

Legal Trends and Challenges Facing Higher Educational Institutions

11.29.18



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Michigan's Minimum Wage and Earned Sick Time Law

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Procedural Posture

- **Status:** approved on Sept. 5, 2018, by the Michigan Legislature
- **Effective date:** 90 days from when current legislative session ends (around 4/1/19)
- **Speculation:** Legislature may amend both measures in lame-duck session in December. Supporters have threatened legal action if Legislature amends laws in lame-duck session to reduce protections

Improved Workforce Opportunity Wage Act



Minimum Hourly Wage

The Improved Workforce Opportunity Act sets the minimum hourly wage as follows:

- January 1, 2019: \$10.00
- January 1, 2020: \$10.65
- January 1, 2021: \$11.35
- January 1, 2022: \$12.00
- January 1, 2023 and thereafter: minimum wage adjusted by increase in CPI-W.
 - No increase if prior year unemployment rate is 8.5% or higher

Tipped Employees

Increases minimum hourly wage for tipped employees as follows:

- January 1, 2019: 48% of \$10.00 (\$4.80)
- January 1, 2020: 60% of \$10.65 (\$6.39)
- January 1, 2021: 70% of \$11.35 (\$7.95)
- January 1, 2022: 80% of \$12.00 (\$9.60)
- January 1, 2023: 90% of minimum wage
- January 1, 2024: 100% of minimum wage

Minimum Hourly Wage

- Retains \$4.25/hour training wage for employees under 18 for first 90 days of employment.
- Thereafter, employees under 18 may be paid 85% of otherwise applicable minimum wage.

Earned Sick Time Act (ESTA)



Q₁

Who is an employer under the ESTA?

- An employer includes any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs at least one individual. Under the ESTA, the United States government does not qualify as an employer. § 2(g).
- If an employer had 10 or more employees working on its payroll for 20 or more work weeks in the current year or in the previous year, the employer is not a small business under the ESTA. § 2(l).

Q₂

What is the rate of accrual for sick time under the ESTA?

- Employees (full or part time or temporary) accrue one hour of earned sick time for every 30 hours of work.
- ***Employees hired prior to April 1, 2019:*** sick time begins to accrue as soon as the ESTA takes effect. Those employees may use the earned sick time as it accrues.
- ***Employees hired after April 1, 2019:*** Sick time begins to accrue from the first date of employment, but employers may require that a new employee not use any accrued sick time until the 91st day after commencing employment.

Q₃

How much paid sick time may an employee take?

Depends on the size of the business...

- **Larger businesses:** an employee is guaranteed up to 72 hours of paid sick time in a year. § 3(1)(b).
- **Small businesses:** an employee is guaranteed up to 40 hours of paid earned sick time in a year. Additionally, if employee accrues more than 40 hours of earned sick time in a calendar year, the employee is entitled to an additional 32 hours of unpaid sick time in that year (unless employer allows more).

- An employee's accrued sick time rolls over from year to year. However, an employee is not entitled to take more sick time off than the amounts allotted for a single year (i.e., subject to 40/32 and 72-hour limits). § 3(1)(c).
- A “year” is a regular and consecutive 12-month period defined by the employer.

Q₄

When may an employee use earned sick time?

“FMLA on Steroids”

- Sample use cases:
 - Mental or physical illness or injury of the employee or the employee’s family member;
 - Medical diagnosis or treatment of an illness or injury of the employee or the employee’s family member;
 - Preventative medical care for the employee or the employee’s family member;
 - For matters arising from the employee or the employee’s family member being a victim of domestic violence or sexual assault;
 - For meetings at a child’s school or place of care related to the child’s health or disability;
 - If the employee’s place of business is closed due to a public health emergency;
 - If the employee’s child’s school or place of care is closed due to a public health emergency

“FMLA on Steroids”

Broadest Possible Definition of Family Member:

- Child (biological, step, foster, legal ward, child of domestic partner, in loco parentis)
- Grandchild
- Spouse or domestic partner
- Parent (biological, foster, step, adoptive, legal guardian)
 - of employee, employee’s spouse, or domestic partner (so “in-laws” are included)
 - Person who stood in loco parentis to employee when s/he was a minor
- Grandparent
- Sibling (biological, foster or adopted)
- Any other individual related by blood or affinity whose close association with employee is equivalent to a family relationship

Q₅

May an employer require advanced notice of an employee's intention to use sick leave?

