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LEGAL ALERT

July 1 Deadline Approaching On New VAWA Regulations

Regulations interpreting the Violence against Women Reauthorization Act of 2013 (VAWA) become effective for higher education institutions on July 1, 2015. Generally speaking, these regulations contain new reporting, policy, and training requirements for colleges and universities. Here is a brief summary of some of the most important new provisions.

New Reporting Requirements

The Clery Act requires annual reporting of statistics for various criminal offenses occurring within certain locations. VAWA adds domestic violence, dating violence, and stalking to the categories that must be reported under Clery.

These categories are defined by the regulations as follows:

- **Domestic violence** is a “felony or misdemeanor crime of violence” committed by: a) a current or former spouse or intimate partner of the victim; b) a person with whom the victim shares a child in common; c) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or e) any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- **Dating violence** includes sexual or physical abuse or the threat of such abuse.
- **Stalking** occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to a) fear for their safety or the safety of others; or b) suffer substantial emotional distress.

VAWA also adds “national origin” and “gender identity” to the reportable hate-crime categories.



New Policy Requirements

VAWA mandates that institutional policies include information on a bevy of new items including the following:

- the procedures that victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about: a) the importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order; b) how and to whom the alleged offense should be reported; and c) options about the involvement of law enforcement and campus authorities;
- information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will: a) complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim; and b) maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures;

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- an explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, including: a) a description of each type of disciplinary proceeding used by the institution; b) the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; c) how to file a disciplinary complaint; d) how the institution determines which type of proceeding to use; e) a description of the standard of evidence that will be used; f) a list of all of the possible sanctions that the institution may impose; and g) a description of the range of protective measures that the institution may offer to the victim;
- assurances about the institution's disciplinary proceedings, including that they: a) will be prompt, fair, and impartial from the initial investigation to the final result; b) will be conducted by officials who, at a minimum, receive annual training on dating violence, domestic violence, sexual assault, and stalking; and c) will provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
- the policies must also state that the institution will simultaneously notify, in writing, both the accuser and the accused of the result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking; and
- finally, the policies must provide the institution's appeal procedures for the accused and the victim if such procedures are available.

New Training Requirements

Under VAWA, all new students and new employees must be offered "primary prevention and awareness programs" that promote awareness of rape, domestic violence, dating violence, sexual assault, and stalking. In addition, officials conducting proceedings regarding rape, domestic violence, dating violence, sexual assault, and stalking must receive annual training on these topics and on how to conduct an investigation and hearing process that protects the safety of victims while promoting accountability.

If you have any questions about these regulations, please visit our Higher Education Practice Group website at www.laborlawyers.com or contact your regular Fisher & Phillips attorney.

This Legal Alert provides an overview of specific new federal regulations. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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