

In Brief

Updates from the Office of Legal Affairs



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Medical Marijuana – JCU Drug-Free Policies Remain In Effect Notwithstanding Ohio Legalization Laws

Medical marijuana became legal in the State of Ohio as of September of 2016. With cultivators and dispensaries now up and running, medical marijuana is becoming more widely available throughout the state. So what impact does the new Ohio state law have on the University's obligations under federal laws and JCU policies?

While Ohio state law has changed regarding the legality of medical marijuana, federal law has not. Marijuana remains classified as a schedule I drug according to federal laws, and remains prohibited under the Drug-Free Schools and Communities Act of 1989 and the Drug-Free Workplace Act of 1988.

So what does this mean for JCU policies on drug use? As a recipient of federal funding, JCU must continue to abide by applicable federal laws. This includes maintaining policies that prohibit the use and possession of marijuana by students, faculty, and staff. This prohibition includes possession, sale, and use of medical marijuana, all of which are not permitted under federal law.

For Students: JCU's Drug Policy - <http://sites.jcu.edu/deanofstudents/pages/community-standards/university-drug-policy-2/> - prohibits the use, possession, sale, distribution, manufacture, and/or growth of illegal, synthetic, or counterfeit drugs on University premises, or at any University-sponsored event or program regardless of where it takes place. Possession or distribution of drug paraphernalia is also prohibited. This prohibition applies to medical marijuana whether or not the medical marijuana or drug paraphernalia was used on-campus, and regardless of possession of a medical permit for use of medical marijuana.

For Employees: JCU's Drug-Free Workplace Policy - http://webmedia.jcu.edu/hr/files/2016/11/Drug-Free-Workplace-Policy_11_22_2016.pdf - prohibits the unlawful manufacture, distribution, dispensation, possession, sale, or use of drugs, including medical marijuana, in the workplace, on University premises, or as part of any University activities on or off campus. This prohibition includes the use of prescribed or illegal drugs by any employee, contractor, or volunteer when consumption impairs the individual's University-related job duties, adversely affects job performance, and/or endangers the physical well-being of any other person, even if consumption does not occur during regular work hours or on University premises.

If you have any questions or are unsure how to apply state law, federal law, and JCU policy, please contact Human Resources at ext. 1905 regarding employees, Office of the Dean of Students at ext. 3010 regarding students, or the Office of Legal Affairs at ext. 1590.



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Internet Searches in Hiring

Picture this: Your department is immersed in the hiring process for a new member of your team. After looking through the applicants' resumes in the PeopleAdmin system, the hard-working members of your department decide to Google these applicants to learn more about them.

Before jumping right in, you and your department will want to consider the best way to conduct a fair, consistent and non-discriminatory internet or social media search of the applicants. Online searches must be conducted in a manner that does not violate any of the following laws by unnecessarily identifying applicants' protected characteristics in a way that could appear to be discriminatory. These applicable laws include: Title VII protections against race, color, sex, national origin, and religious discrimination; Americans with Disabilities Act protection for individuals with disabilities; Age Discrimination in Employment Act protection for individuals age 40 and over; and Genetic Information Nondiscrimination Act protection of genetic information. Your department will want to act in a manner that con-



siders all applicants equally and does not open the door to claims that job applicants were discriminated against in the hiring process.

The good news is that the Human Resources Department can assist you in this search process. Before conducting an internet or social media search of applicants, departments are advised to contact Human Resources for guidance or to conduct the actual search for your department.

The following are some guidelines for conducting internet or social media searches on applicants:

- Human Resources should be consulted about and/or conduct the internet and/or social media search.
- Initiate the internet and/or social media search late in the hiring process, ideally immediately before identifying final candidates, extending a job offer, or at the time when other standard University background

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See INTERNET, p. 3

Fair Labor Standards Act Wage Laws Tips



Flex Time



The question often comes up for supervisors from their diligent employees – “Can I work 5 hours longer this week and take off this time next week?”

