

Legal Update for Supervisors: Current Legal Issues That Impact Supervisors

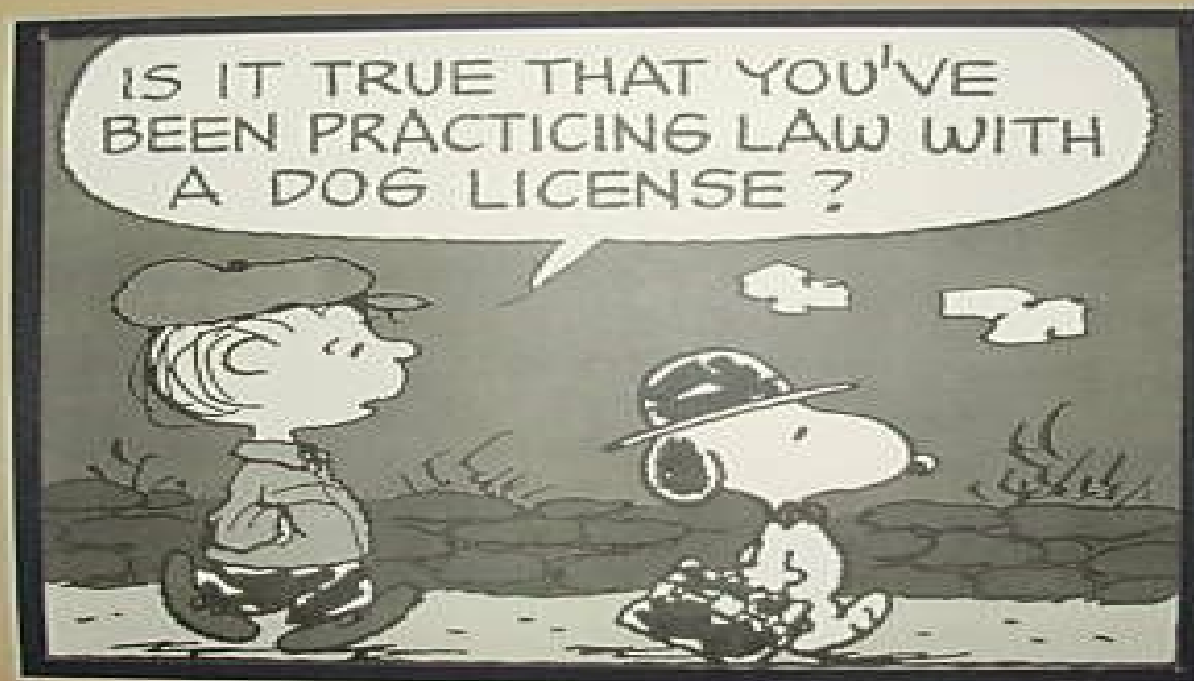
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Human Resources Training Series

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We can help!



Legal Affairs



If you:

- Receive legal documents in the mail or by delivery
- Are contacted by an attorney
- Are visited by an investigator or law enforcement agency from outside the University

Call the Office of Legal Affairs –
x 1590 - Rodman 249.

We are happy to help!

Overview of Topics

- Political activity guidelines from the IRS
- Non-university activities by employees
- New GDPR privacy regulations
- Religious accommodation
- Legal hiring do's and don'ts
- Signatory policy and procedures
- Title VII discrimination/harassment prevention
- Hiring foreign nationals and immigration process



Topic #1:

Political Activities at Non-Profit Entities: IRS Guidelines



How Does This Apply to JCU?



- JCU is exempt from federal income taxation because of its status as a non-profit educational institution under section 501(c)(3) of the Internal Revenue Code.
- 501(c)(3) entities generally may not “participate in, or intervene in (including publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for political office.”





What Does this Mean?

- There are potentially serious negative consequences, **including the loss of tax-exempt status**, if JCU violates IRS rules on political activities.
- However, this restriction is not designed to prevent the University from carrying out its educational activities, encouraging civic engagement/education, or engaging in non-political advocacy on the basis of mission etc.

