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Northeastern University

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OF COUNSEL – SUMMER 2003

the newsletter of

NORTHEASTERN UNIVERSITY
OFFICE OF THE UNIVERSITY COUNSEL

SUMMER 2003 BROWN BAG ROUNDTABLES

The popular brown bag luncheon series is back again for a third summer! This year's legal lunch schedule follows:

- Thursday, July 17 — Update on Supreme Court's consideration of Affirmative Action in higher education.
  12:00 – 1:15 pm
- Thursday, July 31 - Liability 101. Protecting yourself and the University.
  12:00 – 1:15 pm
- Thursday, August 14 - USA PATRIOT ACT, SEVIS and Employment-Based Immigration Issues. What you need to know and why.
  12:00 – 1:15 pm

Bring your lunch and your questions. These seminars allow the opportunity to learn, discuss and share insights. All are welcome. Please call Karen Brown at x2157 to reserve your spot and so that we can arrange for adequate space.

In addition, if you'd like to arrange any programming specially targeted for your department or employees, please contact Lisa Sinclair at x2157. We'll be pleased to help you out!

YOUR QUESTIONS AND ANSWERS

1. **Have I Got a Piece of Equipment for You . . .**
   Question: What do I do when I want to get rid of obsolete office equipment, like old computer terminals and printers? Does the University have a process I have to follow or do I make my own arrangements?

   Answer: It's critical that the University controls all of its assets, so there is a Property Control procedure to be followed. There are many instances where property may not be needed in one area but may fill a use elsewhere in the University.

   The Property Control procedure is coordinated through the University's Property Accounting Office at 251 Richards Hall.

   Property Accounting is responsible for identifying, tagging and documenting all equipment purchased with an acquisition value of $1500 or more. This includes all federal property, such as items received through a grant. Federal regulations require the University to control property through periodic inventories, logistical and financial accountability and disposal of unneeded property.

   In general, two types of forms must be completed as a condition of disposing of or moving any University-owned property. These documents are the Asset Disposition Form and the Bill of Sale. The Asset Disposition Form is provided and executed by Accounting. It is used for the transfer, retirement or sale of equipment. The Bill of Sale form is prepared and executed by Purchasing and is used with the Asset Disposition Form for the sale of equipment.

General property disposition guidelines followed by Property Accounting include:

- If items are computer-related and have a unit cost of less than $5,000, the properly completed Asset Distribution Form will be sent to Recycling. Recycling will typically remove the equipment within 5-7 business days.

- If items have a unit cost of less than $5,000, the form is sent to Transportation. Transportation typically removes equipment within 5 business days.

- If items have a unit cost of greater than $5,000 or are to be sold, the form is forwarded to Purchasing for review as to the manner of removal.

Any questions you have about this procedure or the disposal of any University-owned items should be referred to the Property Accounting Office at 251 Richards Hall, x4953.

2. **HIPPO? HIPPA? GLUB? GLB? What Are the New Privacy Laws?**
Question: I've been hearing about a couple of new privacy laws that recently went into effect. In fact, I received a Northeastern Announcement about HIPPA Privacy Practices. Could you review the new privacy laws and their impact on the University?

Answer: Sure! The two new laws you're asking about are the Health Insurance Portability and Accountability Act (HIPAA) and the Gramm-Leach-Bliley Act (GLB). For University purposes, the laws had effective dates of April 14, 2003 and May 20, 2003, respectively. Let's take them one-by-one.

A. HIPAA

Under HIPAA, certain departments at Northeastern that use or disclose individually identifiable health information, known as protected health information (PHI), are subject to the HIPAA privacy rules. Before HIPAA, no national standard existed for the protection of a person's medical information. With the implementation of these privacy rules on April 14, 2003, a minimum level of protection was created nationwide. (HIPAA does not apply to student records, which are governed by FERPA.)

Northeastern, through its Human Resources Management's Benefits Department, acts as a provider of health benefits to certain classifications of employees and, in some special circumstances, certain functions of Northeastern act as health care providers (e.g., Lane Health Center, Department of Speech-Language Pathology and Audiology, and Center for Counseling and Student Development). Certain researchers may also be impacted if they are health care providers or use or disclose PHI as part of their research. Under HIPAA, if you or your department perform these job functions, you are required to safeguard the privacy of PHI. The general HIPAA rule to remember is that for purposes other than treatment, payment or health care operations, a health care provider or health plan may not use or disclose PHI without an authorization from the individual or his/her personal representative.

