



# OGC BRIEFING

UVU'S LEGAL, COMPLIANCE,  
AND RISK MANAGEMENT  
NEWSLETTER

December 2018

## LEGAL INSIGHTS

The annual performance review season is nearly upon us! 'Tis the time, dreaded by many, where supervisors formally evaluate their employees' performance. Here are some quick reminders to help relieve anxiety, ensure fairness, and steer clear of legal woes:

- Regular communication and feedback is key so there are no surprises during annual performance evaluations. If you have any performance or minor policy violation concerns, nip them early during informal discussions, including 1-1s.
- 1-1s are a great tool to establish trust with your employees, including by asking them how you can help them accomplish their work and career goals. Regular communication and building strong trust—where employees know you care about their success—makes it easier to provide feedback when needed.
- Document feedback in your file notes and in follow-up emails to your employees. If a performance improvement plan or other formal corrective action is needed, work with HR—which will involve OGC as needed. UVU's new Staff Grievance Policy ([Policy 335](#)) sets forth staff member grievance options and rights.
- Be candid and capture performance for the whole year. Corrective action, and performance improvement generally, is more difficult if it follows a glowing (and disingenuous) performance review.
- As you consider evaluations and corrective actions of your employees, avoid discrimination based on protected classes and retaliation following protected acts. Ensure you have documented legitimate reasons for your

actions and that you treat similarly situated employees consistently.

**UVU** Office of  
GENERAL  
COUNSEL

UTAH VALLEY UNIVERSITY

## OGC SPOTLIGHT

Welcome to Eric Gardanier, who joined this summer in a dual role as Intellectual Property Counsel and Director, Office of Technology Commercialization. Eric is an intellectual property and registered patent attorney with over 25 years of significant licensing and patent



experience in the high tech sector. For intellectual property-related matters such as copyrights, trademarks, and IP-related licensing issues, Eric wears his attorney hat and works in the Office of General Counsel, reporting to General Counsel, Karen Clemes. For innovation and technology

developed at the university, Eric runs the Office of Technology Commercialization and reports to Research Officer and Dean Daniel Fairbanks. Eric looks forward to serving the UVU community. He can be reached at [ericg@uvu.edu](mailto:ericg@uvu.edu).

## DID YOU KNOW?

### Contract Review and Signature Authority

UVU [Policy 247](#) sets forth the requirements for reviewing and executing contracts on behalf of UVU. Apart from a few exceptions, all contracts must be reviewed by Procurement and OGC as to form, legal sufficiency, and risk assessment before signing. Additionally, only the following positions have the authority to sign contracts arising within the scope and authority of their respective university position: (1) The President, vice presidents, and the Chief Executive Officer of the UVU Foundation; (2) the General Counsel, for contracts relating to legal services or settlements of legal claims; (3) the Director of Procurement, for contracts relating to the acquisition of goods and services; and (4) the Director of Sponsored Programs, for sponsored academic project and grant contracts.

## CASE UPDATES

### Due Process Rights in Sexual Misconduct Proceedings

Several recent cases have focused on the due process rights of university students accused of sexual misconduct. In two separate cases from the Sixth Circuit Court of Appeals—*Doe v. University of Cincinnati* and *Doe v. Baum*—students who were accused of sexual assault challenged their disciplinary hearings because the hearings did not allow the students to cross-examine their accusers. The court ruled in favor of the students in both cases, holding that a university must give an accused student the opportunity to cross-examine accusers and adverse witnesses when the case hinges on credibility. In another case, *Doe v. Miami University*, the Sixth Circuit held that a university must provide an accused student with an explanation of the evidence against them and an opportunity to present their side of the story to an impartial decision-maker.

These and other due process standards have been incorporated into newly proposed regulations from the U.S. Department of Education. The proposed regulations, announced on November 16th, would require universities to:

- use training materials that promote impartiality;
- allow the parties to freely discuss the allegations with others and to gather evidence;
- provide a live hearing with an opportunity for cross-examination;
- issue a written decision by an impartial decision-maker who must be separate from the investigator; and
- adopt various other standards and procedures .

OGC is analyzing the proposed regulations, which are subject to an ongoing 60-day comment period. If you have questions or concerns about the proposed regulations, please contact OGC. To report sexual misconduct by or against a UVU student or employee, please contact UVU's Office for Equal Opportunity & Affirmative Action.

## RISK REMINDERS

The number of small unmanned aircraft systems (drones) flying in our skies has increased exponentially in recent years. UVU [Policy 705](#) Unmanned Aircraft Systems (Drones) was approved by the Board of Trustees on November 29, 2018. The policy mandates that individuals who want to fly a drone on UVU property must comply with FAA rules, regulations, and applicable laws. Prospective pilots should consult with the Safety Coordinator for the School of Aviation Science with any questions as to how to comply with FAA regulations. Furthermore, pilots of university-owned drones must ensure that the drone is registered with the FAA, certify that the drone weighs less than 55 pounds, submit a request for authorization to operate a drone to the UVU Office of Risk Management (ORM), and complete training with ORM.

When all of the policy requirements have been satisfied, ORM will issue a flight authorization document. Before operating a drone on university property, authorized pilots must also notify UVU Police. Please contact ORM at [riskmanagement@uvu.edu](mailto:riskmanagement@uvu.edu) with any questions about this policy.

## COMPLIANCE COLUMN

UVU employees must report incidents of sexual misconduct to the Title IX Coordinator or a designated deputy coordinator within 24 hours. These can be among the most sensitive and difficult conversations in someone's life. So what about confidentiality? UVU's licensed mental health counselors are the only absolutely confidential resource on campus. The rest of us should interject that we're mandatory reporters, including, if necessary, kindly interrupting before the conversation gets detailed. You should also consider having a [list of resources](#) handy to help victims of sexual misconduct get connected with support services.

Such conversations may inspire you to sleuth in search of truth. Please don't. Trained investigators in the Title IX Office will gather all the relevant information and put the puzzle pieces together in a fair and professional way. "Mini" investigations risk undermining the real investigation, compromising individuals' rights and privacy, and even traumatizing the individuals involved.

In sum, (1) say you're a mandatory reporter, (2) help point to resources, (3) make the report, and (4) let the pros take over.