Examples of Prohibited Political Activity:

- Using University e-mail systems, copiers or mailing lists to send political communications or to solicit campaign contributions
- Using University letterhead, logos or other signals of University affiliation in connection with political activities
- Hosting content or links to content on the University webpage that supports a political candidate/party



Examples of Prohibited Political Activity (continued):



- Using University facilities for political fundraising
- Using employee work time or mission leave work time to perform political activities
- Improper political lobbying or other uses of substantial University resources for partisan activities





Permitted Non-Partisan Activities:

- Non-partisan voter registration, voter education, and get out the vote activities
- Hosting speakers engaging in issue advocacy that is non-partisan or public forums or debates conducted in a non-partisan manner
- Issue advocacy that is not linked to a particular candidate or party
- Educational discussions that may examine contemporary political or policy issues

Scenario: Campaigning Cohort



- A cohort of JCU students has become very involved in a particular political candidate after learning about their housing-first approach to addressing homelessness among people in Cuyahoga County.
- They want you to send an e-mail solicitation to all staff members so they can fight homelessness by signing up as a campaign volunteer for this candidate. The candidate is not mentioned in the solicitation, however, there is a link to their website in the communication.
- The students also want to use campus space nightly during election season in order to set up a mini-campaign center and call voters on the candidate's behalf.



Scenario: Is This Ok?

- No, it is not ok to use University e-mail resources to contact employees on behalf of a political campaign.
- Additionally, it is not ok to allow students to open up a campaign space on JCU campus. The University can theoretically lease such space if it chooses to do so. However, this is generally avoided, and any exceptions would need senior leadership approval.
- The [Student Political and Campaign Activities Policy](#) does allow members of student groups who are current students to conduct limited political campaigning in the student center atrium.

Tips for Handling These Issues



- Remember that campus activities also must follow any applicable JCU policies including: conduct policies, posting policies, work time policies, and any applicable speaker policies.
- Consider the request carefully, and contact the OLA or the Office of Government and Community Relations.
- Remember that it is important to keep mission-driven institutional issue advocacy and politics separate.

Topic #2:

When Employees Engage in Non-University Activities



Non-University Activities

- The University supports employees' outside activities –
 - Such as outside work, school, volunteer activity, family events
- Must be managed so not interfere with University work performance
- For full-time employees, no other full-time outside employment is permitted while employed at JCU.
- May do outside work while on vacation or holiday time if does not conflict with work duties or create a conflict of interest
- May not use paid sick time to perform outside job/activity



Non-University Activities

- Not Permitted: employment or activities outside University that:
 - Coincide or conflict with work hours
 - Conflict with job duties or affect performance
 - Cause employee to arrive late, leave early
 - Constitute a conflict of interest
 - Involve soliciting/conducting outside work during work hours
- If creates performance issue, employee will be asked to discontinue the outside employment
- Exceptions: authorized in writing by supervisor, HR, dept. head



Scenario: Nicole and her Ice Skating Business



- Nicole is a full-time employee at JCU.
- She is a former ice skater, and recently started a business teaching lessons.
- She has decided to teach lessons on her lunch hour each day.
- She also teaches each evening until 11:30 PM. She is so tired she sometimes can't make it to work on time.
- She advertises her skating services to employees during work hours, and uses her University computer to contact skaters.
- She has proposed to Athletics teaching JCU students as a recreational activity.

Scenario: Nicole and her Ice Skating Business

- Under the Outside Employment & Activities Policy:
 - Nicole can teach on her lunch hour if she does not exceed her lunch hour.
 - Is this a full-time job teaching skaters?
 - Is the outside work affecting her performance?
 - She cannot use University resources for outside work.
 - She cannot solicit business during work hours.
- Under Conflict of Interest Policy:
 - Any business arrangement needs a management plan.



Topic #3:

New Data Privacy Regulations for the European Union: Does this Apply to JCU?





What is the GDPR?

