

# In Brief

Updates from the Office of Legal Affairs



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## Issues Related to Remote Work Out of State or Out of the Country



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In an effort to preserve public health and safety after the onset of the COVID-19 pandemic in 2020, countless university employees and students workers around the globe quickly transitioned to working remotely. This was a change that impacted numerous members of the John Carroll University community as well. As a result, new questions arise when this work is being performed in another state or country.

Be it out of state or out of the country, one must consider the variety of legal and administrative challenges that may arise as a result of JCU employees or student workers performing work remotely from a location other than Ohio. These considerations typically are not applicable for short stays, such as when a student or employee uses telecommuting during a study abroad trip or while vacationing out of town. While the exact amount of time required to trigger these considerations depends on the specific state, country or arrangement involved, generally the employee must consistently work in a nonresident location for more than a de minimus period of time for these administrative issues to arise.

When considering an employee's request to perform remote work out of the state or country, JCU's Human Resources and Finance Offices must consider the following:

- Business entity registration and new employee requirements. Many states require out-of-state employers to register their business in the state, comply with that state's business entity requirements, and to report new employee hires, even if only one or few employees are working in the state.
- Out-of-state taxes. Many states will tax an employee's income based on their presence in the state, even though the employee also will pay Ohio taxes.
- Worker's compensation insurance. For each state in which a University employee works, the University must pay for and maintain a separate worker's compensation insurance policy.

- Unemployment insurance. Like worker's compensation, many states require employers to maintain unemployment insurance specific to the state.
- Staying current on state and local laws. For each state where the University has an employee, the University's payroll staff must keep track of any changes to that state's tax, insurance, minimum wage, and compliance laws. This means keeping abreast of the employment laws of additional jurisdictions.

Not surprisingly, there are additional considerations should an employee request authorization to work remotely from another country. In addition to the above concerns, there also are issues of:

- Health care. The employee's healthcare plan may or may not cover expenses in foreign countries, and the specifications of the plan may or may not comply with local regulations for that other country. Some
- (Continued on page 3 "REMOTE WORK")**

## The Mask:

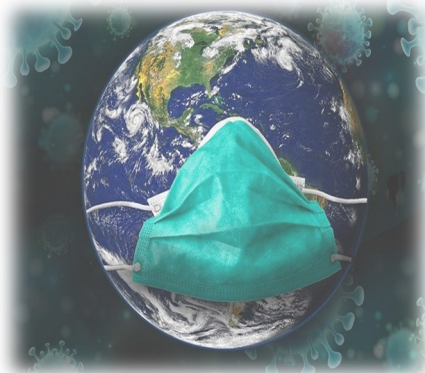
### Ohio's Requirements for Employees and Students

The return to in-person learning this Spring 2021 semester brings new challenges and questions on how to implement best public health practices and comply with federal and state guidance regarding COVID-19. The requirements regarding face coverings is one of those new areas arising out of COVID-19. In making the transition back to Hyflex in-person learning as smoothly and safely as possible for all involved, the University is following the guidance provided by the Ohio Department of Health and the Centers for Disease Control, including those related to face coverings.

The guidance provided by the Ohio Department of Health requires all campus employees and students to wear a cloth facial covering except for a few exceptions, such as:

- Facial coverings that are prohibited by law, regulation, documented industry standards, or documented safety policies;

**Continued on page 3 ("MASKS")**





## New Legal Requirements on the Horizon with a New Administration

With the inauguration and the installation of the Biden Administration, a number of changes are on the horizon for higher education in light of a number of executive orders issued to date, as well as changes in regulations that may be enacted. Here are a few of the changes that have been implemented or are imminent as of this date:

- General identity and sexual orientation: On January 20, 2021, President Biden signed an executive order extending the protections for individuals based on gender identity and sexual orientation from employment (as provided for in the 2020 U.S. Supreme Court case Bostock v. Clayton County) to other areas of the law, including to educational activities under Title IX. While Cuyahoga County's current ordinance also prohibits discrimination based on gender identity and sexual orientation in employment and housing, this executive order requires federal administrative agencies – including the U.S. Department of Education – to review existing policies and regulations and extend these protections on the federal level to areas under education, housing and immigration laws. Based on a statement issued by the White House, there is discussion about changes that will occur for the extension of gender identity protections to athletic competitions and athletic facilities.
- Title IX regulations: The Biden administration has announced its intent to review and reverse a number of Title IX rules initiated by the prior administration and enact new Title IX regulations. Doing so would alter the current regulations, which require hearings with cross-examination by the parties and will likely broaden the narrower definition of sexual harassment that recently went into effect. Any changes made to Title IX regulations under the Biden administration will likely take at least one (1) year to enact.
- More international students will be eligible to travel to the United States and enroll in universities in light of the reversal of the ban on travelers from Muslim countries and the removal of the 4-year restriction on international student study.
- Student debt relief and college affordability, including public education tuition and community college funding, will be a focus of Biden administration initiatives.

The Office of Legal Affairs will continue to monitor developments in the law, regulations, and executive orders under the Biden administration.



## Reminder and Request from Web Accessibility Task Force

Over the past several years, JCU has worked to ensure its website and publicly facing webpages are accessible to everyone, including those individuals with visual impairments or other disabilities. The University's Web Accessibility Task Force – consisting of representatives from Student Accessibility Services, Risk Management, Marketing, IT, the Provost Office, and Legal Affairs – reviews JCU's web accessibility compliance and recommends actions to help address any issues.

As part of ongoing efforts to ensure accessibility, the Task Force requests department personnel who have webpage oversight to take a moment to review your department's webpage for any potential accessibility issues. Doing so is a small step that can help ensure the contents of JCU's website is fully accessible to all.

Information about web accessibility can be found on the Task Force's webpage ([jcu.edu/web-accessibility](http://jcu.edu/web-accessibility)), which contains a checklist of items to review to make documents and websites accessible. In addition, you can test your webpages for accessibility by using the free WAVE Web Accessibility Evaluation Tool ([wave.webaim.org](http://wave.webaim.org)). Should you have specific questions about your department's website in regard to accessibility compliance, please reach out to the Web Accessibility Task Force.

## Are you in need of a Notary Public?

The Office of Legal Affairs offers complimentary notary services for members of the John Carroll community.

Notary services in Ohio are governed by Ohio law, and a Notary Public must comply with these legal requirements. When seeking the services of any Notary Public, please remember the following:

- A Notary Public is verifying the signature is that of the person appearing before the Notary. The Notary cannot verify the document is valid or that it meets legal requirements.
- Always bring photo identification to prove your identity to the Notary Public (appropriate photo identification includes a valid passport, valid driver's license, or another valid government-issued photo ID card.)
- A signatory must always personally appear in front of a Notary Public. One may not present a document for notarization on behalf of another individual.
- Notary Publics who are not licensed attorneys are unable to provide legal advice in any capacity. This means that a non-attorney Notary Public cannot assist with the preparation of, or answer questions about, the document in need of notarization. Please review any questions you may have with a licensed attorney prior to meeting with a Notary Public.
- Some documents allow an individual to sign a document in advance, only personally appearing in front of a Notary Public to acknowledge their signature. However, the majority of documents require an individual to physically sign in the presence of a Notary Public. When in doubt, it is best to wait to sign in the presence of a Notary Public.

If you are in need of a notary, please contact Marissa Mozden at [mmozden@jcu.edu](mailto:mmozden@jcu.edu) or 216-397-1590 to schedule a time, or stop in to the Office of Legal Affairs (Rodman Hall, Room 115).

For additional information and resources on Notary Publics, please refer to the Ohio Secretary of State website at [www.sos.state.oh.us](http://www.sos.state.oh.us)

## REMOTE WORK (continued from page 1)

countries require a level of minimum coverage, and the employee's existing plan may not suffice.

