

# In Brief

Updates from the Office of Legal Affairs



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## New Legislation and Regulations Impacting Higher Education and Employers



On almost a daily basis, we hear about notable court cases and legislative acts that affect higher education and employers. Here's a summary of a few of the key developments in the law affecting higher education and employers.

### **Recreational Marijuana in Ohio**

As most are aware, Ohio became the 24<sup>th</sup> state in the United States to legalize recreational adult use of marijuana when voters passed the "Act to Control and Regulate Adult Use of Marijuana." The law makes it legal for individuals over the age of 21 in the State of Ohio to possess, use and grow their own marijuana. While the law went into effect on December 7, 2023, the Ohio legislature is still determining the path for retail sale and distribution of marijuana.

What you may not be aware is that JCU – like other colleges and universities – is prohibited by a federal law from permitting students or employees who are 21 years old to possess, use and grow their own marijuana on campus or in University-sponsored activities. That's because, as a recipient of federal funds and student financial aid, JCU is bound by the federal Drug-Free Schools and Communities Act and the Drug-Free Workplace law, which prohibits possession, use and growing of marijuana (and other controlled substances) at any age and in any form in relation to university study or work while on the campus or in University-related activities. That means that despite Ohio's new

law, JCU is required to prohibit recreational or medical marijuana and to enforce that prohibition.

JCU has updated its policies – including the student [Community Standards Manual](#) and the Human Resources [Drug-Free Workplace Policy](#) to reflect that for JCU, Ohio's recreational marijuana law does not change how JCU must handle marijuana use and possession.

### **Title IX Regulations and Ohio HB 68**

While it may have taken several years, the U.S. Dept. of Education is slated to announce this Spring new Title IX regulations, the federal law that prohibits discrimination based on sex and that outlines required procedures for sexual harassment proceedings on campuses. The long-awaited Title IX regulations are expected to reverse many of the changes made in the Title IX regulations in 2020 by the Trump Administration. The Dept. of Education also is expected to issue new regulations on transgender athletes on campuses, which are expected to ban policies that prohibit transgender athletes from participating in intercollegiate sports. The Dept. of Education has stated that the regulations will be issued this Spring, following the review of

***See "Legislation and Regulations" (continued on Page 3)***

## ***Workplace Safety on Campus***

The construction projects taking place on JCU's campus reflect the priority of enhancing the educational experience, creating state-of-the-art facilities, and fostering an environment conducive to learning and personal growth.

In the midst of the transformative facilities projects, it is important to remember JCU's policies related to workplace health and safety. Construction sites can pose potential safety hazards from heavy machinery, moving vehicles, uneven surfaces, and debris. Workplace health and safety preventative measures do not only apply to construction sites, but also guide a wide range of activities such as hazardous chemical exposure and electrical wiring in classrooms. Each category has a set of regulations that are established by the federal Occupational Safety and Health Administration (OSHA).



OSHA oversees requirements related to safe working conditions for employees and contractors in the workplace, and issues regulations employers must follow to protect their workers from hazards in the workplace. OSHA conducts inspections to ensure compliance with safety regulations and investigates complaints and workplace injuries and accidents. They have the authority to issue citations and issue penalties for violations of OSHA

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# INTELLECTUAL PROPERTY



## Understanding IP: Basics of Trademarks and Copyrights

You may have heard of or worked on Intellectual Property (often abbreviated I.P. or IP) at some point in your work or personal life. But what exactly is IP? Broadly speaking, IP refers to a wide-ranging category of intangible property made up of creations of the mind, which can include inventions, literary and artistic works, designs and symbols, and names and images that are used for commercial purposes. A person or entity can ensure that their IP is properly owned and legally protected against unauthorized use or conflicting claims of ownership by taking a number of steps, such as registering with state offices, filing with the federal patent and trademark office (“USPTO”) and/or creating agreements that protect IP rights.

Two of the most common and recognizable forms of IP that we’ll explore in this article are 1) Trademarks, and 2) Copyrights.