- The General Data Protection Regulation (GDPR) is an expansive set of European privacy regulations that came into effect in May 2018 for entities operating in the European Union (EU) or targeting individuals *residing in the EU*.
- The GDPR limits the circumstances under which entities (Data Controllers/Processors) can collect information from individuals within the EU and gives those individuals (Data Subjects) the right to inspect and request the deletion of certain regulated consumer data.

What Sort of Data is Covered?



- Name
- Address
- Phone
- Bank / Credit cards
- Email address
- IP address
- Cookies
- Online identifiers
- Biometric data
- Genetic data
- Health data

What Rights Does the GDPR Create?

- Generally, a Data Controller/Processor needs **consent** or a **business relationship + business purpose** in order to collect and process data concerning a Data Subject covered by the GDPR.
- A Data Subject has the right to **inspect** and exercise various means of control over the data that is collected about them.
 - This can include reviewing such data or requesting its deletion in some circumstances.





Why Does This Impact JCU?

- JCU runs overseas and study abroad programs where services are offered within the EU.
- JCU runs a website that can be accessed from the EU by overseas students.
- JCU recruits some overseas students from the EU.



What is JCU Doing to Comply?

- JCU is updating its website and will be making further changes to ensure that GDPR-covered data is opt-in.
- JCU is currently strengthening internal policies that govern data protection, such as the Sensitive Data and Security Policy.
- JCU is implementing procedures to gain consent from students for GDPR purposes before they head overseas for certain study abroad experiences.

What Do I need to Do?



- Make sure you work with the Center for Global Education when sending students overseas.
- Bring new IT contracts to the attention of ITS and OLA in order to ensure that we are remaining compliant.
- Implement new data-privacy processes and procedures as they are promulgated.
- Refer to Interim GDPR Policy.

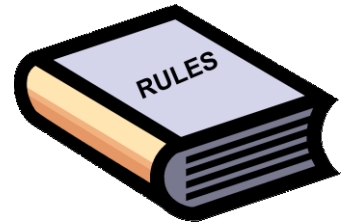
Topic #4:

Religious Accommodation



Legal Obligations

- Mission: Non-discrimination & welcoming
- Non-Discrimination – not treat applicant or employee differently based on religion (hiring, discipline, promotion, benefits)
 - Exceptions:
 - Hiring at religious organization – can hire based on religion
 - BFOQ – if occupational qualification i.e. Catholic priest
- Non-Harassment – not create hostile environment based on religion
- Accommodation – making accommodations to employees for religious beliefs
- Students – no law prohibits discrimination, except housing



Accommodations - Religious Belief

Must accommodate “sincerely held” religious beliefs, observances, practices

- Traditional, organized religions (i.e. Christianity, Islam etc.)
- New or uncommon, or not part of a formal church
- Moral or ethical beliefs
- Even if seems illogical
- Profess no religious beliefs



What is our Accommodation Obligation?

- Obligations to provide “reasonable accommodations” for religious beliefs if conflicts with work requirement
- Examples of Accommodations:
 - Schedule change to attend church
 - Breaks and space for prayer
 - Excused from religious prayer at work
 - Exception to permit wearing headscarf
- Call Human Resources or Legal Affairs to assist.



Undue Hardship



- No obligation to accommodate religious belief if it imposes an undue hardship on the employer
- Hardship = more than a “de minimus” cost or burden to employer
- Factors: Nature of duties, cost, burden on operations, infringes on others’ rights, impairs safety, number who need accommodations



What Would you Do?

Ali's Accommodation

- Ali's position generally requires work on Saturdays. Her work requires work with prospective students.
- Ali asks her supervisor for:
 - Several break times to pray each day
 - Not to work on Saturdays
 - Greeting students with a religious phrase

What Would you Do?

Ali's Accommodation



- What is reasonable accommodation?
- May need to provide unpaid breaks to pray.
- May need to provide space to pray if provide other groups with a space.
- Would not working Saturdays be an undue hardship?
 - Is it every Saturday?
 - What is impact on operations?
 - Are there others who can swap days?
 - Would overtime need to be paid regularly?
- Not prohibit religious speech at work, unless interferes with work, disruptive, appears to be University position.

