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5 Best Practices for Avoiding Legal Problems

Over the years, we have learned that most of our legal advice can be boiled down to five main pointers that, if followed, tend to prevent 99% of legal problems. We are often heard sharing these at legal issues seminars on campus, and thought it would be helpful to reiterate them here.

1. Know (or know where to find) and follow the University's policies.

When an issue arises, there is likely a policy addressing it. University employees are charged with knowing and following all applicable University policies. If it's been a while since you've reviewed them, now's the time. Find them at k-state.edu/policies. You should read all of them, but as a start, review the table of contents and/or index so you have a general idea of what's there. If an issue crosses your desk (or your mind), your familiarity with the policies will help you to find the ones that might apply. The policies are also word-searchable.

2. Use available resources/offices.

Many offices and employees on campus are ready, willing, and able to help you wade through the murky waters of whatever workplace or classroom issue you're facing this week. They're also there to help you scale the mountains to tackle new, but daunting, opportunities. Please peruse their websites or give them a call to familiarize yourself with what services are available and whom to ask for help. For example, the Department Head Resource page at k-state.edu/academicpersonnel/depthead/index.html provides links to policies, forms and offices useful to department heads and other administrators. The Office of General Counsel's website at k-state.edu/generalcounsel has a list of useful resources and FAQs.

3. Always treat people fairly and with respect.

Treating people fairly and with respect should be part of everyone's moral code. Beyond ethical value,

treating people with integrity will also keep you on the right side of the law in most instances. We can all point to a federal law or applicable policy that appears to go beyond the reach of common sense, but for the most part, the scattered and often long-winded regulations that govern our actions have a commonality at their core: ethical and fair conduct.

So if you forget all the rules or find yourself in a position where you don't have time to consult the resources mentioned above, just treat people in a way that would please your grandmother. And when tempted to go beyond what would be fair and equitable in the situation, give the decision the front page of the newspaper test. How would our local taxpayers feel after reading a summary in the Sunday paper?

4. Document actions and events.

Time passes quickly and we all have many things to keep track of simultaneously. Make notes to document actions and events; do not rely solely on memory. Include details: who, what, when, where, and sometimes why. Be sure to include the hard facts, not just conclusory statements. See our August 2014 newsletter for more information on documenting employee performance and conduct, available at k-state.edu/generalcounsel/newsletter/pdfs/Aug2014OGCNewsletter_rgb_2.pdf.

5. Spot legal issues, and consult the Office of General Counsel.

About 80% of our work as K-State's in-house attorneys is preventive in nature, *i.e.*, advice given before a grievance or litigation arises. We'd like it to be 100%! Please contact us early and often so we can assist you in working through issues as you make decisions that have potential legal consequences for the University. We are here to help.

Service is Our Business

Who are we, and what do we do? The OGC is the in-house "law firm" for K-State. We are a group of attorneys and paralegals dedicated to providing administrators and other employees acting on behalf of the University with timely, accurate legal advice and practical guidance in a collaborative environment. We are involved in early and ongoing preventive advising, policy review and development, contract review and negotiation, proactive education about legal issues, and all stages of dispute resolution, including litigation. Our goal is to facilitate the University's success in its educational, research and service missions, including the K-State 2025 visionary plan, by helping prevent and solve legal problems.

Featured FAQ

Q: Who is required to make a report to the Office of Institutional Equity if s/he becomes aware of possible discrimination, harassment, or sexual violence in violation of the University's anti-discrimination policy?

A: Generally, all persons on campus should make a report to the Office of Institutional Equity if they know or have reason to believe that discrimination, harassment, or sexual violence has occurred in violation of the University's anti-discrimination policy (PPM Chapter 3010). Under the policy, "supervisors and administrators" are required to contact the Office of Institutional Equity if they have such knowledge. Factual circumstances will determine whether a particular employee is an administrator or supervisor.

For the purposes of this reporting requirement, "administrators" are management level personnel. At Kansas State University, that typically includes department and unit heads, directors, and equal or higher ranking administrators. Administrators must report whenever they have knowledge of any potential discrimination, harassment, or sexual violence in violation of the University's policy.

"Supervisors" are personnel with authority over other employees (such as day-to-day management of employee tasks, or hiring and firing responsibility) or with authority over a particular University environment (such as responsibility for the floor of a residence hall). Supervisors must report whenever they have knowledge of possible discrimination, harassment, or sexual violence within their area of supervisory responsibility. Supervisors who are also administrators must report whenever they have knowledge of any potential discrimination, harassment, or sexual violence in violation of the University's policy, whether or not it relates to their area of supervisory responsibility.