If the employee is an hourly or “non-exempt” employee who is paid on an hourly basis, the answer is “No.”

The Fair Labor Standards Act (FLSA) is the federal law that requires employers to pay hourly workers for all hours worked in a workweek and to pay overtime to hourly workers for work of more than 40 hours in a single workweek. The workweek has to be set by the University on a standardized basis, and the University’s workweek is **Sunday at 12:00 AM to Saturday at 11:59 PM**. The FLSA does not provide for “compensatory time” to make up hours from one week into the next week, next month, or next year.

That means that if that hourly employee works 5 extra hours this week, the employee will be entitled to regular pay for hours over 37.5 hours in a workweek and overtime pay (1.5 times the regular rate of pay) for any hours over 40 worked in that week.

What is the solution if paying overtime is not possible? You can permit that employee to work “flex” time within that same workweek. So if the employee works 5 extra hours on Monday, that employee can take off 5 hours another day or days in that same week so that their overall hours for the week do not exceed the standard 37.5 hours for the workweek.

Of course, if the employee is not hourly but is salaried and considered “exempt” under the FLSA, the employee is permitted to work any number of hours in a workweek necessary to get the job done, and “flex time” is not required.

Errands at Lunch

Lunch time is the perfect time to get some food, relax and get away from the desk. But you may wonder – “Is it acceptable to ask an employee to run a few University-related errands on their lunch hour, since they were already heading out to grab a sandwich?”

If the employee is a non-exempt, hourly employee, any office errands run during an unpaid lunch time must be considered time worked, unless the time spent is so small or de minimus that the time could not be accounted for (i.e., 5 or fewer minutes that would be hard to track). Any time actually spent on travelling to the errand and conducting the errand would be considered time worked. If the employee conducts office errands at lunch, the employee can be provided flex time during that same workweek to account for the time spent on the errands. Otherwise, the employee must be paid for time worked running the errands, whether at the regular rate of pay up to 40 hours or the overtime rate if the employee worked over 40 hours in the workweek.

Of course, salaried or “exempt” employees (who are not subject to overtime requirements) can be asked to run errands during a lunch time without being paid additional or offered flex time for that time.

In addition, as a best practice, non-exempt (hourly) employees should be completely relieved of duties during any unpaid lunch hour and not be asked to answer phones, greet visitors, or send out emails. If non-exempt employees need to be asked to do these things, they need to be compensated for the time worked or offered flex time in that same workweek.

If you have questions about any wage laws or policies, you can read the JCU Hours Worked and Overtime Policy located [here](#), or feel free to contact Human Resources or the Office of Legal Affairs.



If you are interested in learning more about FLSA requirements on overtime hours, consider attending the training session offered by the Office of Legal Affairs and Human Resources on “Wage and Hour Issues in the Workplace: Understanding the Fair Labor Standards Act (FLSA)” on April 3. (See box at left for details.)

Upcoming Training Sessions

**March 27, 2019
9:00 a.m.-10:30 a.m.**

**“Legal Update for Supervisors: Current Legal Issues That Impact Supervisors”
Jardine Room**

*Presented by
Office of Legal Affairs*

**April 3, 2019
10:00 a.m.-11:30 a.m.**

**“Wage and Hour Issues in the Workplace: Understanding the Fair Labor Standards Act (FLSA)”
Jardine Room**

*Presented by
Office of Legal Affairs
and*

Human Resources

FERPA: A Student’s Consent to Disclosure Does NOT Require Disclosure

Imagine this: a parent comes to your office or calls on the phone and asks to see education records of their student protected under the Family Educational Rights & Privacy Act (FERPA). Imagine that the student has already given written consent to disclose the records to their parent, and the student may even be accompanying their parent to your office or joining in on the phone call. Must the faculty member or administrator allow the parent access to the requested records? In other words, does the parent have a *right* to the education records? The answer – No. While a student may give consent to the disclosure of information to a third party such as a parent, such consent does not transfer or create any rights for that third party.