### Overview of Trademarks

Trademarks generally refer to words, logos, slogans, designs, or a combination of these things that are used in connection with services to identify the source of a product or service. Trademarks essentially function as a method to identify an organization or an individual’s brand. To illustrate how trademarks can serve as a brand, the distinctive “M” shaped golden arches invoke instant recognition of the world’s largest fast-food chain, while a signature curvy glass bottle is associated with the most popular cola. When trademarks are legally registered, they offer protection by discouraging and preventing others from adopting a name or logo that is the same or substantially similar to an existing trademark.

### Overview of Copyrights

Copyrights are rights that provide authors and creators of original material the exclusive ability to use, copy, or duplicate the material that they developed or own. You can think of copyrights as establishing record of who rightfully controls the usage of the original material. Copyrighted materials can include a multitude of works, including but not limited to literature, music, photos, video, architectural designs, website content and computer software. Original creators of copyrighted material may grant other persons or entities the rights to use their material, typically through a licensing agreement which often grants limited usage of the original copyrighted material.

### JCU’s trademarks, copyrights, and other intellectual property

JCU’s has 3 registered trademarked names and logos – the name “John Carroll University,” “John Carroll University” with the botany cross, and “JCU.” Consistent and correct usage of JCU’s trademarks will help prevent brand dilution and preserve JCU’s distinction. In addition, JCU is obligated to enforce its trademarks and prevent unauthorized use of the trademarks. Be sure that whenever using JCU’s logos and other trademarked property, you are adhering to all usage guidelines established by JCU Integrated Marketing and Communications. Questions about

use of a JCU trademark on T-shirts, programming etc. should be referred to [IMC](#).

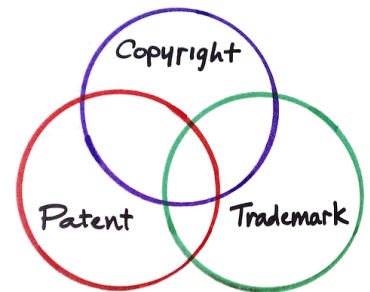
Also, there are risks and legal implications surrounding the use of JCU’s IP. Contracts and service agreements, for instance, will often contain provisions that permit a vendor to use JCU’s logos and trademarks as part of their advertising, which can be problematic if the usage is not consistent with JCU’s brand and mission. If your department works with consultants or vendors who are responsible for creating any type of creative work product for JCU, a contract should typically provide JCU with ownership rights to the work product and require JCU’s approval of the use of JCU’s trademarked names.

### **Avoiding Intellectual Property Violations (IP Infringement)**

The unauthorized use, duplication, or sale of protected intellectual property is known as IP infringement and can result in significant legal and financial damages. When using materials and works that are not your own, you should ensure that the usage is not infringing upon the intellectual property rights of another person or entity. Some ways to avoid infringing upon another’s IP rights include:

- Creating your own original images, music, videos or materials.
- Refraining from using, copying or reproducing other’s images, videos, and material without permission or a license; if you do want to use another’s material, obtain appropriate permission or a license.
- Using “royalty-free” or “Creative Commons” media and materials which typically permit free usage, although it is best practice to credit the creator when using these materials.
- Avoiding the usage of logos, brand names, photos and other trademarks without proper authorization to do so.
- Referring to JCU’s [Copyright Policy](#) or talking to Legal Affairs to determine if an educational use of copyrighted material may be considered “fair use” of the IP if it meets the 4 factors for educational fair use.
- Consulting with the JCU Office of Legal affairs if you encounter licensing agreements, contracts, or other documents that deal with IP.

Contact the [Office of Legal Affairs](#) if you have questions regarding the appropriate usage of IP, are not sure if IP rights are involved, or if you are concerned about potential IP infringement.



## "Legislation and Regulations" (continued from Page 1)

240,000 comments on its proposed regulations. The regulations may take effect this Fall.

