

Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

FEBRUARY 18 - MARCH 3, 2022

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WHAT IN THE WORLD IS "UNCLAIMED PROPERTY" AND WHY DOES IT MATTER TO YOUR BUSINESS?

Every state in the U.S. has an unclaimed property law. UPLs generally require businesses that are holding property owed to another (e.g., usually money) to remit that property to the appropriate state government if the business loses contact with the owner for a statutory period called a "dormancy period." Dormancy periods for unclaimed property, or UP, range from one to seven years. Because businesses are obligated to comply with UPLs in situations where they are holding UP that is due and owing to another - why is it that so many businesses have never heard of UP or filed a UP report?

What are some examples of UP?

UP has two forms - tangible (e.g., physical property - tables, chairs, etc.) and intangible property (e.g., money, uncashed checks, credit balances, stock shares, etc.). Most state UPLs do not require unclaimed tangible property to be reported, so we will not address that here. A majority of businesses,



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however, generate a significant amount of unclaimed intangible property on an annual basis in the ordinary course of business through payroll, customer and/or vendor credit balances, voided and uncashed checks, lost stockholders and mergers and acquisitions.

Businesses that fail to comply with state law UPLs and file reports where required risk the dreaded "audit lottery." UP audits typically last three to seven years and cause a significant amount of business

disruption and human resource allocation. The contingent-fee auditors routinely issue voluminous and overbroad information requests and often take unreasonable positions, given their pecuniary interest in the outcome of the audit. Consequently, UP audits more closely resemble fishing expeditions than a process to enforce a legitimate state interest. Companies that willfully fail to comply with state UPLs and take their chances with the audit lottery face the potential for significant interest and penalties as a result.

How can businesses comply with UPLs?

If your business has never filed a UP report, there are some steps that you can take to begin the journey toward full compliance. First, you should talk to a UP professional about opportunities to voluntarily come into compliance. Many states offer amnesty or Voluntary Disclosure Programs that allow businesses that are out of compliance to voluntarily report their UP in exchange for a waiver of interest and penalty. A

UP professional can assist you with evaluating the areas of your business that create UP exposure and can advise you with respect to how to fill those gaps and prevent liability from continuing to accrue. For businesses that are newer and have not accrued several years of historical UP liability, they can come into compliance by filing annual reports as required by law. For the more unfortunate business that have already received a Notice of Examination and have been selected for audit, do not try to navigate the audit on your own! Engage an UP professional to assist you and ensure that the auditors play by the rules.

The worst approach a business can take is to ignore its UP obligations or take the position that the business does not generate UP. Noncompliance with UPLs over time can lead to millions of dollars of liability. For more information on UP and how it impacts your business, check out UPPO.org and the Ohio Division of Unclaimed Funds website. ■

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RELIEF HAS BEEN DENIED IN MOST ANTI-MASKING LAWSUITS AGAINST SCHOOLS

Over the last two years, Ohio school boards have absorbed the diverse and sometimes raucous opinions of their constituents on everything from virtual learning to quarantining to masking. Outcomes in mask-related lawsuits suggest that courts are leaving the decisions to schools.

Montgomery County Schools Cases

In September 2021, the Southern District of Ohio dismissed three separate lawsuits brought by pro se parents against Huber Heights City Schools, Mad River Local Schools and Northmont City Schools. The parents alleged that requiring masks equated to a violation of their children's constitutional rights. The dismissals were based on a rule prohibiting parents from filing pro se claims in federal court on behalf

of their minor children. The Court held that, "the rule against non-lawyer representation protects the rights of those before the court by preventing an ill-equipped layperson from squandering the rights of the party he purports to represent."

Chillicothe City School District Case

On Nov. 1, 2021, four parents filed a lawsuit against the Chillicothe City School District alleging that the school's policy requiring masks was "arbitrary, capricious and based on ignorance due to failure to inquire into facts." The parents' pro se claims brought on behalf of their minor children were similarly dismissed, but claims brought by the parents on their own behalf survived. Nonetheless, the parents' request for a Temporary Restraining Order was denied because they "[had] not shown that they [were] likely

to succeed on the merits of the remaining claims or that irreparable injury would accrue."

Mayfield City School District Case

In September 2021, a parent in the Mayfield City School District sought a TRO against because the school board was adopting a mask requirement. The parent argued that the policy caused "immediate and irreparable harm" and impeded on her daughter's fundamental right to a public education.

The Court denied the TRO, finding, *inter alia*, that masking did not impede on the student's ability to attend school. The Court noted that, "the mask mandate was implemented to prevent serious injury, illness, and death...[and] the risks associated



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with not wearing a mask in public schools are well-documented and supported by scientific evidence."

Forest Hills Local School District Case

A plaintiff in the Forest Hills Local School District took issue with the board meeting in which a mandatory mask policy was adopted. The plaintiff alleged a violation of the Open Meetings

Act and sought a TRO preventing the mask requirement. The Court denied the request for a TRO after a conference was held with the parties.

Outcomes to-date indicate that Ohio courts are hesitant to substitute the judgment of local school boards - at least when it comes to masks.



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