- If the employee's use of earned sick time is foreseeable, an employer may require up to 7 days of advanced notice.
- If the employee's use of the earned sick time is not foreseeable, then the employer may require the employee to give notice as soon as practicable. § 4(2).

What do you do right now?

Financial

Record Keeping

Timing

Vacation/ PTO/ Paid Sick Time/ Bereavement/ Jury

Attendance Policy

Communication

Employee Turnover and Engagement

Union Contracts



Recreational Cannabis Use – How This Law Could Impact Colleges and Universities

Kaitlin Sheets



Overview

1. Current Laws: Federal & State—What's changed?
2. College Drug Policies
3. College Communications

Complex dilemma: federal laws v. state mandates to permit marijuana use

- Marijuana still illegal under federal law
- Federal Laws:
 - Controlled Substances Act
 - Drug-Free Schools and Communities Act



Federal Law: The Controlled Substances Act (CSA) (21 U.S.C. § 801 *et seq*)

- CSA places all substances regulated under federal law into 5 schedules
- Schedules determined by substance's medical use, potential for abuse, safety, or dependence liability
- Marijuana is still a level I substance: “high potential for abuse”; “no currently accepted medical use”; and a “lack of accepted safety.”
- No immediate plans to change this

Federal Law: Drug-Free Schools and Communities Act (20 U.S.C. § 1101)

- Requires institutions receiving federal financial assistance to establish drug and alcohol abuse prevention
- Students and employees must receive annual materials with:
(1) standards of conduct; (2) description of various laws that apply in the college's jurisdiction about alcohol and drugs; (3) description of health risks; (4) description of counseling and treatment programs available; (5) potential sanctions for violating code of conduct

Problems

1. Losing funding: College and universities that receive federal funding (all), risk losing federal funding by allowing marijuana possession/consumption
2. Violating federal laws: Also would be in violation of Drug-Free Schools and Communities Act

Campus Drug Policies

- Nothing should change in campus policy
- Universities can still ban possession and consumption on and off campus through the student code of conduct
- Ryan Huff, Chief Spokesman, University of Colorado Boulder (After state laws changed):
 - “Policywise, nothing has changed . . . but we certainly did a lot of messaging to our students at the time, and we continue to do that.”
- Jeff Cournoyer, Chief Spokesman, University of Massachusetts Chief Spokesman:
 - “Don’t expect any changes to student conduct code,” but definitely, “communicating to of-age students that [] changes in state law will not apply on the campuses.”

Campus Drug Policies (Continued)

- Critical to remind students that student code of conduct extends to off-campus marijuana use
- Update conduct policies if this is not clear enough
- Colorado College:
 - “As a student of Colorado College, your conduct, whether it takes place on-campus, is subject to the Student Code of Conduct, including the prohibition on marijuana use.”
- Remind students of penalties
 - Southern Connecticut State University: Reminded students that they would be cited for an infraction on campus, then fined and referred to the institution’s judicial office

College Communications

- Press Releases
- Address college's position with federal laws
- Remind students of code of conduct and current policies
- Remind students of penalties for using or possessing marijuana on or off-campus
- Easy to follow FAQ section

Example Communication

- Stanford University: Official statement
 1. Addressed state law change
 2. Marijuana still illegal under federal law
 3. Federal funding issues
 4. References Stanford University's "Controlled Substances and Alcohol Policy"
 5. Defines marijuana (edibles, vaporized, topical products etc.)
 6. Attached "Frequently Asked Questions" section about the new laws and student drug policy violations

Final Thoughts

- Communicate with students and faculty early
- Remind students of rules within student code of conduct
- Remind students that off-campus marijuana use violates student codes of conduct
- Train/educate leadership, (ex: Faculty, Resident Assistants) on university policy

Activism on College Campuses in Today's Divisive Political Climate

Pam Enslin



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What is the First Amendment?

