International Visitors for Short-Term Programs

Are you interested in hosting international visitors (students, scholars, professionals, etc.) at Northeastern for short term programming, such as workshops, conferences, summer courses? Perhaps you are seeking to host short-term visitors at Northeastern and have questions about how to arrange the visit in compliance with international immigration regulations? Want to discuss how to improve or change current programming? Please save the date and attend our brown-bag seminar on Tuesday May 20th at 12pm to discuss the different types of short-term programming you can offer and how to invite/sponsor international visitors/students in compliance with US immigration regulations. Representatives from the International Student and Scholar Institute, the Office of International Study Programs and the Office of the General Counsel will be present to answer your questions.

International Compliance: Spotting the Issues

Please join us in June for the first in a series of brownbag discussions around the myriad and often thorny issues that can arise in the realm of international activity. Whether you are considering hiring an international vendor to perform work at the University, developing a program that requires international travel, or considering an initiative where University personnel will work abroad, this first seminar in the series will provide you with tools to highlight and troubleshoot issues when planning to engage in activity with international components.

OGC 101: How to More Effectively Work with the Office of General Counsel

Meet with attorneys in the OGC and learn how to maximize your relationship with our office. Discussion topics will include how to best utilize the OGC for anticipated university legal needs, ways to keep abreast of legal issues that may impact your office, and identifying resources to help you be better prepared to spot potential legal issues and to collaborate with the OGC in resolving legal questions that may arise.

Please call x2157 to or email Lisa Stoddart (l.stoddart@neu.edu) to indicate your interest in these seminars. Your responses will aid us in determining the appropriate accommodations for this seminar, and details regarding time and location will be released thereafter.
The OGC Welcomes Valerie Jackson to its Legal Team

Valerie Jackson has joined our office as a Law Fellow. Valerie’s practice with the OGC includes all aspects of higher education law and employment law. Valerie received her B.A. from the College of the Holy Cross, her M.A. with distinction from Providence College, and her J.D. from Northeastern University School of Law. While in law school, Valerie served as a judicial intern for the Honorable Marianne Bowler at the U.S. District Court of Massachusetts, and was a law clerk at the U.S. Attorney’s Office, Sherin and Lodgen LLP and Morgan Brown & Joy LLP. She also served as senior staff for the Northeastern University Law Journal, and was a Research Assistant to the School’s Legal Research and Writing Program. Prior to joining the OGC, Valerie was an attorney in the employment unit at Greater Boston Legal Services, and at Kurker Paget LLC.

The Compliance Corner: Promoting a Culture of Compliance

Policies are essential to a strong organizational infrastructure, and Northeastern University’s policies set forth institutional values, promote the University’s culture of compliance, and reflect the University’s commitment to operating according to the highest ethical standards. University policies also reflect requirements of various laws and regulations with which the University and/or members of the University community are expected to comply. The University relies upon its policies to provide direction and to promote effective and ethical operations.

On March 21, 2014, the Board of Trustees approved a new Code of Ethical Conduct for Northeastern University. The Code underscores the University’s culture of responsible and ethical behavior, and applies to our entire community, from the trustees to volunteers when acting on behalf of the University. The Code articulates the fundamental values -- such as avoiding conflicts, respect for the rights of others, and compliance with laws and regulations – that underlie all University policies and activities. Look for further announcements of this and other new or revised policies, which are now going to be available in one online location.

The Professional Standards and Business Conduct Policy has also recently been revised. It will no longer be a compilation of policies, but will instead contain links to all the key compliance policies, and so will be easier to update when necessary. You are probably also aware that the Appropriate Use Policy has been revised. All users of Northeastern information systems and accounts are responsible for familiarizing themselves with and adhering to this policy.

There will be more to come on new and updated policies. Watch for the roll-out of the University’s exciting new policy page. And if you haven’t yet done so, be sure to complete your annual Conflict of Interest and Commitment Disclosure Statement as soon as possible.
On March 31, the United States Supreme Court heard oral arguments on the patentability of software for the first time in 33 years in Alice Corp. v. CLS Bank International. The Supreme Court’s initial decision on this issue was in 1972, when it held in Gottschalk v. Benson, 409 U.S. 63 that a software program that converted decimal notation to pure binary notation was not patentable. Through the 1970s, the court maintained its stance that programs were little more than unpatentable mathematical formulas. Then in 1981, the Supreme Court changed the landscape of software protection by granting a software patent to the applicant in the case, Diamond v. Diehr, 450 U.S. 175. That ruling opened a window for the patenting of software. Companies were quick to notice the change, and since the ruling, the number of software patents has continued to increase.

As the prevalence of software patents has grown so have concerns over the effect of software patents on innovation. Opponents of software patents protest that patents unnecessarily slow a rapidly moving industry. They cry foul over the dual protection granted to software from both patent and copyright. As code is a text, it has traditionally been protected by copyright law, which gives creators the exclusive right to copy and distribute their work (among others).

