

OF COUNSEL – Spring 2008
the newsletter of

NORTHEASTERN UNIVERSITY
OFFICE OF THE UNIVERSITY COUNSEL

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What am I supposed to do when I receive an inquiry from an outside attorney?

From time to time attorneys contact University offices by letter or by phone on behalf of a current or former student or employee. The attorney may indicate that he or she is a friend or acquaintance of the student, employee, or his or her family. The attorney may advise you that he or she only is contacting the University in this “friendly” capacity.

Whenever a person presenting him or herself as an attorney contacts the University, the attorney must be referred to the University Counsel’s office to respond on behalf of the University. The University Counsel’s office is the legal representative for the University. The inquiring attorney is required by legal profession rules to work with the University’s counsel, rather than to seek out information directly from the University’s employees. Moreover, an attorney is not viewed as acting as a relative or a friend if he or she uses legal stationery to write a letter to the University, or if he or she identifies him or herself as an attorney when they first contact the University.

Please contact our office when you first receive communications from an attorney. We are available to work with you in preparing the University’s response.

Where should I maintain personal or confidential information about students or employees?

Massachusetts recently enacted a law which regulates disclosures of personal information. This law was enacted after a significant data breach at a Massachusetts company. Under this new law, if personal or sensitive information is improperly shared or made available, the disclosing party must report this action to two different government enforcement agencies. Financial penalties also apply. The definition of personal information under this new law is interpreted broadly and is defined as:

- First name and last name OR first initial and last name, COMBINED WITH
- Social security number OR

- Driver's license or state issued i.d. number, OR
- Financial account number, or credit or debit card number (with or without required security code, access code, personal i.d. number or password, to gain access to an individual's financial account.)

In your capacity as a University employee, you may need to maintain personal data about students and/or employees which fits within the law's definition. Current University policies prohibit the inclusion of information such as social security numbers on rosters or other documents. We realize that some University employees may utilize document maintenance websites outside the University. You may have used such sites as part of your academic or professional work. However, it is crucial that personal information about Northeastern students and employees is not maintained or otherwise accessible outside the University. Similarly, employees must use their neu.edu email accounts to communicate confidential University information or about confidential matters.

The University now has available electronic storage sites for University records and information. These sites are controlled and safeguarded by the University. We encourage you to contact the University's Information Security Department at x7718 to identify information maintenance options which will work best for your particular department. In the event you become aware of what you think may be a data breach of University information, you are advised to immediately notify Glenn Hill at the extension noted above, x7718.

URGENT MESSAGE TO ALL SUPERVISORS OF H1B EMPLOYEES and DEPARTMENTAL PERSONNEL ADMINISTRATORS

Authorization for employment under the H1B status/category carries with it defined parameters. When the University petitions for a potential or existing employee under H1B status, we must attest that the person will perform specific responsibilities in a specific job at a specific location and be paid a specific amount that must meet or exceed the prevailing wage as set by the Department of Labor. **Changes to the terms of employment cannot take place** until an amended petition is filed that reflects the changes in the job and adjusted compensation where necessary. This is strictly and narrowly construed and is strictly enforced! This means that hours cannot be added or subtracted, responsibilities cannot be enhanced, broadened or diminished (including promotions or reconfiguring a position), and the person cannot be relocated from one facility to another without an amended petition being filed. The penalties for the employee for working without authorization (which unauthorized changes would constitute) and for the institution to not only allow but generate unauthorized employment (which unauthorized changes would constitute) are serious and with lasting consequence.

If you have an employee in H1B status whose responsibilities you would like to change, you must work with University Counsel **in advance** of any promotion or adjustment to their position.

Did you miss the announcement about the Northeastern University Compliance Helpline (617-373-5911)? – Well, here it is again!

Northeastern University is dedicated to upholding the highest standards of professional conduct and compliance with all applicable laws, regulations and ordinances that may apply to University activities. The University embraces the principles of honesty, integrity, respect and professionalism in its own conduct and the conduct of those acting on its behalf. The University expects those principles will be upheld by all administrators, faculty, staff, and the student body as well as outside contractors providing services to the University.

We understand that at times there may be deviations from these principles. It is important for each of us to assume responsibility for reporting such deviations. Typically you should report such matters to your supervisor, or to the supervisor of someone you believe to be acting in a manner that is not compliant with University policies or procedures. If you do not feel comfortable reporting that activity through the appropriate channels, the University recognizes the need for an alternative way to communicate those concerns confidentially and perhaps anonymously. The University Compliance Helpline, 617-373-5911, is a secure phone line that has been set up to accept confidential and even anonymous reports from members of the University community. Reports may also be made via E-mail to comphelpline@neu.edu or direct mail to Brian Burns, the Director of Audit, Compliance and Risk Services. In accordance with University policy, all reports can be made without fear of retaliation.

This confidential reporting mechanism is available to accept reports related to concerns of non-compliance, acts outside University policy, unethical conduct, conflicts-of-interest and working conditions inconsistent with university policy and values, as well as incidents of fiscal misconduct. This compliance helpline is available to all constituencies of the University community.

The University Compliance Helpline, is maintained by the Office of Institutional Audit, Compliance and Risk Services. The office will investigate all reports about improper conduct or violations of laws, University policies and procedures or other evidence of inappropriate behavior. When an investigation reveals that there is evidence to support the complaint, the office will ensure that the University Administration takes the appropriate actions.

