

October 01, 2005

## Of counsel: Fall 2005

Northeastern University - Office of the University Counsel

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### Recommended Citation

Northeastern University - Office of the University Counsel, "Of counsel: Fall 2005" (2005). *Of Counsel Newsletter*. Paper 12.  
<http://hdl.handle.net/2047/d20000167>

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**OF COUNSEL – FALL 2005**  
the newsletter of

**NORTHEASTERN UNIVERSITY**  
**OFFICE OF THE UNIVERSITY COUNSEL**

**Internet Use - Appropriate Use Policy**

The information systems of Northeastern University are intended for the use of authorized members of the Northeastern community in the conduct of their academic and administrative work. The University reserves the right to monitor, record, inspect, copy, remove or otherwise alter any data, file or system resources. The University also retains access rights to all files and electronic mail on its computing and network facilities. Anyone using the systems or networks expressly consents to such monitoring and should have no expectation of privacy.

The University's information system is the property of Northeastern University and the users of the system should have no expectation of privacy. The system may be used only for work-related items. Any unauthorized, inappropriate, illegal or illegitimate use of the University's computing resources, or failure to comply with the Northeastern University Appropriate Use Policy will subject the violator to disciplinary action by the University including but not limited to termination of employment.

For more information, the full text of the Northeastern University Appropriate Use Policy can be found at <http://www.help.neu.edu/aupContent.html>.

**No Gaming/Raffle**

Many gambling activities are illegal under Massachusetts law. As indicated in the University Policy, Northeastern University does not permit card playing of any kind in classrooms unless it is a regularly scheduled activity of an organization recognized officially by the Office of Student Activities. Students may not gamble, play pyramid games, or sell lottery tickets in university property. Casino or other game events are permitted in designated areas that are approved by city and state laws, as part of properly scheduled events, and in strict accordance with regulations issued by the Office of the Vice President for Student Affairs.

**Immigration Issues**

Persons from certain countries will not be considered for University's petition for any kind of visas.

**Contracts**

Recognizing that there are a number of new faces on campus (Welcome!), this entire edition of OF COUNSEL is devoted to Northeastern University's policy on contract review and processing. This important policy must be adhered to by the entire University community.

Here are "The Rules" of contract review and processing at Northeastern.

1. Do Not sign contracts. A contract is any document that obligates or commits the University to doing something in exchange for the other party's agreement to do something else.
2. There are only three individuals who have been authorized by the Board of Trustees to sign agreements on behalf of the University: President Richard M. Freeland, Senior Vice President Laurence F. Mucciolo and Treasurer William Kneeland.
3. In order to have one of these three authorized persons sign your contract, a hard copy of the agreement must first be brought to the Office of the University Counsel for review. The Office is located at 115 Churchill Hall.
4. Contracts to be reviewed must be either hand-delivered or sent by campus mail to Karen Brown, Office of the University Counsel, 115 Churchill Hall.
5. Do not send contracts via e-mail. Contracts must be logged into a tracking system. Therefore, no contract can be reviewed until a hard copy has been logged into the system.
6.
  - a. Review will be for legal compliance and for compliance with applicable University policies. For instance, as just one example, vendor contracts are reviewed to make sure they comply with the University's insurance requirements.
  - b. The project, event or other subject matter of the contract may not begin until the contract is signed by all parties.
7. After the contract has been reviewed and initialed by this Office, it will be sent to one of the authorized parties for signature.
8. After signature, you will be notified that your contract is ready for pick-up. That notification will come from the office of the individual who signed the contract. We do not track the status of a contract once it leaves this Office.
9.
  - a. As of 2004, 2500 – 3000 contracts now flow through the review process on an annual basis. While some agreements are a page or two, the majority exceeds five pages and many are over twenty pages. On average, that means a minimum of nine contracts a day are reviewed by this office and often more, to meet this demand. Contract law is only an aspect of the legal business handled by the Office of University Counsel. The Office represents the University in all of its varied legal matters.
  - b. Therefore, given the sheer volume of contracts at the University, it is imperative that you allow a minimum of 10 working days for review and processing. That means at least two weeks after our Office has received the contract. While in the past, the Office of the University Counsel has been able to make exceptions to this time requirement, based upon the number of agreements, effective immediately, no such exceptions can be made without the approval of the Vice President and University Counsel.**

10. The two-week minimum requirement is necessary to ensure the University's agreements are properly logged, reviewed and tracked. The complexity of some contractual relationships or other legal issues related to a particular contract may extend the review period, however. Therefore, you should submit your agreement as far in advance of the event or the anticipated effective date of the agreement as possible.
11. Contracts with terms longer than one year must be approved by the Board of Trustees.
12. FAILURE TO TIMELY SUBMIT A CONTRACT FOR REVIEW OR FAILURE TO SUBMIT A CONTRACT AT ALL MAY RESULT IN CANCELLATION OF THE EVENT OR THE WORK TO BE PERFORMED AND MAY RESULT IN PERSONAL RESPONSIBILITY.
  - **NOTE: SIGNING AN AGREEMENT ON YOUR OWN CAN ALSO RESULT IN PERSONAL LIABILITY AS WELL AS DISCIPLINARY ACTION.**

### Independent Contractor/Consultant

Massachusetts law presumes that every worker is an employee unless each and every of the following three criteria are met:

1. There must be a written document which explicitly states that a worker must be free of Northeastern University's "control and direction." In addition to such a document, the individual must perform his/her functions independently. For example, independent contractors can determine when and where they work, and how much work is needed to perform the project for which they have been retained.

2. Independent contractors must provide services and/or perform functions which are outside the employer's usual sphere of business. If an individual performs functions which typically are performed by employees will be considered a Northeastern University employee, not an independent contractor.

3. Independent contractors must hold themselves out to the public as available to provide the same or similar services to a variety of employers. Such independent contractors have financial investments in their contracting/consulting businesses.

If the Commonwealth determines that an individual was an employee, not an independent contractor, an employer could be ordered to pay retroactive taxes for benefits on the individual's behalf. The additional penalties for non-compliance include fines of up to \$50,000, criminal penalties including imprisonment, and debarment from contracting work. The law also provides for **individual liability**.

Should you have any questions or need information concerning this matter, please contact the Office of Human Resources Management.

*'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*