Topic #5:

Legal Hiring Do's and Don'ts





Employment Process

- Important to have a standard, consistent employment process:
 - How review candidate applications/resumes
 - What questions ask candidates
 - How arrive at decision

KEY: Document entire hiring selection process
Allows others to determine no discrimination



Retention of Records – Legal Requirements

- Required to document selection process in some manner
- Must document why selected one over another
- Not required to take notes of those interviewed
- If taken, **decision-makers** MUST retain them.
- Includes: applications, emails, evaluations, handwritten notes, notes jotted on resumes/CVs

Retention of Records



- Chair/hiring supervisor: retain all documents, evaluations, notes
- Collect notes and documents from decision-makers in the search process
- Require all emails be retained
- Federal law (29 CFR 1627): Records **MUST** be retained for **one (1) year** from later of date the record is made or selection is made

Reviewing Applications



- Document process you will use to review applications
- Review in light of position qualifications/posting
- Document why select certain candidates for interview and not others
- Consistency in review – will they be reviewed by the same individuals? Judged by same standards?
- Will you vote on who comes for interviews?

Conducting Interviews



- Consistent interview schedule – in writing
- Consistent forms of interactions, i.e. lunch, lecture
- Consistent questions for candidates – in writing
- Planning out major topics/questions in advance
- Using evaluation tool or matrix that can be used and completed during or after interview



Impermissible Questions

Questions that could seek information on race, color, national origin, age, religion, sex, pregnancy, family status, or disability

- Can lead to an inference that selection was discriminatory
 - “What year did you graduate from high school?”
 - “Tell me about your family.”
 - “Where are you from and how did you happen to come to the U.S.?”
 - “Are you a U.S. citizen?” (Correct: “Are you authorized to work in the U.S. without JCU sponsorship and have you ever been on a J visa?”)

Internet Searches



- Internet or social media searches should not be conducted on any applicant without consultation with Human Resources.
- May be conducted by Human Resources at the request of the department.
- Can be done as part of the regular background check process performed by Human Resources on a consistent basis.

Internet Searches

- To determine whether information exists to indicate that a candidate:
 - violated the law
 - acted in a manner that would violate University policy, or
 - indicates an inability to otherwise support the mission, vision and/or values of the University.
- Should be based on publicly available information (i.e. not requests to friend or connect on social media).
- Not include information that could be used in a discriminatory manner.



Deciding on Successful Candidate



- More documentation required of those interviewed
- Review vs. job posting, qualifications, field, specialty, needs
- Document selection – rationale for why chosen, communications to candidates
 - In addition to PeopleAdmin selections
 - i.e. “not as qualified as others - experience”
- Records & notes - consistent with decision; could be publicly reviewed.



What About Affirmative Action?

- The University has an affirmative action plan (AAP). Talk to HR about it and see how it applies to your area.
- The AAP creates an objective set of data to determine recruitment goals.
- Focus on applicant recruitment practices to increase diversity of candidate pool.

Affirmative Action Continued

- Cannot hire based on personal assessment of JCU, diversity of JCU, your department, or student preferences.
- Cannot use diversity to hire one underrepresented group over another when comparing two diverse candidates.
- AAP may create a “plus factor” consideration for equally qualified candidates, if there is appropriate support in the AAP to hire an underrepresented minority.



Topic #6:

New Signatory Policy and Procedures

APPROVED



What Does This Policy Do?

- Requires the initiating party to assure the contract includes reasonable business terms
- Provides for contract review as part of a standard process
- Designates who can sign contracts for the University and in what amounts
- Explains when review by the Finance Office and Legal Affairs is needed



Key Contract Review Steps:

1. In writing with key terms
2. No conflicts of interest
3. Reasonable business deal
4. If more than \$10,000, CFO or delegate OKs
5. If more than \$10,000, or insurance, indemnification, or risk, Legal Affairs reviews, unless standard terms/pre-approved contract



Who Can Sign?