Alice Corp. v. CLS Bank International may once again change the landscape for protection of software. Stay tuned this summer for the Supreme Court’s decision.

On Jan. 22, 2014, the U.S. Supreme Court ruled in Medtronic Inc. v. Mirowski Family Ventures LLC regarding the burden of proving infringement in a declaratory judgment patent case. The Court unanimously ruled that the burden of persuasion in an infringement action is with the patentee, not the party challenging infringement.

Medtronic, a medical device company, entered into a license agreement with Mirowski, a firm that owns numerous patents related to implantable heart stimulators. Mirowski believed that seven new Medtronic products violated Mirowski’s patents. Medtronic asserted that its new products fell outside the scope of the patent claims. After Mirowski alleged infringement by Medtronic, Medtronic brought a declaratory judgment action pleading noninfringement. In accordance with prevailing law, the district court concluded that Mirowski, as the patentee, had the burden of proving infringement by Medtronic, and had failed to meet that burden. Mirowski appealed, and the Court of Appeals reversed. Justice Stephen Breyer, writing for a unanimous Court, held that the burden of proving infringement in a patent case should always remain with the patentee.

This case serves as a reminder that patentees must take great care when corresponding with their licensees, as the former must bear the burden of proving their assertions in any subsequent litigation. This decision will impact many areas of patent licensing practice, including drafting of license provisions, negotiations regarding whether later-introduced products are royalty bearing, and subsequent litigation proceedings.
If my contract needs a Certificate of Insurance, can I send the Certificate of Insurance to the OGC after I submit my contract for review?

No. If your contract requires a Certificate of Insurance, Risk Services required that you send it along with the contract. The OGC cannot review a contract without a Certificate of Insurance or a waiver of insurance from Risk Services. When submitting a Certificate of Insurance, please make sure that it is recent (within 3 months of submission date), that the University is listed as an additional insured and as a certificate holder. If you have questions about Certificates of Insurance or waivers, please contact Risk Services at insurance@neu.edu.

The university has a master agreement with a company. Do I need to submit a new agreement every time I submit a new or updated Statement of Work?

If the master agreement is still in effect, all that will be needed is a new “Statement of Work.” When completing the Statement of Work, include the specific work to be performed, when the work is due, the amount to be paid, and when payment is due. A template Statement of Work is available at the OGC website.

Do I keep a copy of the contract that has been signed by the University, or do I send it to the party with whom I am contracting?

All fully-executed (signed) agreements must be maintained by the originating department. It is the responsibility of the department to keep the original, signed document. Copies of the signed document should be sent to the other parties to the contract. In this way, both parties stay abreast of the business relationship to which they have committed.

When should a contract or agreement be sent to the OGC for review?

Always! All agreements that obligate the University to provide payment, goods, services, use of University property or other University resources of any kind or nature whatsoever or to refrain from exercising any of its legal rights must be reviewed by the OGC. If you’re unsure whether a document is a contract or not, please call us at x2157 or email contractquestions@neu.edu.

I have more questions about contracts, what should I do?

Call x2157 or email contractquestions@neu.edu. and we’d be happy to help.
Contracts Review by the Numbers

From July 1, 2013 to the end of the calendar year 2013, 1,668 contracts were submitted to the OGC. 53% were on University templates. Because they contain OGC-approved terms and conditions, we encourage you to use University templates in your work for the University. OGC’s review of University templates is typically completed in only 1 or 2 days. Most non-template agreements are reviewed in 4 or fewer days. On average, our office reviews 278 contracts per month, or 14 contracts per day.

The types of contracts most frequently submitted were for Services, Independent Contractors/Consultants, Performers, Clinical Affiliations and Licenses. Collectively, over the last six months of 2013, these 5 types of agreements represent 69% of the 1668 contracts reviewed by the OGC. To aid in processing these types of agreements, our office has developed template addenda for Independent Contractor/Consultant agreements, Licenses agreements and Clinical Affiliation agreements. The addenda are available upon request, and can help you in the efficient processing and review of non-template agreements. We have also developed master template agreements for service providers and event facilities. For any of these template documents, call us at x2157 or email contractquestions@neu.edu.

If you have any questions you would like to see answered in Of Counsel please submit them to the Office of General Counsel. Depending upon the nature of your question, we will either answer you personally or address your issue in a future edition of this newsletter.

Of Counsel has been prepared as a general summary of important developments. It is not intended as individual legal advice. Should you have any questions or need information concerning a specific situation or any of the content of this advisory, please contact the Office of the General Counsel, 716 Columbus Place, ext. 2157.

You may access this edition of Of Counsel on the OGC’s website at: www.northeastern.edu/general-counsel/