Any employee who is unclear about whether s/he is an "administrator" or "supervisor," or who has other questions about the reporting requirements, is welcome to contact this office and/or the Office of Institutional Equity for further clarification.

Visit our website:

k-state.edu/generalcounsel

Our website gives an introduction to the services we provide and addresses frequently asked questions. It also houses a list of resources for easy access to laws and policies applicable to University operations.

Don't Give Away the Farm (or Your Research Area)

Faculty members are occasionally contacted by private companies to providing consulting or other services. These can be nice opportunities for faculty members, but it is imperative that department heads and other supervisors review proposed agreements between faculty members and the outside companies, so that they understand the nature of the relationship before approving the consulting activity. Consulting activities must be approved in advance by the department head, dean and Provost, according to Appendix S of the University Handbook, the Policy on Conflict of Interest, Conflict of Time Commitment, Consulting and Other Employment at k-state.edu/academicpersonnel/fhbook/fhxs.html. The Policy prohibits external activities that compromise proprietary or other confidential university information.

Companies, through their consulting agreements, regularly attempt to own everything related to the consultancy — the intellectual property, the faculty member's "know-how" that is not reflected in the IP, and even the faculty member's research area. Faculty members can sometimes fail to appreciate the prohibitive effect these agreements might have on their ability to conduct future research for the University and otherwise.

To avoid these problems, as well as to avoid issues involving conflict of time commitment or conflict of interest, department heads and other supervisors need to: (1) review consulting agreements to ensure the agreements do not compromise the University's interests; and (2) contact the Office of General Counsel and/or the Office of the Vice President for Research if they have any questions or concerns about a proposed consulting agreement.

A "Contract" By Any Other Name...

A contract is an agreement between two or more parties to undertake specified obligations. It can have many different titles other than "contract."

A contract is often called another name, such as a memorandum of understanding, memorandum of agreement, purchasing agreement, services contract, lease, easement, invoice with specified terms, request for proposal attached to an agreement, offer letter, guarantee, terms of service, terms and conditions, terms of use, license, grant, research agreement, commitment, settlement, binding promise, among many other names. Contracts can be written or verbal and made in hard copy or electronically (sometimes by a simple click of the mouse and/or check of a box!). Persons acting on behalf of the University must follow the procedures found in the [Policy and Procedures Manual, Chapter 3070](#) before entering into a contract that imposes obligations on the University, no matter the name or form given.

Only the University President and his designees have contracting authority to bind the University. These persons and their areas of contractual signatory authority are set out in a letter from the President that is continually updated and published in Chapter 3070.030.

Prior to signing, contracts must be routed through the Office of General Counsel. When routed through the Office, an attorney reviews it to ensure that its terms are consistent and that it does not create unexpected obligations or unacceptable

liability for the University. The attorney may suggest edits or additions to the contract's terms, which also may involve negotiations with the other party. The one exception to the Office of General Counsel's review is when the contract is a template agreement, previously approved by the Office, and there are no changes to the template's terms (including any appendices or other attachments) other than dates, names, or dollar amounts.

The most efficient way to submit a contract for review and approval is to first review it according to the [Contract Review Checklist](#), attach the [DA-146a](#) to the contract, and then submit it as directed in the Contract Review Checklist. This may include first submitting it to Pre-Award Services or Purchasing prior to review by the Office of General Counsel. When submitting the contract to the Office of General Counsel, please email the contract and the completed Checklist to attys@ksu.edu or deliver a hard copy.

You are encouraged to allow as much time as possible for review prior to when the contract must be finalized, particularly when the contract must also go through other review processes such as the Office of International Programs or other offices as described in [Chapter 3070.060](#). Each step of the process is important in protecting the University from unintended liabilities and expenses.

Quote of the Day:

"Injustice anywhere is a threat to justice everywhere."

— Martin Luther King

About this Publication:

This newsletter is designed to serve as a practical informational tool, bringing you topics of interest and practical tips. It should not be relied on as a substitute for legal advice. Laws, regulations and policies change frequently, and legal advice requires careful consideration and application of all relevant facts. If you have legal questions or need legal advice concerning any University matter, please contact the Office of General Counsel directly at 785-532-5730 or attys@k-state.edu