Signatory

- Must be authorized to sign in writing
- Can provide temporary delegation (i.e. vacation)
- See delegation list

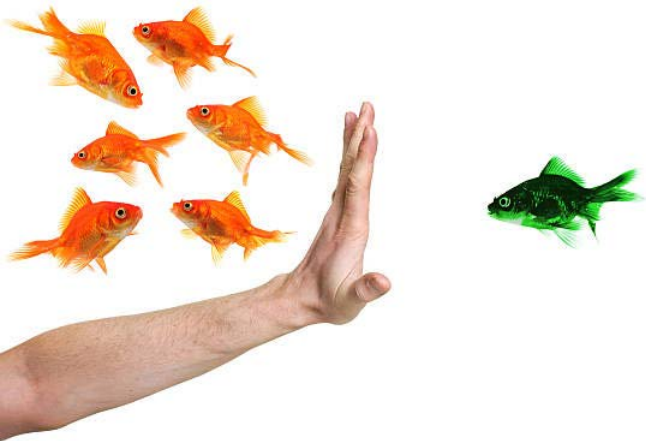
http://webmedia.jcu.edu/legalaffairs/files/2019/01/Signature-Delegations_POST_final_v6.pdf

Signature Delegations 2018

Name of Approver Officer's name who is delegating authority	Name / Position of Delegate	Scope What authority (concerning what subject)	Aggregate Value/Cost	Start Date When authority begins	End Date When authority ends
Michael Johnson President		Any contract	\$0 - \$999,999	6/1/2018	Duration of Presidential appointment
	Dennis Hareza Executive Vice President and CFO	Any contract with a financial commitment	\$0 - \$499,999	3/1/2018	Duration of VP appointment
	James Krukones Associate Academic Vice President and Interim Academic Vice President	Contracts related to Academic Affairs and affiliation agreements	\$0 - \$10,000	6/1/2018	Duration of Associate VP and Interim Academic VP appointments
	Stephanie Levenson Vice President for Enrollment Management	Contracts related to Enrollment	\$0 - \$10,000	8/27/2018	Duration of VP appointment
	Mark McCarthy Vice President for Student Affairs	Contracts related to Student Affairs	\$0 - \$10,000	3/1/2018	Duration of VP appointment
	Edward Peck Vice President for Mission and Identity	Contracts related to Mission and Identity	\$0 - \$10,000	3/1/2018	Duration of VP appointment
	Doreen Riley Vice President for University Advancement	Contracts related to University Advancement and Marketing and Communications	\$0 - \$10,000	3/1/2018	Duration of VP appointment
	Colleen Trembl General Counsel	Retention of outside counsel / contracts related to legal matters	\$0 - \$10,000	3/1/2018	Duration of General Counsel appointment

Topic #7:

Title VII and Non-Discrimination and Harassment



Non-Discrimination

- Federal law and Ohio law: prohibits discrimination based on
 - race
 - sex
 - national origin
 - gender, pregnancy
 - disability
 - age
 - marital status
 - veteran status
- University policy prohibits discrimination on race, color, national origin, sex, sexual orientation, gender identity & expression, disability, gender, age, veteran status



Examples



- Discrimination:

- Paying an employee less because of their gender etc.
- Terminating an employee based on pregnancy
- Not hiring an employee based on ethnicity & English being a second language

- Harassment:

- Creating a hostile environment based on sex-based comments – severe & pervasive
- Regularly criticizing an employee because of disability

Sally's Situation



- Bob is Sally's supervisor.
- Bob regularly makes fun of Sally's accent. He also often tells ethnic jokes, and expects Sally to laugh.
- Bob determines that Sally is having difficulty performing her duties, including failing to complete job tasks on time, and not being understandable when answering the office phone.
- Bob wishes to start corrective action for Sally for these performance issues.

Is there any issue with the corrective action?