We all play an important role in the University's on-going effort toward achieving excellence in all that we do. A community that is willing to assume responsibility and play an active role will ensure that we succeed. Thank you for doing your part.

If you have questions about the University Compliance Helpline or the type of activity the Helpline is set-up to address, please contact The Office of Institutional Audit, Compliance and Risk Services at x5997.

Contract Review Update

New:

The Office of University Counsel will soon begin requiring that a standard cover sheet be submitted with all contracts for review. Please be on the lookout for an upcoming NU Announcement detailing this procedure.

As a general reminder, here is the University contract Review Policy:

CONTRACT REVIEW POLICY

This policy and procedure establishes a process for the review and authorization of contracts entered on behalf of Northeastern University.

This contract review process assumes that the necessary University officials have approved the project covered by the contract. It is the responsibility of the originating department members to obtain the necessary approvals to move forward with the project before the commitments have been made. The review described here is intended to occur after the approval of the project has been obtained, and to focus on the contents of the contract itself.

What is a contract?

A University contract is any agreement between the University or any of its subunits and another party, which is intended to have legal effect, whether or not it is titled "contract." Contracts have certain components; most importantly, there must be a common understanding among the parties as to the essential terms of the agreement and something of value must be exchanged by each party. An agreement may be a binding contract even though one party provides something of value to the other party at no charge. A contract may involve a commitment of University funds, facilities, personnel, other resources, of the University's name, or it may be a commitment for the University to give up a right it otherwise may have. Examples of University contracts include: agreements for the purchase or rental of goods or services, nondisclosure or confidentiality agreements, agreements that set terms for acceptance of gifts, a sale, lease, or donation of University goods or services, liability waivers, settlement of disputes, licenses, student or faculty exchange agreements, etc. The above list is not all-inclusive. While acting in the scope of your employment, you must presume that you are negotiating a University contract.

Why do we have centralized signature authority and legal review of contracts?

Problems have arisen when employees have entered into contracts on behalf of the University without having authorization to do so and without fully understanding the implications of the contract terms. If an employee signs a contract that he or she is not authorized to sign, the employee will be held personally liable for the contract, as he or she will have acted outside the scope of his or her authority as an employee. Personal

liability may include responsibility for all costs associated with the contract, including the costs of legal defense.

The Office of University Counsel reviews contracts for legal form, including, but not limited to, appropriate designation of parties, legal consideration (i.e., mutual obligations), jurisdiction, term and liability.

Signature Authority

Board of Trustees' policy specially addresses the issue of authorization to enter into contracts on behalf of Northeastern. Only the President, the Vice President of Administration and Finance and the Treasurer have signature authority for all contracts. Signing authority may be officially delegated if authorized by the Board of Trustees in writing, and will usually only be granted to a specific person for specific tasks for a period of time not to exceed one year. If an employee authorizes delegation of his or her authority outside of these parameters, that employee does so at risk of personal liability.

Legal Review Policy:

All proposed University contracts require review by the Office of University Counsel prior to execution by an authorized signatory.¹

The employee or department submitting the contract is responsible for understanding and approving of the business terms of the Agreement, and is responsible for following all other applicable University policies in the execution and administration of the contract.

All contracts must be submitted in hard copy to the Office of University Counsel at 115 Churchill.

It is always preferred that a template authorized by the Office of University Counsel be used as the contract. If there is an applicable University Counsel template available, employees are encouraged to convince the contracting party that it must be used. Often the party will do so if you explain that it is University policy. University Counsel templates are specifically designed to protect the University. Use of a University Counsel template facilitates the review process. Employees and departments are encouraged to contact the Office of University to discuss creation of templates for commonly encountered situations. Authorized templates will be made available on the Office of University Counsel's website.

Employees must allow a two week turnaround window for contracts to be reviewed upon receipt by the Office of University Counsel. Many factors influence the amount of time

¹ The only exceptions to this are certain contracts that originate with or are facilitated by the Office of Technology Transfer and the Division of Sponsored Research, which are the subject of specific authorization for internal review and approval.

required for the Office of University Counsel to complete this review. For example, when the Office of University Counsel is required engage the contracting parties to negotiate or clarify terms, Counsel cannot control the parties' response time. The best way to expedite the review of a non-template contract is to submit it in a condition that it is as close to acceptable by the University as possible. .

Many contracts submitted, as well as requests that Counsel create a contract, are complicated and require the involvement of many parties. On some days five contracts are submitted to the Office of University Counsel's, and on other days fifty are submitted. Therefore, we do our best to accommodate true emergencies – they are to be brought to the attention of General Counsel, Vin Lembo, for approval of expedited review.

Contract Processing

After legal review, the contract will be sent to the Treasurer's Office for signature. The Treasurer's Office will contact the person listed on the cover sheet when the contract is signed and available for pickup. If your contract document requires signatures in multiple places, it is helpful to put signature flags where signatures are required.

The submitting employee is responsible for maintaining copies of all submitted and executed contracts, including insurance certificates. The Office of University Counsel will not keep a copy of your contract, nor will the Treasurer's Office.

'Of Counsel' has been prepared as a general summary of important developments. Its contents are intended for general information purposes only. It is not intended, nor should it be considered, 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 University Counsel, 115 Churchill Hall, x2157.

In addition, if you have topics of interest for future issues, please let us know!

Note: Previous editions of Of Counsel may be found at the Office of University Counsel website <http://www.northeastern.edu/legal/newsletter.html>.