At the same time that higher education is expecting the release of new Title IX regulations related to transgender athletes, Ohio's legislature passed HB 68, which requires private and public universities in Ohio – including JCU – to designate intercollegiate teams as female in female divisions, male in male divisions, and co-ed in co-ed divisions, and to not "knowingly" permit male athletes to participate in intercollegiate competitions or teams designated for females. This law, which was the result of the override of Governor DeWine's veto of the bill, goes into effect on April 24.

### **Student-Athletes Become Employees?**

It may be looking like March Madness in the world of intercollegiate sports, as a National Labor Relations Board (NLRB) regional office issued a decision in February finding that student-athletes are employees who can unionize under federal law. The decision found that the men's basketball team at Dartmouth College, whose players are not eligible for athletics scholarships, were employees of the college and could hold an election to unionize. The NLRB found that the players performed work by generating revenue for the college via ticket sales and broadcast rights, and that the players received "compensation" in the form of meals, housing, apparel etc. On March 5, the Dartmouth men's basketball team voted in favor of joining the Service Employees International Union.

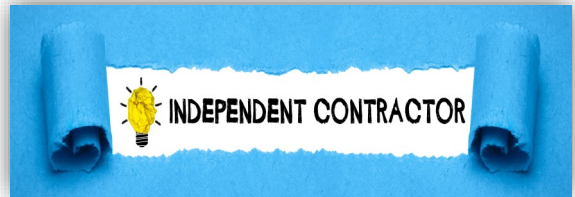
The decision, if upheld on appeal to the NLRB, could have far-reaching effects on collegiate sports, including how collegiate sports are run and players participate.

A similar case is pending in California, where the NLRB has filed complaints against University of Southern California and several

athletic associations related to student-athletes, which the NLRB found to be violations of federal law.

### **Independent Contractors**

If your department has ever retained an outside consultant or vendor, you likely were hiring an independent contractor. These



contractors differ from employees in the amount of control an employer can exercise over their work. Such individuals typically perform work for other entities for profit, control their own work and tools, and complete the work on a project basis, rather than working on an hourly or salary basis.

The U.S. Department of Labor has established rules related to independent contractors to control who qualifies as an independent contractor because such individuals are exempt from wage and hour rules including overtime pay or pay for all hours worked. The Internal Revenue Service (IRS) also carefully monitors independent contractor status, because of the effect on tax revenue that results because employers are not required to withhold taxes for independent contractors.

In January, the U.S. Dept. of Labor issued new regulations governing what it means to be an independent contractor, applying a stricter rule to qualifying as a contractor. The new regulations require looking at all the circumstances to determine if an individual is an independent contractor vs. an employee. The new rule became effective March 11. **Human Resources** or the **Office of Legal Affairs** are available to assist if your area is looking to retain an independent contractor.

## **"Workplace Safety" (continued from Page 1)**

standards. OSHA also encourages employers to establish health and safety programs to proactively identify and address workplace hazards. Three key OSHA regulations that apply to universities include:

1. Hazard communication (HazCom) requires employers to provide information and training about hazardous chemicals in the workplace.
2. Emergency Action Plan outlines the procedures and protocols to be followed by employees during emergencies, such as fires, severe weather events, chemical spills, or violent incidents.
3. Bloodborne Pathogen Standard applies to workers who may be exposed to blood or other potentially infectious materials.



Of primary importance, students and employees should not enter restricted areas or unauthorized zones without permission. They also should pay attention to any safety signs, barricades, temporary walkways, and instructions provided by the campus or construction personnel to ensure they navigate safely and avoid potential hazards. In addition, if a supervisor learns of a workplace injury or accident, the supervisor should report this to the **Director of Regulatory Affairs and Risk Management**. Employees are required to self-report any workplace injury, accident or condition to Risk Management.

