In Brief

Updates from the Office of Legal Affairs

John Carroll UNIVERSITY

Helpful Information When Hiring Foreign Faculty and Staff

University hiring involves finding the most qualified candidates for the position. For the specialized needs in many fields (especially in faculty hiring) and to compete for the best candidates, consideration of hiring international candidates can be important and may increase the overall diversity of the University workforce.

However, when the candidates are foreign nationals, those involved in the interviewing and hiring process need to consider a few procedural issues. For example, it's important to know whether a candidate requires sponsorship to work in the United States, as the process will involve appropriate action by the University, require time to petition for the candidate's visa or immigration status, and entail some expenditure of funds to handle the paperwork necessary for employment authorization. Human Resources and Legal Affairs can assist departments with these immigration needs.

Here's some helpful tips to consider:

When Interviewing Candidates:
➢ Always consider who is the most qualified candidate for a position.

➢ Ask all candidates the following questions:
  ◦ Are you authorized to work in the United States?
  ◦ Would you require University sponsorship to be authorized to work in the United States?

  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.

➢ It is generally not a best practice to ask if the candidate is a citizen of the United States. It may run the risk of eliminating qualified candidates or lead to claims of discrimination based on national origin.

➢ It is not acceptable to ask a candidate what their ethnicity, race or national origin is in pre-employment situations. (As necessary, Human Resources and Legal Affairs may ask the candidate about their country of origin to assist with immigration work authorization.)

➢ Generally, discussing immigration sponsorship issues is not as critical in reviewing first-round candidates.

➢ In determining second-round candidates, it is appropriate to ask what kind of sponsorship the candidate would require and explore any timing issues related to any necessary sponsorship. Departments should seek assistance from Human Resources or Legal Affairs when asking such questions.

➢ 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 so, 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 continuous employment).

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 visa needs. Potential visa categories include:

Assisting International Students on Visas

Students attending JCU on student visas are able to study in the United States pursuant to a program administered by JCU in coordination with the federal government through a system called the Student and Exchange Visitor Information System (SEVIS). Students studying under these programs are typically granted an F-1 visa (student visa). Less commonly, students studying at JCU may be granted a J-1 visa (exchange visitor visa), or they may be given a B-1 or B-2 visa if they are only present for a conference or short cultural experience. There are also many other visa statuses that may permit a person to study in the United States that depend on: work authorization, being a dependent of someone with a visa, or other factors. It is important to note that JCU does not seek or require information concerning a student's immigration status or visa classification unless it is required

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Upcoming Training Sessions

October 16, 2019
9:00 a.m.-10:30 a.m.

"Family Educational Rights and Privacy Act (FERPA) and Other Privacy Requirements"

Jardine Room

Presented by
Office of Legal Affairs
and
Office of the Registrar

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November 21, 2019
9:00 a.m.-10:30 a.m.

"Wage and Hour Issues in the Workplace: Understanding the Fair Labor Standards Act (FLSA)"

O'Connell Reading Room

Presented by
Office of Legal Affairs
and
Human Resources

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in order to administer their SEVIS-associated student record or to verify employment eligibility.

Since F-1 visas are the most common form of student visa, this article will mainly concentrate on the general requirements and limits applicable to first-time students studying in the United States under that status. Once a student has been admitted to JCU through the admissions process, the student seeking a student visa will need to provide certain biographical information and documentation. Then a designated employee from the Center for Global Education will enter/utilize that documentation within the SEVIS system to generate a document known as Form I-20 for the student. The required information includes biographical information, identification information, details on the program of study, the timing of the student's studies, and information on the financial resources available to the student to support their needs during their course of study. It is important to note that F and J students are limited in their ability to work while on a student visa and are generally expected to show sufficient resources to pay all unmet tuition **and** living expenses.

Based on this information, the University creates a SEVIS record for the student, the student is assigned a SEVIS number, and is issued an I-20. Typically the student then pays a fee and applies for a visa at a

U.S. embassy or consulate while in their home country and schedules an interview within 120 days prior to the start date of the program on their Form I-20. If this visa is approved, the student may then use their visa to enter the U.S., but not more than 30 days before their program is scheduled to start. The student then must show up at JCU, check in with Global Education, and maintain their status as a student within their program.

Pitfalls for Students to Avoid and
Tips for Assisting Students:
There are a variety of issues that can force the institution to terminate a student's record and thus their authorization to be in the United States. It is important to note that, pursuant to its duty to directly oversee student visas and its role in administering the SEVIS system, JCU is strictly obligated to report certain events to the federal government in a specified and prompt timeframe. Below is a non-exhaustive list showing examples of issues that can cause a student's SEVIS record to be terminated, leaving them with only a grace period to seek authorization to remain in the U.S. or leave the country:

- Failing to maintain a full-time course load without seeking an exception to maintain their immigration status. Thus, it is important to talk with the Center for Global Education before giving advice on dropping classes.

- Engaging in work, including internships, without prior authorization or for more hours than permitted. Even if a student would otherwise be eligible for such work or eligible to participate in certain programs (Optional Practical Training or Curricular Practical Training), failing to get **prior** authorization through the Center for Global Education may **require** JCU to terminate a student's record and authorization. Thus, it is very important for persons on JCU-administered visas to adhere strictly to work authorization rules, and for JCU faculty and staff to consult with the Center for Global Education before giving advice on work or internship opportunities.

- Not showing up for classes for an extended period of time.

- Not showing up and not checking in with JCU's SEVIS official in the Center for Global Education at the start of the semester.

- Withdrawing or taking a leave of absence.

