

# In Brief

Updates from the Office of Legal Affairs



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## Drone Use on Campus



**"Generally...drone use on University property is not permitted for recreational or hobbyist purposes. Drones may be permitted for educational uses or for University operational or promotional purposes, if the user obtains appropriate approval..."**

It's a bird; it's a plane, it's a drone on campus? Well, it's a drone on campus only if it's approved under the new policy regarding the use of Unmanned Aircraft Systems (or "drones"). In addition to the policy, potential drone users may wish to be aware of federal regulations regarding drone use in the United States.

### JCU Policy

Generally, under the policy, drone use on University property is not permitted for recreational or hobbyist purposes. Drones may be permitted for educational uses or for University operational or promotional purposes, if the user obtains appropriate approval and flies the drone in compliance with the University policy and applicable laws. All individuals using a drone on JCU property or elsewhere on behalf of JCU must have such drone use approved through the Office of Risk Management and Regulatory Affairs, and additionally must comply with all federal regulations. Approved drone flights on campus or on behalf of JCU must be done in a responsible manner and cannot create any hazards. The University's drone policy is available at <http://sites.jcu.edu/hr/pages/resourcespolicies/technology-policies/>.

### Federal Regulations: Special Rule of Model Aircraft

A drone doesn't have to be registered with the Federal Aviation Administration (FAA) if it is operated under the Special Rule of Model Aircraft. To operate under the Special Rule, the drone must comply with all of the following:

- The aircraft is flown strictly for hobby or recreational use.
- The aircraft is operated in accordance with local guidelines.
- The aircraft is not more than 55 lbs. unless otherwise certified.
- The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft.
- When flown within five miles of an airport, the operator of the aircraft provides the airport operator and the airport traffic control tower (if there is one) with prior notice of operation.

The FAA considers "airports" to also include helipads. The FAA has developed a mobile app, B4UFLY, which uses location to alert the user of

any airports within five miles that need to be notified. B4UFLY shows multiple airports within five miles of the JCU campus that must be alerted before a drone flight.

### Federal Regulations: Educational Uses

The FAA considers student drone use for educational purposes as "recreational," so the drone does not need to be registered as long as it operates under the Special Rule of Model Aircraft. Faculty use of drones is considered recreational as long as it is used in a course not related to drone use (i.e. a professor of a geology class flies a drone over a rock formation in order to show the students a better view). Faculty members' drone use is considered commercial, though, if they are flying it while teaching a class related to drones, or for any research purposes.

### Federal Regulations: Commercial Uses

For someone to operate a drone commercially, the FAA requires registration and has many other flight and administrative requirements. "Commercial use" is considered use for work, business purposes, or for compensation or hire. Commercial use could include drone use for research or use by a University contractor for promotional purposes.

### Federal Regulations: Safety Guidelines

Regardless of whether the drone use is for educational or recreational use, the FAA has provided guidelines for how to fly a drone safely. These include:

- Flying at or below 400 feet
- Being aware of airspace requirements and restrictions
- Staying away from surrounding obstacles
- Keeping your drone within sight
- Never flying near other aircraft, especially near airports
- Never flying over groups of people
- Never flying over stadiums or sports events
- Never flying near emergency response efforts such as fires
- Never flying under the influence of drugs or alcohol.

For questions about the drone policy or drone use, contact Garry Homany, Risk Management, at x1982, or [ghomany@jcu.edu](mailto:ghomany@jcu.edu).

### Contact Us:

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## FERPA and Disclosures to Third Parties - Providing Job References

JCU's faculty and staff are always striving to help students in every way possible. So, when a student approaches about being a job reference, faculty and staff usually want to be able to say "of course."

However, when doing so, it is good to keep in mind the Family Educational Rights and Privacy Act (FERPA), a federal law that restricts disclosures of student educational records without a student's written consent.

If a prospective employer calls asking for a student's academic grades, classroom performance, or student conduct records, FERPA's requirements likely apply. FERPA broadly defines "education records" to include most personally identifiable records about a student maintained by the University, including class grades and papers, housing or conduct documents, transcripts and more. If a job reference is based on any information from an educational record, FERPA would require the student to provide written consent to disclose the information to the recruiter. This is the case even if the student gives verbal permission to speak to a prospective employer. While it is usually permissible to provide to a third person "directory information" (i.e. name, contact information, year in school etc. - See listing of directory information at <http://sites.jcu.edu/registrar/pages/faculty-and-staff/what-administrators-faculty-staff-need-to-know/>) without written consent, written consent is key when providing a recruiter with any substantive information based on an educational record.



So, what's the simplest solution? You can use JCU's standard FERPA consent form for any disclosures regarding students and their educational records to third persons. The form can be accessed at [http://webmedia.jcu.edu/registrar/files/2017/09/FERPA\\_REQUEST-TO-RELEASE-RECORDS-10\\_21\\_15.pdf](http://webmedia.jcu.edu/registrar/files/2017/09/FERPA_REQUEST-TO-RELEASE-RECORDS-10_21_15.pdf) or <http://webmedia.jcu.edu/legalaffairs/files/2015/10/REQUEST-TO-RELEASE-RECORDS-10-13-15.pdf>. The student just needs to sign and date the form, and provide it to you. Then, having tackled FERPA's consent requirements, you are ready to help JCU students move on to great things!