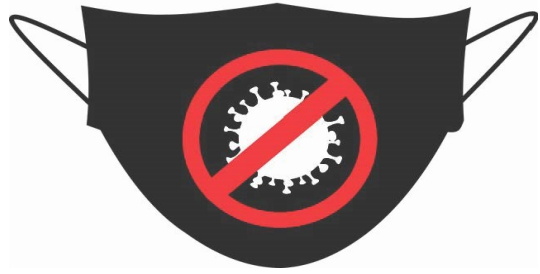
- **Payment.** It may not be possible for the University to directly deposit an employee's salary into a foreign bank account.
- **Unemployment.** If the relationship between the University and the employee ends, the employee may not be eligible for unemployment benefits from Ohio or for other federal benefits.
- **Local employment laws.** There is even greater variation amongst countries' employment and tax laws. Many countries also mandate rest periods, parental and sick leave, minimum wage and overtime requirements, severance payments, and more. The University must stay abreast of these laws, and comply with them.

The variation from state to state, and especially from country to country, can require significant time to conduct these due diligence efforts and added costs for the University. Maintaining files and ensuring compliance in various locations is required, and there are potentially serious consequences for failure to comply.

In addition, employees need to consider other potential barriers to fully successful remote-work performance. These barriers may include:

- Time zones and time changes.
- Travel restrictions.
- Visas and work permit requirements.
- Connectivity issues.
  - Not only must the employee have a sufficient internet connection to perform the work duties, the employee also must have access to certain programs. Neither of these are guaranteed in all countries. For instance, Google platforms may be restricted in China, so an employee may not be able to access University email from that country.

While JCU recently announced its plans to resume on-campus work for staff members effective March 29, 2021, JCU staff who are authorized to telecommute or have a documented work accommodation based on accommodations or other COVID-related reasons may continue to work from home. Others may be working or teaching remotely. Any employee wishing to consider working remotely from a location other than Ohio should contact Human Resources or the Provost Office for review of potential issues prior to doing so. The Office of Legal Affairs is available to assist with legal or compliance questions regarding these matters.



## MASKS (continued from page 1)

- Facial coverings are not possible for health reasons;
- Facial coverings are not required when an employee is working alone in an assigned office;
- Facial coverings are not required when the student is alone or with roommates in a residential setting;
- There is a functional reason a facial covering cannot be used for the work at issue, as approved by the COVID-19 Task Force; and/or
- Cloth face coverings are not required outdoors on campus if six feet of physical distancing can be maintained.

One of the functional reasons that may justify an exception to the usual cloth face covering requirement is if the facial covering is an impediment to academic content delivery, such as for those learners with a hearing impairment or when teaching a foreign language and reading or seeing lips is critical. In such cases, the University can offer an instructor a clear mask, which is a cloth face covering with clear plastic over the mouth area so reading and seeing lips is possible. In addition, the University can install plexiglass barriers or offer facial shields in classroom settings while the instructor maintains a 6-foot physical distance.

However, it is important to note that the Centers for Disease Control does not recommend the use of face shields as a substitute for face masks or coverings because of a lack of evidence of their effectiveness to control the spread of the virus. Therefore, the University's current requirements for wearing cloth face coverings, rather than facial shields, on campus will continue through the Spring semester.

Consistent with the Ohio Department of Health mandates, the University may only offer exceptions to the requirement of wearing cloth face coverings (except for an employee working alone in an assigned office) if the University has a written justification for the employee seeking any exception. Therefore, any employee seeking an exception under any of the provisions noted above needs to contact Human Resources for review of the request and if granted, to permit the University to develop the required written justification for the exception or an alternative accommodation plan.

For more information on the University's policy on facial coverings, see the [Interim COVID-19 Policy](#), or contact Human Resources or the Office of Legal Affairs.

