued for something that we have liability protections for under HB 4402, will PACE provide assistance?

Yes. If the lawsuit involves allegations that are not excluded by PACE, then PACE will provide indemnity and defense coverage. If the allegations are excluded by PACE because of the above communicable disease exclusion, then PACE will only provide limited defense coverage up to \$50,000 per member, with a maximum of \$1 million for all members during this policy year.

3. Does my district and our school nurse have liability coverage from PACE when administering the COVID-19 vaccine?

There is no coverage for alleged or actual transmission of a virus. Vaccines do not contain the virus. In most circumstances, school districts and school nurses working in the course and scope of their district have liability coverage from PACE when administering the COVID19 vaccine. An exception is liability associated with school-based health clinics. PACE has never provided medical malpractice insurance coverage for school-based health clinics. These operations should have their own medical malpractice insurance coverage which should be consulted with prior to administering the vaccine at the clinic.

Examples:

- (a) If a district is providing vaccinations to employees and students in a drive through effort, or mass inoculation effort in the gymnasium the school nurses providing the vaccine and the district would have liability insurance coverage with PACE.
 - (b) If the district is providing vaccinations at a school-based medical clinic that operates similar to a medical facility, then it does not have liability coverage from PACE and should contact its medical malpractice insurance carrier.
 - (c) If a school nurse administering the vaccine is COVID-19 positive and transmits the virus to a student, and the student's parents sue the district claiming the student received the virus from the school nurse, then PACE would only provide limited defense coverage.
- 4. If we terminate a teacher's employment during the COVID-19 emergency and the employee sues the district for wrongful termination claiming that they were terminated for complaining about COVID-19 related safety issues, does PACE provide any liability coverage to the district?**

Yes, the termination of the teacher did not involve the alleged or actual transmission of a communicable disease, therefore the exclusion would not

apply, and the district has coverage for defense and indemnification of the employment action.

5. If a someone trips on a district's cracked sidewalk while walking to receive their vaccination causing injury, does PACE provide liability coverage to the district?

Yes, the injury sustained by the fall does not involve the alleged or actual transmission of a communicable disease, therefore the exclusion would not apply, and the district has coverage for defense and indemnification.

6. Does the district and its employees have liability coverage from PACE for COVID-19 testing?

No, testing for a communicable disease is excluded by PACE because it is associated with alleged or actual transmission of a communicable disease. Districts should check with their legal counsel to verify if the liability protections provided by the federal PREP Act or HB 4402 apply to testing.