Political Activity and Campus Resources: Important Rules for 501(c)(3) Non-Profits

As a 501(c)(3) not-for-profit educational institution, the University receives federal tax-exempt status, meaning it is excused from paying federal income tax. This carries certain rights and responsibilities under federal laws and regulations. One of these responsibilities is to follow Internal Revenue Service (IRS) guidelines restricting political participation by 501(c)(3) not-for-profit entities by prohibiting use of University resources for political activities. Allowing University resources to be used for prohibited political activities can have serious consequences, including a potential loss of tax-exempt status.

Here are some examples of common permissible and prohibited uses of University resources that may be helpful when considering political activities on University property.

Permissible uses of University resources:

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



Prohibited uses of University resources:

- Use of University e-mail systems, copiers or mailing lists to send political communications or to solicit campaign contributions
- Use of 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
- Use of University facilities for political fundraising
- Using employee work time or mission leave work time to perform political activities

These brief examples cover common scenarios contained in IRS guidance on this topic. For further information, the IRS website contains a [FAQ](#) section on this topic. If you have additional questions about political activities or particular restrictions, please feel free to contact the Office of Government & Community Relations at ext. 4909, or the Office of Legal Affairs at ext. 1590.

From INTERNET, p. 1

"Online searches must be conducted in a manner that does not violate any...laws by unnecessarily identifying applicants' protected characteristics in a way that could appear to be discriminatory."



checks are performed (i.e., criminal background checks).

- The person conducting the search should remove any information that could be considered by a hiring committee or department in a discriminatory manner (e.g., age, disability, race, gender, ethnicity, personal and family medical history, genetic information).
- Document that decision-makers did not have access to protected information discovered during internet and social media checks, such as by having Human Resources provide search information to the hiring committee that omits any protected information.
- Ensure the accuracy of discovered information and disregard any information that cannot be confirmed.
- Use a list of websites and pages within websites in order to screen all candidates in a consistent manner, such as performing an internet search of applicants' names and reviewing the first two pages of results.
- Only review publicly available information such as websites or social media posts that are set to a public audience, i.e., posts that are not limited

to friends or connections.

- Do not connect with the candidate or with friends of the candidate in order to view information about the prospective employee.
- The department and Human Resources are prohibited by law from requesting passwords or usernames from job candidates to obtain access to online information.
- Do not make hiring decisions based on a lack of internet or social-media presence, unless an online presence is required for the position (such as when the position requires social media skills).

These guidelines are set forth in the new proposed addition to the Hiring Policy applicable to hiring of staff employees. The proposed revision to the policy is currently posted for community notice and comment at <http://sites.jcu.edu/hr/pages/resources/policies/policies-under-review/>. While the new proposed addition applies to the staff Hiring Policy, these guidelines above are helpful to consider in faculty hiring, as well, despite certain variations for faculty hiring based on online searches necessary to review candidates' research, expertise in field, etc.

From FERPA, p. 2

Students, parents, faculty and staff may sometimes confuse the two concepts of "rights" under FERPA with being granted "consent" to the disclosure of records. When a student attends a university, all rights formerly held by the parent under FERPA transfer to the student. Under FERPA, students have the right to 1) inspect and review their education records, 2) request to amend their education records, 3) provide written consent to the disclosure of education records to others (such as parents), and 4) file a complaint with the U.S. Department of Education. Therefore, written consent from the student is required for the disclosure of student educational records to the parent. (In certain limited circumstances under the law, such as a health or safety emergency, disclosure to a parent can be made without student consent.) The fact that a student gives consent to disclosure of

their education records to a parent does not mean that the parent has a right to the records.

So, in the scenario described, if the student has properly given written consent to the disclosure of their education records to their parent, the faculty member *may* disclose that information to the parent, but is *not required* to do so under FERPA. To provide parents and other third persons with access to certain educational records, students may use the Proxy Access system in the Banner system, or complete a FERPA authorization form (available [here](#)). For more information on FERPA, feel free to call the Office of Legal Affairs at ext. 1590, or the Office of the Registrar at ext. 6650.