Sally's Situation

- Making fun of Sally's accent is unlawful harassment. Making ethnic jokes also is unlawful harassment.
- Is the corrective action appropriate?
 - Difficult to tell –
 - Not performing job duties is ordinarily an objective performance issue.
 - Not answering the phone clearly could be a legitimate performance issue related to communication.
 - But Bob's prior actions – making fun of Sally's accent and telling jokes – could lead Sally to believe the corrective action is based on her ethnicity.
 - Need to investigate Bob's actions & stop his conduct.



Legal Obligations

- Acknowledge complaint
- Have a process to report it and address
 - Bias Reporting and EthicsPoint
 - University Grievance Policy – for faculty and staff
 - Hate-Free Policy – for students
- Investigate and/or resolve
- Document what we did



Offices to Assist



- Human Resources – Staff or Faculty
- Associate Provost (AVP) – Faculty
- CSDI, Dean of Students - Students
- Title IX Office – for sexual harassment
- Mission – for diversity issues, suggestions
- Legal Affairs – any questions

Topic #8:

Hiring Foreign Nationals and Immigration Issues



Non-Discrimination

Federal law prohibits discrimination based on race, color, national origin, ethnicity

- Hiring
- Employment
- i.e. Not wishing to hire an individual from a particular country or with an accent
- i.e. Thinking an individual of a particular nationality poses a greater risk



Citizenship

- Federal law does not prohibit basing hiring decisions on being a U.S. citizen
- Some federal grants require that recipients be U.S. citizens
- BUT that can equate to discrimination based on national origin.
- May not promote diversity
- Better not to ask - “Are you a U.S. citizen?”



Ability to Work in United States

Important questions to ask applicants:

1. Are you able to work in the United States without sponsorship?
 - Are you able to provide documentation upon hire of your authorization to work in the United States?
 - Are there any time limitations on your ability to work in the United States?
 - What sponsorship would be required?
2. Have you ever been on a J visa?



Types of Visas/Permanent Resident

1. H-1B: visa with employer sponsor

- 3 years
- Renewable for 3 years
- Can transfer to another institution
- Costs must be paid by employer for H-1B and for renewals

2. TN (NAFTA Professional): For citizens of Canada and Mexico

- 3 years, with renewal for 3 years
- Employer does not have to pay for TN, but often does

3. Permanent Resident (Green Card)

- Usually 3-step process
 - Employer must pay for first step at least (\$2000 plus filing fees)
 - Usually requires job posting or re-posting, other paperwork



What Sponsorship Means

Sponsorship by the University means assisting with immigration status to permit employee to work here.

Involves:

- Time – to collect documents, file documents
- Money
 - i.e. H-1B visa: \$1800 plus filing fees
 - i.e. Green Card: \$6000 plus filing fees
- Uncertainty - may not be known whether employee will be authorized to work by start date (i.e. H-1B)





Hiring Considerations

- Qualifications of employee
- Employee's contribution to diversity, mission of JCU
- Ability to retain employee if employee remains at the University beyond initial visa (i.e. H-1B expires, permanent resident)
- Travel restrictions, residency requirements
- Loss of employee after having sponsored employee on non-immigrant or immigrant visa
- Timing of start date
- Ability of University to pay
- Ability or willingness to ask employee to pay a portion

Scenario: Interviewing Enrique

- Your department is interviewing candidates for a coordinator position. On his application, Enrique checks that he is not authorized to work in the U.S. without sponsorship.
- At Enrique's interview, can you ask:
 1. What is your citizenship?
 2. What kind of sponsorship do you need?
 3. What is your current visa status?
- Can you decide not to hire him because he could not start soon enough because of his immigration status?
- Can you decide not to hire him because of the cost to the University?
- Can you decide not to hire him because he is from a particular country?



Scenario: Interviewing Enrique

1. No – don't ask citizenship
 2. Yes – can ask kind of sponsorship
 3. Yes – eventually
- Yes – timing is acceptable factor
 - Yes – cost is acceptable factor
 - No – Not necessary and could be basis for national origin/race discrimination



Thank You

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