In Brief

Updates from the Office of Legal Affairs

John Carroll University

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Drug-Free Campus Requirement and Ohio's Medical Marijuana Law

In May of 2016, Governor John Kasich signed House Bill 523 into law, legalizing the medicinal use of marijuana in the State of Ohio. This makes Ohio the 25th state in the United States to legalize its use. The law's substantive changes began to take effect this past September. Despite this change in Ohio's law on the medical use of marijuana, John Carroll University must continue to comply with federal drug-free laws, and the possession or use of medical marijuana is not permitted by students or employees on the University's campus.

Overview of Law

The new law allows for the use of cannabis, in varying forms, for the medical treatment of approximately twenty "qualifying medical conditions." The individual seeking marijuana treatment also must have a valid prescription from a licensed physician who has permission to prescribe from a state medical board. While Governor Kasich's signing does change the state law in Ohio, it has no effect on the federal rules governing John Carroll University and its students and employees.

Drug-Free Requirements

In order to continue to receive federal grant money, awards, or other aid, the University must comply with federal regulations regarding prohibitions on illegal drug and alcohol use on its campus and University-owned property. The Drug-Free Schools and Communities Act, Drug-Free Workplace Act, Occupational Safety and Health Administration regulations, and several other federal laws or regulations require institutions of higher education, such as John Carroll University, to implement a drug- and alcohol-free program on campus. The institution's program should prevent "the unlawful possession, use, or distribution of illicit drugs or alcohol by all students and employees on school premises."

Student Use of Medicinal Marijuana

Prescriptions for medical marijuana are not lawful under federal law. Consistent with this rule, students who possess these state-authorized marijuana prescriptions will not be allowed to store or use marijuana on John Carroll University's campus. The University cannot accommodate these prescriptions because to do so would be a direct violation of federal statutes and could result in the loss of federal funding and aid. The possession and use of marijuana will continue to be regulated and disciplined if found in any University residence halls, campus buildings, or any other University-owned properties. If a student is in possession of marijuana while on University property, the student will be subject to discipline in accordance with the University's student policies. Students also should be aware of the adverse effects of their personal, independent use of marijuana, for medical or recreational reasons, on their future employment opportunities.

Employee Use of Medicinal Marijuana

Ohio is one of a few states that has expressly addressed an employee's use of medical marijuana within the new law. Under Ohio law, employers may continue

to prohibit and test for all drug use, including medical marijuana. The law's provisions include:

- Employers may still test employees for marijuana and may terminate an employee's employment even if 1) the employee uses marijuana "off duty"; 2) no evidence of impairment exists; and 3) the employee has a valid prescription for medical marijuana.
- Employers are not required to provide an "accommodation" for employees with medical marijuana prescriptions.
- Employers must continue to comply with any federal laws, including those which require a drug-free campus or workplace.

JCU Drug-Free Policies

Consistent with federal law, the University has implemented a drug-free workplace and drug-free schools policy and program. More information on the University's drug- and alcohol-free policy and program can be found at http://webmedia.jcu.edu/hr/files/2016/11/Drug-Free-Workplace-Policy_11_22_2016.pdf for employees and http://sites.jcu.edu/deanofstudents/pages/community-standards/alcoholic-beverage-policy/ and http://sites.jcu.edu/deanofstudents/pages/community-standards/university-drug-policy-2/ for students.

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Confidentiality of Disability-Related Information

The goal of two disability laws - Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) - is to level the playing field for students with disabilities. The laws do this by assuring that students with disabilities have the same rights and opportunities as every other student. Section 504 and the ADA focus on providing individuals with disabilities with accommodations they need to succeed in academic and campus life, while at the same time maintaining the individual's privacy regarding the disability. JCU's Office for Student Accessibility Services is the University's office in charge of collecting, evaluating, and housing student disability documentation and determining eligibility for accommodations. Disability-related information is maintained in that office on forms, separate from other student records, and kept in secure files with limited access.

What Information Can and Cannot be Shared?

Disclosure of disability-related information is left to the student's discretion. Unless a student expressly discloses or authorizes disclosure of a disability, faculty and staff may not speculate on a student's disability or disclose information about a disability. Faculty and staff may not ask a student if he or she has a disability or the nature of the disability. For example, when a student requests and is found eligible for additional time on exams, faculty and staff may not ask why the student needs additional time. The law directs that whether the accommodation is provided because of a learning disability or because of an attention disorder is irrelevant to the need for the accommodation.

These disability laws provide an exception if the student poses a direct threat to others. The Family and Education Rights and Privacy Act (FERPA), the federal law governing disclosure of education records, also provides a health and safety exception to these strict limitations on confidentiality. This permits the disclosure from student records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals. Safety concerns warranting disclosure could include a student's statements about self-harm, unusually erratic and threatening behavior, or similar conduct that others would reasonably see as posing a risk of serious harm. It also may include general safety inquiries made of all students regarding laboratory safety requirements.