## **LEGAL UPDATE FOR SUPERVISORS**

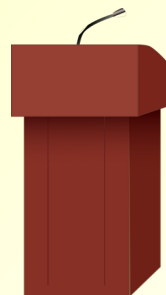
**The Office of Legal Affairs is offering a legal update for supervisors on current legal issues that affect supervisors. The session will provide an overview of several relevant laws and issues, such as political activity guidelines, FERPA educational records issues, wage and hour issues, website accessibility, copyright, and more. The session will include the opportunity for questions and discussion on related topics.**

**DATE: April 17, 2024**

**TIME: 9:00 AM—10:30 AM**

**LOCATION: Murphy Room**

***To register, please click [here](#).  
We look forward to seeing you!***





# Export Controls: What to Know about the Complex Export Control Laws

If you are engaged in research or international projects, it is important to consider the impact of United States export control laws on your work. The Export Control laws and regulations are intended to protect national security interests, prevent the proliferation of weapons, and safeguard sensitive technologies from falling into the wrong hands. The alphabet soup of export control laws and regulations include the Export Control Act, the International Traffic in Arms Regulations (ITAR) law (related to export and import of defense-related articles and services on the United States Munitions List (USML)), the Export Administration Act and its regulations, the Export Administration Regulations (EAR), which govern the export and re-export of most commercial items, and the most recent Export Control Reform Act (ECRA).

In an era of evolving global dynamics and heightened security concerns, these Export Control regulations significantly affect academic research, international collaborations, and the dissemination of knowledge. Export control laws often place limitations on the export or sharing of sensitive technologies and information or the work on certain research by individuals from certain designated foreign countries. This can require licenses for certain research or technology projects, and can affect various academic disciplines and research projects, including but not limited to mathematics, psychology, chemistry, education, and engineering. Additionally, regulations can complicate partnerships with foreign entities or persons, requiring universities to navigate intricate compliance procedures. A university must strike a delicate balance between compliance with export control laws and fostering an environment conducive to innovation and global cooperation. This involves implementing research compliance programs, educating faculty and staff, and establishing protocols to manage international collaborations effectively.

A key exclusion that may exempt certain research activities at JCU from Export Control laws is the "Fundamental Research Exclusion" (FRE). The FRE exempts the dissemination of information deemed fundamental from export control regulations. It applies to research conducted for scientific inquiry

that is intended to be shared broadly within the scientific community. The FRE typically applies to basic and applied research in science and engineering where the results are intended to be published or otherwise broadly shared. This could include sharing the research results through publication, conferences, or other means that are customary within the academic or scientific community. This means that the information resulting from such research, including data, software, and certain technologies, can typically be shared with foreign nationals or entities without specific export licenses or approvals. However, only non-tangible research results are excluded under the FRE. *Physical items* will always remain subject to U.S. export controls. It is crucial for researchers to understand the nuances of the FRE and ensure that their research activities comply with the regulations before attempting to leverage the exemptions provided for fundamental research.

If you have questions about Export Control laws, please contact the Office of Sponsored Programs or the [Office of Legal Affairs](#).



## ***Do you need a contract reviewed by the Office of Legal Affairs?***

To help streamline the contract review process, please submit contracts in need of review by the Office of Legal Affairs using a [Contract Intake Form](#). Doing so creates a workflow that tracks the contract review process and captures important information on the University's contracts.

In general, the contract review process works as follows:

- 1) Contract intake form is completed online.
- 2) Contract request is assigned to an attorney.
- 3) Contract is reviewed/drafted by the assigned attorney.
- 4) Reviewed contract is shared with University officers who need to approve and sign it. Please refer to the [Signature Delegations Chart](#) which identifies appropriate signatories for contracts.

***Once your contract is signed by all parties, please submit a copy of the fully signed contract to the Office of Legal Affairs for University record-keeping in the contract workflow.***

For more information regarding contract approval and review and the University contract signatory process, please visit the [Contract Approval and Review](#) page on the [Office of Legal Affairs website](#) or contact the Office of Legal Affairs.

