

In Brief

Updates from the Office of Legal Affairs



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Student Safety Bolstered with New Hazing Law

Hazing on college campuses has resulted in tragic outcomes in recent years, sparking efforts at prevention and training to stop its prevalence. Governor Mike DeWine and the Ohio legislature have acknowledged a need for enhanced hazing policies to protect collegiate students, culminating in the passage of Senate Bill 126: Collin's Law - The Ohio Anti-Hazing Act.

This Bill is named after Collin Wiant, a freshman at Ohio University who died after collapsing on the floor of an off-campus fraternity house in 2018. Wiant's death was found to have been caused by asphyxiation due to nitrous oxide ingestion after he inhaled a canister of the gas. Through trial, an Ohio court found that the drug and alcohol consumption occurring that night at the Sigma Pi fraternity house was forced and coerced, a key component of hazing. Most of the individuals involved in the hazing activities were given sentences of one year probation and ordered to complete a rehabilitation program. These punishments raised concern that they did not reflect the gravity of the crime.

The primary purpose of Collin's Law is to expand the definition of hazing in Ohio to include the forced consumption of drugs and alcohol. Notably, the Bill also increases the criminal penalty for hazing, which was a fourth-degree misdemeanor under prior hazing laws and comparable in severity to failing to pay a fine for a traffic violation. Under Collin's Law, the penalty for hazing is increased to a second-degree misdemeanor for general hazing and a third-degree felony for any hazing involving drugs or alcohol that results in serious physical injury.

Collin's Law holds students criminally liable for hazing activities they may commit if the individual conducts those activities recklessly or intentionally. Reckless participation in hazing activities is found when the individual had knowledge that the activity may cause physical or mental harm to the victim or is carried out against the victim's will through force or coercion.

Collin's Law also adds new reporting and compliance requirements to existing hazing laws. These requirements are focused on college administrators and employees. Under the new laws, no individual who is an employee or volunteer at the university shall recklessly fail to immediately report the knowledge of hazing to a law enforcement agency in the county in which the victim resides or in which the hazing has occurred. For example, a court could find that it was reckless to fail to report a hazing incident due to a belief that the issue is being addressed internally or by another employee. This requirement is now included in JCU's [Mandatory Reporting Policy](#).

Finally, this new Ohio law requires colleges and universities to educate their students, staff, faculty, and any volunteers on hazing prevention and awareness to promote a safer environment for students. Some of these education requirements include requiring all students to complete hazing education training before joining any campus organization and requiring students to complete some form of this education prior to graduation and/or receiving their diploma.



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Allowing Student-Athletes to Profit from their Name, Image, Likeness



Following a surge of requests from collegiate student-athletes, professional athletes, the public, and recent court actions, the National Collegiate Athletic Association (NCAA) has changed their stance on allowing compensation for collegiate student-athletes for the use of their name, image, and likeness (NIL). The NCAA has issued an interim rule on NIL for student-athletes in all NCAA divisions. The rules regarding how these student-athletes may earn compensation are broad and tend to vary from state-to-state.

In addition to the NCAA's interim policy, Ohio Governor Mike DeWine issued an executive order, effective July 1, permitting NIL compensation for student-athletes at Ohio universities and colleges and placing restrictions and procedural requirements on NIL activities.

While these new rules and orders likely will have more significant implications for Division I athletes, they can impact any student-athlete in Ohio, including the student-athletes at John Carroll University and other Division III universities. JCU has issued a [new policy](#) on NIL activities, consistent with the NCAA and Ohio requirements, which provides guidance and requirements related to student-athletes who may wish to seek compensation for promotional or commercial activities using their name, image, or likeness.

Some highlights from the University's policy are as follows:

- JCU employees may not compensate or

arrange any compensation deals for current or prospective student-athletes for use of their name, image or likeness.

- It is not permissible for compensation to be provided in exchange for athletic performance or attendance at JCU.
- NIL compensation can come in the form of money, goods or services.
- NIL opportunities must not conflict with academic nor team-related activities. Student-athletes may not advertise for or promote a product or service while participating in official team activities (practices, scrimmages, travel events, etc.).