- Failing to notify JCU's SEVIS official of the need to extend the expected duration of your coursework at JCU.

Contact the Center for Global Education or Legal Affairs for student visa questions.

Most Common Visa Types for Student Visas

Visa Category	F – Student Visa	J – Exchange Visitor Program	B-1 or B-2
Typical Use at JCU	This is the primary visa classification for a student.	This visa category is primarily used to facilitate the exchange of faculty and visiting scholars.	This visa is used for a variety of short-term business, cultural and educational purposes.
Duration	This visa is generally valid for the duration of the student's program.	This visa is generally valid for the duration of the exchange program, but is not a permanent work visa. A person under this status will generally have to return to and reside in their home country for a period of time prior to applying for another visa status.	Most University uses do not meet the tests for B visas since it generally precludes seeking educational credentials. It would mainly be applicable to conferences and/or certain short-term religious/cultural programming.

sponsoring the employee.

- O-1 visa: For individuals with extraordinary ability or achievement in sciences, arts, education, business or athletics

- TN visa: For NAFTA professionals who are residents of Canada or Mexico with a job with a U.S. employer

- Permanent residency: Petitions seeking permanent residency and work authorization for those who meet these requirements

➢ Legal Affairs and the Provost Office or Human Resources will work with outside

immigration counsel to assist with petitions for employment-based 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, and obtain a decision from the U.S. Citizenship and Immigration Services.

Contact Legal Affairs or Human Resources for any employment-related immigration questions.

- H1-B employment-based visa: Valid for up to two 3-year terms. This visa is valid only for the particular employer

New Contract Process for the Office of Legal Affairs

The OLA is starting to roll out its new digital contract intake form, which will eventually become the starting point for having a contract drafted or reviewed by our office. This process, which was built with the help of Information Technology Services, is designed to create a standardized workflow for contracts, to track contracts and important financial data for the University, and to create a better avenue to get appropriate internal approvals for contract review by the OLA.

Here is a link to the new contract intake form if you would like to try out the new process.

The general process works as follows, with the requestor getting an automated e-mail update at each step:

1. Contract request 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 it
5. Contract is approved by officer

The OLA hopes to utilize this new process for all contracts in the coming months. More to come in the next OLA newsletter.

APPROVED

Signatory Policy

If a contract or any agreement committing the University comes across your desk, you may be asking yourself: "Can I sign this contract for the University?"

The answer depends on the Contract and Signatory Policy and Delegation Schedule. The Delegation Schedule sets out the specific University employees who have authority to sign contracts on behalf of the University and the total amount the individual has authority to contract for. Signing an agreement without University authority can risk that the contract will not be valid or commit the University to a contract without legal authority to do so. An individual signing intentionally without authority would be in violation of the Contract and Signatory Policy.

The Delegation Schedule is updated on a regular basis here, so check out the schedule so you can say, "Now I know who can sign."

Of course, if you have any questions, feel free to call the Office of Legal Affairs at ext. 1590.

WE MOVED!
Come to our Open House!

The Office of Legal Affairs

and the

Office of Regulatory Affairs and Risk Management

have moved to their new location on the first floor of Rodman Hall, next to Human Resources.

The main office for the Office of Legal Affairs is located in Room 115.

The Office of Regulatory Affairs and Risk Management is located in Room 119.

If you would like to check out our new space, we invite you to stop in on Friday, Oct. 11, anytime between 8:30 and 10:30 AM.

Light refreshments will be provided.

Minors on Campus Policy: Keeping Children on Campus Safe

It's never too early to inspire future Blue Streaks. In fact, many programs on JCU's campus for children that offer academic activities or competitions, camps, and sports programs can get them excited about JCU. Of course, any program that involves children requires a heightened level of screening and protection under Ohio law and University policy. Specifically, several Ohio statutes require day camps, sports camps, academic programs or activities, and other "out-of-home care" of minors to conduct fingerprinting and criminal background checks through the Ohio Bureau of Criminal Investigations on all employees involved in the program.

For this reason, under JCU's Minors on Campus Policy, a criminal background check must be conducted for all Authorized Adults – including faculty, staff, students, and volunteers – who will be accompanying, escorting, or supervising minors as part of a University-sponsored program or camp. An "Authorized Adult" under the JCU policy is an adult who is responsible for escorting, accompanying or supervising minors participating in any University program or activity and has complied with the requirements under the JCU policy to be present with minors. If you are a Program Administrator of any program involving minors, the following steps must be taken to certify those working with your program are "Authorized Adults" able to be present with minors:

1. Ensure all Authorized Adults undergo a criminal background check to receive clearance to participate. All Authorized Adults who have not had a background check done in the last four (4) years and who will be responsible for accompanying, escorting, or supervising minors must be checked. The background check process is set by the Office of Regulatory Affairs and Risk Management, in collaboration with JCUPD.

2. Check the name of the Authorized Adult against the National Sex Offender Registry to verify that the individual's name is not listed.

3. Ensure that prior to working with minors, all Authorized Adults successfully complete United Educators' online training, "Protecting Children: Identifying and Reporting Misconduct." This training is required at least every four (4) years after the initial training.

Note that programs involving minors must be registered with the Department of Regulatory Affairs and Risk Management at least 60 days prior to the first scheduled date of participation by minors. For more information about minors on campus or to register a program involving minors, visit JCU's Minors on Campus Policy at https://jcu.edu/hr/minors-campus-policy, or contact Garry Homany, Director of Regulatory Affairs and Risk Management, or the Office of Legal Affairs.