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***If you are interested in learning more about FERPA requirements on disclosures, such as disclosures to parents, consider attending the training session offered by the Office of Legal Affairs and the Office of the Registrar on "Family Educational Rights and Privacy Act (FERPA) and Other Privacy Requirements - A Guide to Handling Student Educational Records" - October 5. (See box below for details).***

***"While it is usually permissible to provide to a third person 'directory information' ... without written consent, written consent is key when providing a recruiter with any substantive information based on an educational record."***

### Upcoming Training Sessions

**October 5, 2017**

**9:30 a.m.-11:00 a.m.**

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

**LSC Conference Room**

*Presented by Office of the Registrar and Office of Legal Affairs*

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**October 11, 2017**

**9:00 a.m.-10:30 a.m.**

**"Wage & Hour Issues in the Workplace: Understanding the Fair Labor Standards Act"**

**LSC Conference Room**

*Presented by Human Resources and Office of Legal Affairs*

## Assistance Animals: Why, Where, and What Can I Say?

If you were wondering, "Can that animal be on campus," the answer is likely "yes" if it's an Assistance Animal. The use of Assistance Animals on university campuses is a recently growing trend that can raise questions about the legal requirements surrounding the presence of these animals. JCU allows Service Animals and Emotional Support Animals to be present in certain campus settings through its Assistance Animal Policy (<http://webmedia.jcu.edu/disabilities/files/2016/08/Assistance-Animal-Policy.pdf>) consistent with Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Fair Housing Act.

The guide on the following page outlines the different Assistance Animal categories and provides a brief summary of the common questions surrounding each type of Assistance Animal. This guide will help assure that all interactions with University community members concerning Assistance Animals will be handled in a sensitive and respectful manner.

If you are ever unsure of how to deal with these issues on campus, please contact Student Accessibility Services (SAS, x4967) or the Office of Legal Affairs (x1590).

**See ANIMALS, p. 3**





Assistance Animal Category	Service Animal	Emotional Support Animal
<b>What is it?</b>	A dog (or in rare cases a miniature horse) that is individually trained to do work or perform tasks for a person with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.	An animal that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. These animals need not be specially trained, and may be of any species or breed unless otherwise prohibited by state or local ordinances.
<b>Where is it allowed?</b>	All areas of campus, both inside and outside.	Student housing only, with necessary trips outside.
<b>Who coordinates this?</b>	Registration with SAS is voluntary other than for housing, where registration and a housing accommodation is required.	The student goes through an accommodation process involving documentation and approval by SAS in coordination with Residence Life.
<b>Do I have to approve it to be in my work area/classroom?</b>	No, as it can be in any campus area.	No, because these animals are not allowed in your work area or classroom.
<b>What can I ask if I don't know if the animal is supposed to be present?</b>	If it is not readily apparent that an animal is a service animal, University staff may inquire into only these two questions: 1) Whether the animal is required because of a disability, and, 2) What work or tasks the animal is trained to perform.	
<b>What if the animal is not behaving?</b>	If the animal is: 1) not housebroken or being cleaned up after, 2) poses a threat to health and/or safety, or 3) the animal is out of control and the owner does not regain control of it, then you may tell the owner to remove the animal in the short term and consult with SAS about the continued presence of the animal.	
<b>Can I ask a person about their disability, ask about a certification, or require a student to put a vest or harness on their animal?</b>	No.	No.
<b>What if I have an allergy?</b>	Please contact SAS to address this issue.	
<b>Where can I learn more?</b>	SAS is happy to answer questions you may have surrounding Assistance Animals on campus. Legal Affairs is available to answer legal questions about Assistance Animals.	



## Fair Labor Standards Act Update

### Exempt vs. Non-Exempt Update & Job Description Formatting Project

The U.S. Department of Labor's proposed revision to the Fair Labor Standards Act (FLSA) that would have increased to \$47,476 the necessary salary to be an "exempt" employee is now officially dead. In late August, a U.S. District Court in Texas issued a summary judgment order, permanently striking down the Obama Administration's proposed rule as exceeding the Department's authority. The Department of Labor dismissed its earlier appeal of the matter, and so the proposed regulations will not go into effect.

Employers are now awaiting the possibility that the Trump Administration will issue a new proposed rule, this one with a substantially lower minimum salary threshold.

In the meantime, the current FLSA regulations continue to require all employers to categorize employees as either exempt or non-exempt employees using the existing salary level test. Under the existing FLSA regulations, exempt employees are those who meet three tests: 1) a duties test requiring that the position engage in executive, administrative, or professional/teaching work; 2) a salary basis test in which the employee is paid a pre-determined amount of salary regardless of the amount of work performed in a workweek (with limited exceptions); and 3) a salary level test requiring a salary of at least \$455/week or \$23,660 annually. Those who do not meet all of these tests are non-exempt employees who are paid for all hours worked in a workweek and paid overtime compensation of one and one-half times the hourly rate of pay for all hours worked over forty (40) in a workweek.

Even prior to the Department of Labor's proposed overtime rule, the Human Resources Department has been engaged in an ongoing project to update the template and formatting of employee job descriptions, which will include the exempt or non-exempt status of each employee. Supervisors are asked to utilize the new job description format to update job descriptions at the time employee performance evaluations are completed.

***If you are interested in learning more about FLSA requirements for hours worked, lunch breaks, travel, work from home, and more, consider attending the training session offered by Human Resources and the Office of Legal Affairs on "Wage & Hour Issues in the Workplace: Understanding the Fair Labor Standards Act" – October 11. (See box on page 2 for details).***