The First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

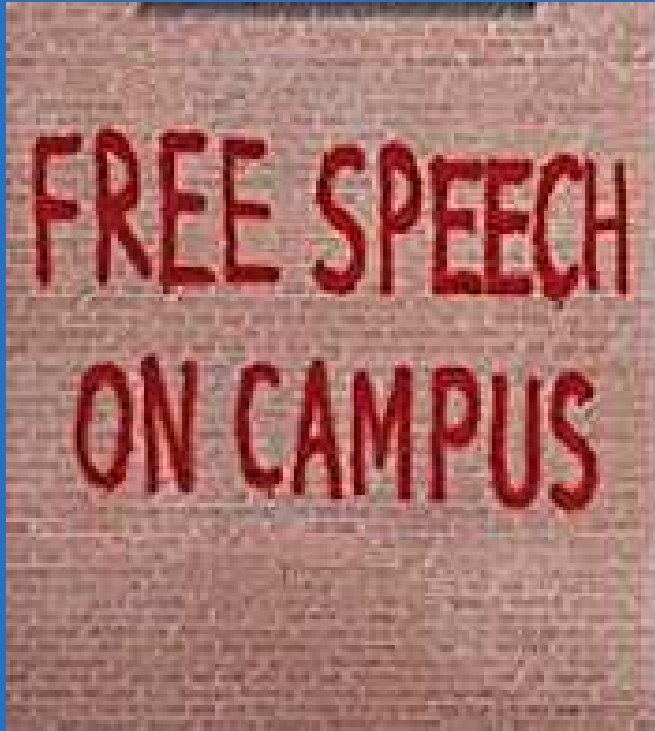
Impact of First Amendment on Higher Education

Is there a right to free speech on college campuses?

Public v. private universities

Impact of First Amendment on Higher Education

Codes of Conduct



FREE SPEECH
ON CAMPUS

Speakers on College Campuses

Controversial campus speakers:

- Public colleges may invite whomever they would like
- Student right to protest speakers
- Student right to invite speakers on their own initiative

Student Protests

Security v. Free Speech



Use of College Facilities

Time, place, and manner policies

Postings

Requirements for authorization



Drafting Policies

Hate speech

Freedom of expression

Conclusion

“Marketplace of ideas”



Safety and Liability Concerns with On-Campus Scooters

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Introduction

1. Background
2. Where to Park and Ride
3. Liability and Safety Issues
4. Suggested Policies

Background



Background

Bird:

- 17 college campuses in the U.S.
- Detroit, Ann Arbor, East Lansing
- Recent issues at University of Miami and Michigan State University
- Comparison to Uber and Lyft

Lime:

- 28 college campuses in the U.S.
- Detroit

Parking

- Can be parked anywhere
- Hazards to pedestrians and ADA violations
- Schools are impounding scooters

Where to Ride

- Bike lanes, right side of road, or sidewalks
- Categorized as “electric skateboards”
- State law requires front light and back reflector to ride on roadways in the dark

Liability Concerns

- Increase in scooter-related injuries
- Rental agreements include liability waiver and release
- Companies require competent riders
- Riders assume risk

Safety Concerns

- Companies put forth requirements without enforcement mechanism
- Policing safety is left to campus administration
- Illegal to operate on roadway while intoxicated or while using cell phone

Policy Suggestions

- Policy useful whether e-scooters permitted on campus or not
- Parking policy based on campus design
- Riding policy supplementing state and local law
- Safety policy developed from company policies and state law
- Penalties for failure to comply

XR on Campus: Augmented, Virtual, Mixed Reality

Brian Wassom



Warner Norcross + Judd

XR on Campus: Augmented, Virtual, Mixed Reality



**AUGMENTED REALITY
LAW, PRIVACY, AND
ETHICS**
Law, Society, and Emerging AR Technologies

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XR is Big Business



“I regard it as a big idea, like the smartphone..... I think AR is that big, it’s huge. I get excited because of the things that could be done that could improve a lot of lives. And be entertaining.”