Additionally, if your department is a covered function under HIPAA, then you are required to have third parties who are given access to PHI sign a "Business Associate Agreement" in which they agree to appropriately safeguard PHI. To the extent you are accessing PHI on behalf of a HIPAA covered entity outside Northeastern, Northeastern may be asked to sign a Business Associate Agreement as well. If you receive such an agreement, it is considered a contract and you must process it through the Office of University Counsel. In addition, if you or your department think you may need to develop a Business Associate Agreement with a third party, please contact the Office of the University Counsel.

In anticipation of the April 14, 2003 compliance deadline, Pam Smith and Lisa Sinclair of the Office of University Counsel and Glenn Hill of Information Technology met with various department heads and deans to discuss HIPAA's effect of Northeastern. Because HIPAA requires training for those employees who work in covered functions, Smith, Sinclair and Hill also scheduled and conducted a dozen training sessions for more than 300 Northeastern employees. Plans to schedule another HIPAA

awareness session for September 2003 are in the works. If you would to attend or if you have new employees in any of the covered functions described above, please call Karen Brown at x2157 to reserve a space.

Finally, in order to ensure compliance with HIPAA privacy regulations and to manage HIPAA privacy questions or complaints, Northeastern designated Nan Clark Regina, Director of the Division of Research Integrity, as its HIPAA Privacy Officer. Nan can be reached at x4588 and has copies of relevant HIPAA forms such as the Business Associate Agreement and a patient authorization form. Similarly, Glenn Hill was designated as HIPAA Security Officer to assure compliance with HIPAA security regulations that protect from inappropriate access to PHI. You can reach Glenn at x7718.

B. GLB

Under the federal Gramm-Leach-Bliley Act (GLB), a financial institution (a term broadly defined to encompass some functions of institutions of higher education) had to develop security plans and policies to protect the privacy of certain information. The effective date for this GLB Safeguards Rule was May 20, 2003.

The functions provided by Northeastern subject to the GLB Safeguards Rule are student loan processing, such as federal Perkins loans, and offering cards that are used in lieu of cash for campus transactions (except for so-called "stored value cards" like the Husky Card). In order to be in compliance with the GLB Safeguards Rule, Northeastern had to take steps to protect the security and confidentiality of non-public personal information that might be utilized as part of these functions such as bank or credit card numbers, income and credit histories and social security numbers.

The steps taken to appropriately protect this information under GLB included the development of a written Information Security Program. The Program includes steps to protect the security of protected information and protect against unauthorized access to the covered information, among other things.

As with HIPAA, training has been conducted for employees working in the impacted areas of the University. The GLB Safeguards Rule also requires the designation of a coordinator for the Information Security Program. The coordinator for Northeastern is Glenn Hill, IT Security Manager. Should you have any questions about the GLB Safeguards Rule or the Information Security Program, or IT security in general, contact Glenn at x7718.

C. And while we're on the subject, here's information about another law that may impact the disclosure of student and other records . . .

Following 9-11, Congress passed the USA PATRIOT ACT, legislation that expands the investigatory authority of federal agencies, in particular the Federal Bureau of Investigation. It is important to understand that this authority applies to information about all residents and citizens of the United States, not just to foreign nationals as is commonly believed.

For Northeastern's purposes, the most important provisions are as follows:

- The PATRIOT ACT usurps FERPA (also known as the Buckley Amendment) with respect to student records.

  Whereas FERPA requires that the institution make an effort to advise a student that records are being sought, under the PATRIOT ACT, Northeastern is not permitted to advise the student of the request for records. Not all requests for information from federal agencies are made under the aegis of the PATRIOT ACT, however. **Therefore, any requests for student information made by a federal agency must be directed to the Office of University Counsel before any information is provided. If any federal agent appears on campus to request information or you receive a notice to produce records from a federal agency, please contact the Office of University Counsel.**

- The PATRIOT ACT allows federal agencies (with proper documentation) to secure employment records, telephone records, voice mails, emails and other electronic information on ANYONE. Again, the individual whose records are being sought will not be informed if the request is made under the PATRIOT ACT. Any department or individual who receives a request for such information must contact University Counsel.