In any event, it is important to keep in mind that disclosure of a student's disability-related information must be balanced against the student's right not to have that information disclosed. The best way to preserve the privacy of students with disabilities and provide appropriate accommodations at the same time is to contact JCU's Office for Student Accessibility Services with your questions or concerns.

Confidentiality of Employee Medical Records

The ADA does not only protect student disability information, but it also provides special confidentiality requirements for employment-related medical records. The ADA provides that information obtained by an employer regarding the medical condition or history of an applicant or employee must be collected on separate forms, kept in separate medical files, and be treated as a "confidential medical record."

"Section 504 and the ADA focus on providing individuals with disabilities with accommodations they need to succeed in academic and campus life..."

However, there are certain limited exceptions under the ADA regarding confidentiality of employee medical records. First, supervisors or managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations. Second, to plan for emergency treatment that may be necessary due to a disability, first aid and safety personnel may be advised of the disability and appropriate safety planning information. Lastly, government officials investigating compliance with the ADA may be provided with information contained in an employee's medical records file.

Generally, all disability-related information and medical records involving an employee should be directed to and maintained by either Human Resources or Risk Management. These offices may consult with the Office of Legal Affairs to review issues of compliance with the law. Supervisors who receive disability or medical information from an employee should direct the employee to Human Resources or Risk Management, and should forward any medical records to one of those offices for retention.

Upcoming Training Session

April 12, 2017
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 and Human Resources

Fair Labor Standards Act Update

Proposed Regulations Still on Hold

As discussed in the September 2016 Legal Affairs In Brief newsletter, all U.S. employers were gearing up and diligently planning to implement proposed changes to the Fair Labor Standards Act (FLSA) regulations, which were to take effect on December 1. These regulations would have doubled the salary threshold for employees to qualify for "exempt" status under the FLSA.

Those plans were placed on an abrupt hold in November by a Texas federal court's order, halting the implementation of the proposed regulations based on a substantial likelihood that the plaintiffs would prevail in showing that the regulations were unlawful. The court found that the U.S. Department of Labor had exceeded its authority in increasing the salary level and had not used the appropriate rule-making process.

The U.S. Department of Labor under President Obama's Administration appealed the ban. Reports are that it is likely that President Trump's Administration will choose not to proceed with the appeal prior to a decision on the appeal.

As of this date, the ban on these proposed regulations remains in place, and the regulations have not become effective and are still on hold. Commentators indicate that the proposed regulations may never become effective, but alternative revised FLSA regulations may be proposed. Therefore, the current FLSA regulations and salary threshold remain in effect.

For questions regarding the FLSA's current requirements, you may contact Human Resources or the Office of Legal Affairs.

The Genetic Information Nondiscrimination Act

The Genetic Information Nondiscrimination Act (also known as "GINA"), signed into law in 2008, provides individuals with protection against discrimination by employers based on an individual's genetic information, as well as prohibiting health insurance companies from raising costs or denying coverage based on an individual's genetic information.

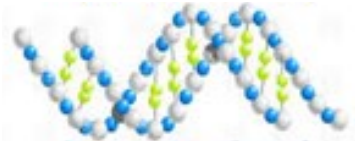
GINA and Employment

GINA prohibits employers from failing or refusing to hire an individual because of genetic information. For current employees, GINA prohibits employers from discharging or otherwise discriminating, limiting, segregating, or classifying an employee because of genetic information.

GINA also prohibits employers from requesting, requiring, or collecting genetic information. This includes: information about an individual's genetic tests; the genetic tests of family members of the individual; the manifestation of a disease or disorder in family members of the individual; requests for receipt of genetic services; or genetic information about a fetus being carried by either the individual or an individual's family member. There are some situations in which it is permissible for employers to obtain genetic information, including: forms that an employee would be required to fill out under the Family Medical Leave Act (FMLA), and voluntary health services and programs, such as employee wellness programs, when certain requirements are met.

GINA and Health Insurance

GINA also prohibits health insurance companies from requesting or requiring genetic testing, and restricts the collection of genetic information – including that of the individual's family members or general family medical history – in connection with enrollment, or for underwriting purposes.



Further, these companies cannot base premiums for a plan or a group of similarly situated individuals on any genetic information.

However, GINA does not cover disorders and diseases which are manifested. Manifested conditions are those that have been or could be reasonably diagnosed by a health care professional with appropriate levels of training and expertise in the involved field of medicine. For example, in the case of an individual with a gene mutation which does not present symptoms until an individual is in their 20s-30s, if the individual begins to show signs of and is diagnosed with the disease, the health care insurer is permitted to use the manifestation of the disease to make decisions as to the individual's eligibility, premiums, and coverage.

Health insurance companies are also permitted to require genetic information if the information is necessary to make a determination about payment for a requested test, treatment, or procedure. The insurer may only ask for the minimum amount of information necessary in order to determine the medical necessity of the requested test, treatment, or procedure.

For more information on GINA or how it relates to benefits, contact the Office of Legal Affairs at ext. 1590 or Human Resources at ext. 1576.