



**BASA Regional Meeting – September 2020**

**Legal Update**  
*With Nicole Donovan*



**Bricker & Eckler**  
ATTORNEYS AT LAW

# Legal issues we will cover today

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- FFCRA 2.0
- Mask exemption issues
- A few words about Title IX
- Non-COVID legal news



# FFCRA 2.0

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- Updated regulations announced 09.11.2020
- **Effective 09.16.2020**
- Addressed 4 key areas

# FFCRA 2.0 (Continued)

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- Available only when work is otherwise available and leave is not needed but-for the qualifying condition.
  - “Health care provider” is defined further.
  - Notice of leave and information must be provided “as soon as practicable.”
- Intermittent leave is only available with employer **consent** and only available for in-person employees for school/daycare closure reasons.
  - Leave for hybrid closures is NOT intermittent leave. Each school day closure is a separate reason for leave.

# ODH Mask Order and Exemptions

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- Medical, religious and other exemptions
- MAMM/Anti-mask rallies
- *Moll v. East Muskingum Local School District*
- New ND OH Case



# Title IX

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- Implement new policy
- Confirm training of staff
- Post training materials on website
- Reinforce to principals NO discipline before TIX process **is complete**

# Adams v. St. Johns – 11<sup>th</sup> Circuit (FL)

## *Bostock* applied to Title IX

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- Policy prohibited a transgender student from using restroom of choice.
- The court rejected argument that Title IX's ban on sex discrimination differed from that of Title VII.
- Bathroom policy singled student out for different treatment because of his transgender status and caused him psychological and dignitary harm.
- The court also rejected schools offer of separate facilities.

# Marquardt v. Carlton – 6<sup>th</sup> Circuit (OH)

## Facebook post was matter of public concern

- Facebook posts by EMS Captain regarding police shooting and death of twelve-year-old Tamir Rice.
- Posts contained racially insensitive language, profanity, and expressed satisfaction at Rice's death and regret that the author was not able to kill Rice himself.
- The Sixth Circuit found captain's post could be "a matter of public concern."
- The case was remanded to the lower court to weigh the interests of the Cleveland EMS against the employee's free speech interests – was there a reasonable prediction of disruption?



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