- Tim Cook

Universities Have Always Been Ground Zero for XR R&D

Steve Mann's "wearable computer" and "reality mediator" inventions of the 1970s have evolved into what looks like ordinary eyeglasses.



Home News Research Education Publications Products



That Is All the More True Today

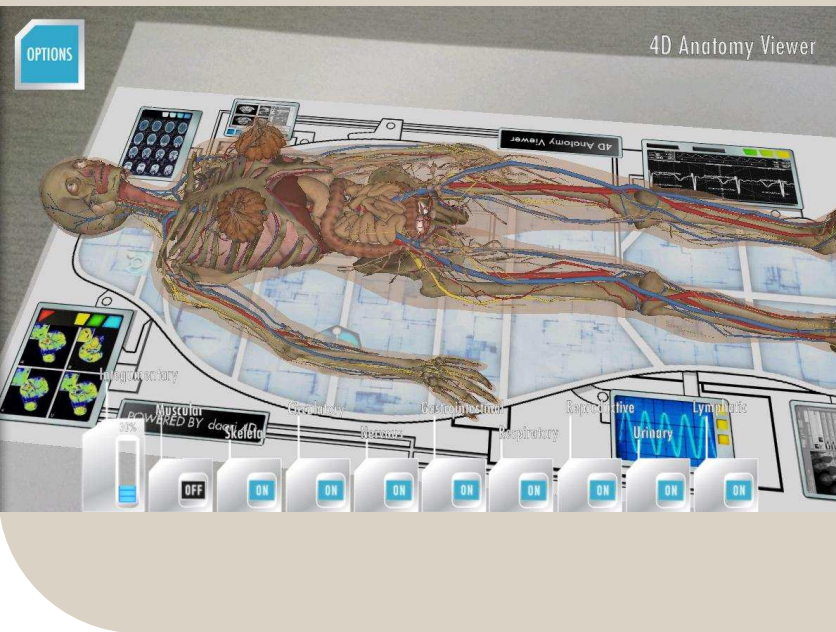
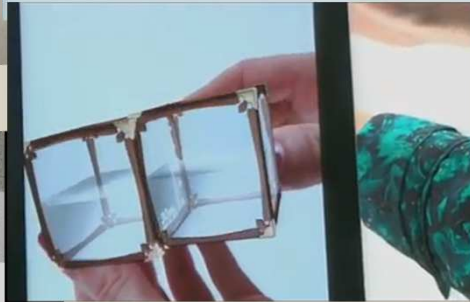
University of Miami to become idea hub for Magic Leap projects





UAB THE UNIVERSITY OF
ALABAMA AT BIRMINGHAM

AR/VR as Pedagogical / Training Tool



Practical Considerations

- Patent Protection
- Licensing
- Eye Safety
- Ethical Practices
- Personal Injury on Campus
- Location-Based Social Networks