See NIL (page 3)

Who Benefits? Private Benefit Rules for Non-Profit Entities

The charitable or business activities of non-profit institutions such as JCU are subject to special rules to ensure that non-profits utilize their resources and property to benefit their charitable purposes, and not any private individual or firm. In addition to these Internal Revenue Service (IRS) rules, JCU also has purchasing processes, a Conflict of Interest policy, and policies and practices related to the stewardship of gifts and institutional funds.

General Concepts:

Private Benefit

Section 501(c)(3) of the Internal Revenue Code lays out the requirements for an entity to be exempt from federal taxation and establishes the general rules around permissible exempt purposes for such an organization. Treasury regulations have established a rule called the *private benefit doctrine*, which establishes that in order to comply with 501(c)(3) requirements, an organization must be operated exclusively for an exempt purpose and must serve a *public* rather than a *private* interest to be good stewards to its donors. Any private benefit from charitable activity must be incidental and a mere byproduct of the public benefit JCU services through its mission, and it must also be an insubstantial amount relative to the particular charitable activity. For example, paying an alumni who won a competitive bidding process fair market value to provide vans for JCU's mission-aligned service activities would be permissible, but leasing an alumni's luxury home in an inconvenient location an hour away at 50% above fair market value for routine activities would be suspect.



Private Inurement

Private inurement is a form of private benefit where an insider with significant influence over an organization, such as a high-level manager, board member, or other officer, enters into some bargain or arrangement that provides excess benefits to them individually compared to the value of what they are providing. Even a small or incidental benefit to an insider may be problematic in certain scenarios. Transactions or beneficial arrangements with University senior managers or board members need to comply with JCU's conflict and purchasing processes.

How Does This Apply to Daily Operations?

There are three main ways in which JCU and its employees and leaders can avoid entering into arrangements that would violate IRS rules on private benefit:

1. **Follow University Purchasing Policy and processes and Exercise Fiscal Diligence.** Private benefit rules do not prohibit tax-exempt entities from paying reasonable amounts of money for the goods or services necessary to carry out their charitable missions. Therefore, the most obvious way to avoid conferring a surplus benefit to a vendor or other person is making sure that the University does not pay more than fair market value for the goods or services necessary to carry out its mission. This is achieved by following purchasing processes/policies, such as bidding requirements. This ensures that the University should not do business with an individual or overpay for a service just because of a relationship with a University community member.
2. **Think Carefully About Allowing Third-Party Benefit from Institutional Resources.** Private benefit rules also are an important consideration when a third party stands to benefit from the use of University resources in a way that is unrelated to JCU's charitable mission, even if there is no marginal cost to JCU. For example, it would not be appropriate under private benefit rules for JCU to provide free or heavily discounted office space to third-party businesses that are unrelated to the University's mission. This would be true even if the University anticipated that the offices would otherwise remain vacant. The use of University space and resources by third parties and outside businesses should be authorized through formal channels, such as facilities use agreements. The OLA and/or the Finance Office should be consulted if you have a question about whether a proposed use of University resources is appropriate under private benefit rules.
3. **Transactions with Senior Leaders or Board Members Require Special Review.** Transactions or business arrangements between the University and senior leaders/management and/or board members should be referred to the OLA or Finance Office since such transactions may require additional process and review, conflict of interest management plans, or possibly board-level oversight.

Questions about private benefit or private inurement can be directed to the Office of Legal Affairs or the Finance Office.



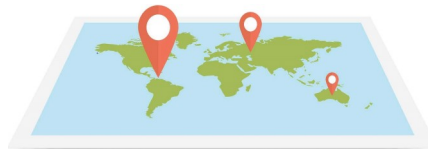
Key Issues When Hiring Foreign Nationals

Here are a few tips in considering hiring candidates who are foreign nationals and may require visa sponsorship by JCU to work at the University:

- It is important to determine whether a candidate requires University immigration sponsorship to work in the United States. Only certain professional positions are eligible for employment-based sponsored visas.
- Be aware that immigration sponsorship will involve visa processes; time and funding, including compliance with the federal immigration process; time to petition for the candidate's visa or immigration status; potential delays in the start date for a candidate during visa processing; and the expenditure of University funds to complete the legal paperwork necessary for employment authorization.
- Consider the desired start date for a candidate who requires sponsorship to work in the United States, as sufficient time is needed to gather documents, post notices, file petitions, provide additional documents to the federal agency, and obtain a decision from the U.S. Citizenship and Immigration Services.
- Human Resources can reach out to candidates to ask appropriate questions of final candidates who are foreign nationals before issuing a final offer (i.e. Are you authorized to work in the United States? Would you require University sponsorship to be authorized to work in the United States? What kind of sponsorship would be required?) Note: When the PeopleAdmin system is used to submit and screen applications, these questions are among the questions already included in the standard online application.
- Before interviewing second-round candidates, contact Human Resources or Legal Affairs so they can ask candidates necessary questions such as what kind of sponsorship the candidate would require and explore any timing issues related to any necessary sponsorship.
- The hiring department should not ask if the candidate is a citizen of the United States or about a candidate's national or ethnic origin or race, as this could be viewed as discriminatory.
- Before selecting a finalist, it is important to know two things: 1) if the

candidate is authorized to work in the United States without sponsorship, and 2) if the candidate has ever been on a J exchange visitor visa (as prior J visa status requires the candidate to meet certain home residency requirements that may affect the ability to be continuously employed).

- For a Selected Candidate: Work with Human Resources and/or the Provost's Office and Legal Affairs to determine the candidate's current immigration status and address visa needs.
- Legal Affairs and the Provost Office and/or Human Resources will work with outside immigration counsel to assist with petitions for employment-based authorization.



NIL (continued from page 1)

- A student-athlete may not use any registered JCU trademarks, logos, or designs for NIL activities, unless prior written permission from JCU is received.
- Student-athletes must disclose proposed NIL agreements/contracts/arrangements to the Senior Director of Athletics for review.
- Student-athletes are permitted to obtain professional representation to assist with securing these NIL opportunities, but not for future professional contract negotiations.
- Any academic or other scholarship funding cannot be reduced or rescinded due to participation in NIL opportunities, but NIL compensation may affect financial aid need assessments.
- NIL rules do not alter the ability of student-athletes to be employed by JCU for usual work compensation.

The ability for student-athletes to earn compensation for their NIL does not stop at brand deals, third-party endorsements, or sports-related activities. These student-athletes are now able to earn compensation on things such as owning their own businesses, publishing books or manuscripts, running camps, or even from creating and monetizing videos on platforms such as YouTube.

The ability for college athletes to seek compensation for their name, image, and likeness is certainly new and uncharted for universities. If you have any questions about NIL, please contact the Senior Director of Athletics and/or the Office of Legal Affairs.

New Federal OSHA Rule on Vaccination Requirement

Private employers with more than 100 employees, including universities such as JCU, will be required under a new federal emergency rule from the Occupational Health and Safety Administration (OSHA) to mandate COVID-19 vaccinations or weekly testing for all full-time and part-time employees. However, the details of the rule, such as vaccination documentation and testing requirements and permissible exemptions, have not been announced to date. As a result, universities are waiting to determine how the new rule will affect them and their vaccination protocols.

In September, the Biden Administration announced that OSHA will issue an emergency temporary rule to require employees to be vaccinated or produce a negative weekly test for COVID-19. A separate federal rule mandates vaccinations for federal contractors, without permitting weekly testing as an alternative. Once issued, the emergency rule will take effect immediately, and will be enforced by OSHA within 75 days. Employers who have not implemented the vaccine requirement or complied with the rule may be subject to federal fines.

Typically, such emergency rules can only remain in place for a period of six (6) months before a more permanent rule is put into place via a formal rule-making process with a notice-and-comment period. It is likely the emergency rule will face legal challenges, including attempts by state governors to block enforcement of the rule. Separately, Ohio's legislature has been engaged

in proposing legislation restricting vaccine requirements and establishing permissible exemptions for employers and universities in the state. Such proposals are not yet laws and their provisions are not yet clear.

JCU's vaccination requirement, announced on August 27, requires all employees and students to be vaccinated by November 15. Students, faculty and staff can request a medical or non-medical exemption from the vaccination requirement by submitting an exemption request by October 14. For more information, please click [here](#).