- The PATRIOT ACT established the Student and Exchange Visitor Information System (SEVIS). This applies to all foreign students, whether undergraduate or graduate, and visiting scholars who are here on F, F-OPT, or J-1 visas. Simply put, the University must report the presence, status and departure of all foreign students and exchange visitors, and their dependents. We must also report all "reportable events" as they take place for each of these members of our community. A "reportable event" includes falling under full-time enrollment, working more than the authorized number of hours weekly (20), change of address, change of off-campus employment, foreign travel, dismissal and other disciplinary outcomes among others. The SEVIS system is now up and running for Northeastern thanks to the dedicated efforts of the SEVIS task force and the International Student and Scholar Institute (ISSI).

Please contact the ISSI for specific information on complying with SEVIS. ISSI can be reached at x2310.

3. **Where Do We Go From Here?**

Question: I understand there's been a change in how the University is handling employment-based visas. What is that change and to whom do I direct my questions?

Answer: Yes, there has been a change. Northeastern has among its faculty and staff many individuals who require visas in order to be employed. Until recently, a number of these "employment based visas" were handled by the ISSI. In May, the Office of University Counsel assumed responsibility for H1B visas, as well as Os and TNs. We have also undertaken an audit of existing visa holders on campus to respond to departmental needs regarding renewals and terminations.

Toward that end, please keep in mind the following:

- Not all positions qualify for employment-based visas. H1B visas are used to hire tenure-track faculty and researchers. They are position and degree specific. Lower level administrative positions with general degree requirements do not qualify.

- All visa requests must be approved by the senior vice president responsible for the area, contingent upon consultation with University Counsel for viability under relevant immigration law and conformity with University policy.

- Currently, for routine processing, an H1B visa takes six months from the date of filing. Premium processing is available at an additional fee of $1000 for those situations in which time is of the essence.

- Termination of employees on H1B visas must be handled according to a number of provisions under the law, including reporting an employee's departure to the Department of Labor and the Bureau of Citizenship and Immigration Services (the new INS). Please consult with University Counsel before you initiate any termination discussions and again at the end of an employee's stay with Northeastern.

Please call the Deanna Jantzen with any questions regarding hiring, renewing or terminating international employees at x2157.

4. **Just Sign Right Here . . .**

Question: I received a letter from a consultant that lists the services she is going to be providing to my department. The letter asks me to sign it and return it to the consultant if I agree to the services. Is this a contract?

Answer: Since the letter makes you an offer and provides you with a manner for acceptance of the offer, the letter may indeed be a contract – one that also may not provide you with adequate protection as the recipient and payer of the services. As with all other contracts, send these types of arrangements to the Office of the University Counsel for review processing.

In order to protect the University's best interests and you as an employee of the institution, be reminded that all contracts must be processed through the Office of University Counsel first. After review, our office forwards contracts for an authorized signature. Authorized signatories are Treasurer Joe Murphy, Senior Vice President Larry Mucciolo and President Freeland. Once the agreement has been reviewed and signed, it will be returned to you. You must allow adequate time to have your contract reviewed, signed and returned to you. Adequate time requires at least two weeks**.**

Please also be reminded not to sign any agreement – including the letter-type arrangements you've described in your question – yourself. There may be individual liability – that means to you – for any contract not entered into consistent with the University's process.

Direct contracts or questions about contracts to the Office of University Counsel. The Office also maintains template agreements for common contractual scenarios like independent contractor or consultant relationships. We are available to assist you not only with your questions but to help you develop and negotiate agreements, too. You can reach us at 115 Churchill Hall, x2157.

If you have any questions you'd like to see responded to in this space, please submit them to the Office of University Counsel at 115 Churchill Hall. Depending upon the nature of your question, we'll either answer you personally or address your issue in a future edition of this newsletter.

Of Counsel has been prepared as a general summary of important developments. It is not intended as individual legal advice. Should you have any questions or need information concerning a specific situation or any of the content of this advisory, please contact the Office of University Counsel, 115 Churchill Hall, x2157.