Cybersecurity Vendor Relationships and Protecting Your Institution from a Breach

Nate Steed



Warner Norcross + Judd

Costs

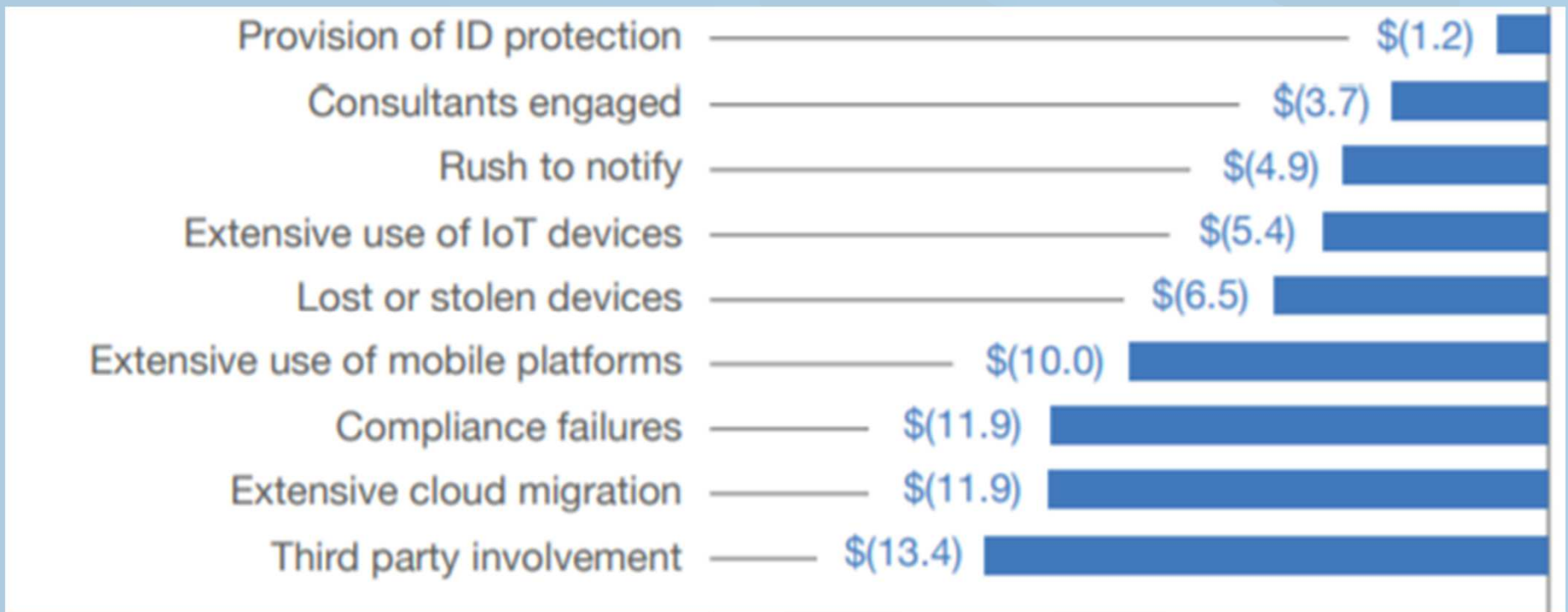
Overall average cost/record: \$148

Education: \$166

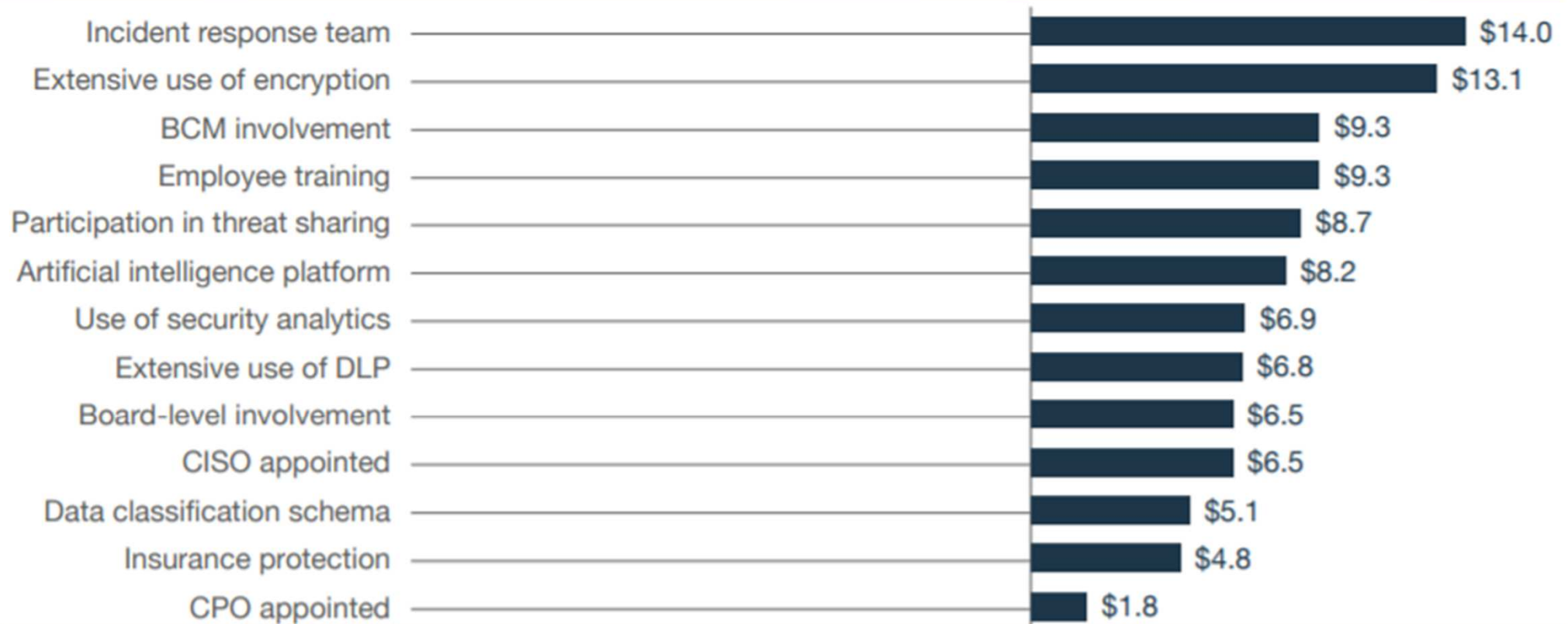
Health: \$408

Retail: \$116

Costs



Costs



Source: 2018 Cost of Data Breach Study, Ponemon Institute

Security Obligations

Vendor will operate in conformance with its operating, security and privacy policies, and will act promptly to address any nonconformance therewith identified by Vendor or any other party

Security Obligations

Vendor shall maintain the **appropriate security safeguards reasonably necessary to prevent unauthorized persons** from accessing, using, disclosing, or otherwise committing any act that could breach or compromise the privacy, availability, integrity, or content of any Customer Data.

Vendor represents and warrants that it will **use all commercially-reasonable efforts to ensure that Vendor's software, equipment, network resources, data or materials owned or controlled by Vendor (collectively, the "System") are protected against security risks and vulnerabilities**, including, but not limited to: (a) implementing appropriate security measures including commercially available anti-malware software; (b) secure TLS encryption of all data transmissions; (c) password protected access and user IDs; (d) automatic log off if the System is idle or no action is taken after a specified period of time; (e) isolation of Customer's data into separate databases; and (f) transmission and storage of any and all Customer information using a commercially supported encryption solution.

Notification

Upon a determination by Vendor that a third party gained unauthorized access to, or used or disclosed, any Customer Confidential Information while in the possession of Vendor, Vendor will investigate unauthorized access, use, or disclosure and notify Customer of its findings within 10 business days after conclusion of such investigation.

Notification

In the event Vendor or any of its representatives **becomes aware of any unauthorized** access to, use or disclosure of, **or potential unauthorized** access to or use or disclosure of any Customer Confidential Information, Vendor will **immediately notify Customer** of the unauthorized access, use, or disclosure.

Limitation on Liability

Other than Customer's obligations to pay fees as set out in License Orders, in no event shall either party's aggregate liability under this Agreement, exceed the value of the fees paid or payable from the Customer in the twelve (12) month period immediately preceding the event giving rise to such claim.

Limitation on Liability

Other than Customer's obligations to pay fees as set out in License Orders, **or any costs arising from a Data Breach**, in no event shall either party's aggregate liability under this Agreement, exceed the value of the fees paid or payable from the Customer in the twelve (12) month period immediately preceding the event giving rise to such claim.

Questions



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