

LEGALEASE

“Simplifying Legal Issues”



Case Western Reserve University - Office of General Counsel

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A Reminder About the Nature Tax-Exempt Entities: Operated to Serve Public – Not Private – Interests

For federal tax purposes, Case Western Reserve University is recognized as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. To receive tax-exempt status, an organization must be organized and operated exclusively for certain tax-exempt purposes specified in the Code (religious, charitable, educational, etc.). The organization must not be organized or operated for the benefit of private interests, and no part of the net earnings of the organization may inure to the benefit of any private individual.

Private benefit occurs when a person receives a benefit— monetary or otherwise— from the exempt organization that serves a private interest (not including reasonable compensation). An example of private benefit may be the use by an individual of the exempt organization’s facilities, staff or other resources for private purposes. Anything more than incidental private benefit would jeopardize an organization’s tax-exempt status. (“Incidental” generally means that the

private benefit is a mere byproduct of the public benefit and is insubstantial in amount.)

Private inurement occurs when any part of an exempt organization’s net earnings or assets accrues to a person who is an “insider” of the exempt organization (for example, an officer, trustee or key employee). An example of private inurement may be the payment of unreasonable compensation to an insider. Any amount of private inurement would jeopardize the organization’s tax-exempt status.

The University must be careful to operate in a manner that will preserve its tax-exempt status and has adopted various policies to help ensure compliant operations. Members of the University community should familiarize themselves with University policies and follow them at all times. The University’s business policies can be found at www.case.edu/bizpolicies/.

ASK THE BARRISTER

Q: Can I discuss a student’s educational performance with a colleague who works in another part of Case Western Reserve University, or is that prohibited by FERPA?

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New Disability Law News

You may know that the Americans with Disabilities Act (ADA) requires employers and public accommodations such as universities to provide reasonable accommodations to disabled persons in the workplace and on campus. But what you may not know is that with the new ADA Amendments Act (ADAAA), which became effective January 1, 2009, employers and schools will have more to consider in making decisions about who needs to be accommodated.

The ADAAA expands the scope of the individuals covered by the ADA by adding a broader definition of disability. Under the existing law, a disability is a physical or mental impairment that substantially limits one or more major life activity. The ADAAA expands the listing of “major life activities” that a disability can affect for an individual to be

disabled. The listing of “major life activities” includes:

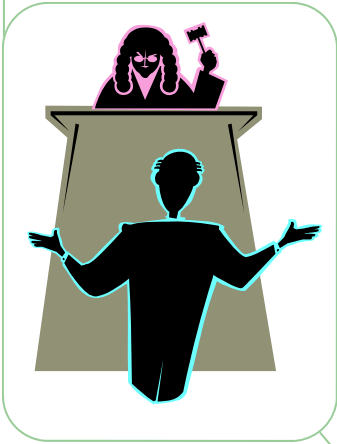
- caring for oneself, performing manual tasks, seeing, hearing, eating, walking, standing, speaking, breathing, learning, and working.
- new major life activities (added by the ADAAA) include: sleeping, bending, reading, thinking, concentrating, and communicating, as well as additional bodily functions that may be affected such as the immune system, normal cell growth, digestive, brain, respiratory, and reproductive functions. This means that more employees, students and visitors are likely to be disabled because the list of major life activities is expanded. So, under the new law, some impairments will now be considered disabilities that may not have been before, including:
 - Insomnia (sleeping)
 - Dyslexia (learning)

- Stuttering (speaking)
- Attention deficit disorder (concentrating)
- Back injuries (bending and lifting)
- Infertility potentially (reproductive)

Of course, any disability must still “substantially limit” a major life activity to be considered a disability. However, a disability does not have to substantially limit an activity related to work. For example, insomnia may substantially limit sleeping and although this is not related to a job duty, the disability may require reasonable accommodations.

Consider this question — Are you disabled if you could take medication to take care of the problem? Under the old law, you were not

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The Higher Education Opportunity Act: Peer-to-Peer File Sharing Addressed

The Higher Education Opportunity Act requires the University to take proactive steps to help combat illegal peer-to-peer ("P2P") file sharing that violates the copyright laws.

As an initial matter, the University is required to periodically notify students that illegal P2P file sharing not only violates federal law, but also violates the University's Acceptable Use Policy and Standards of Conduct. Such violations may lead not only to civil liability, but also to administrative discipline. Students must also understand that the University's Office of General Counsel will not represent students if they are sued by a copyright holder for violations of federal laws. Students may end up having to choose between spending thousands of dollars to either defend themselves or having to pay thousands of dollars to settle the matter.

This includes using network management tools to help shape bandwidth in a way that restricts the ability to illegally file share. This also includes notifying individual students of their possible violations of the law if the University receives notice of such fact from a copyright holder. Finally, the University is effectively combating this problem through the imposition of appropriate disciplinary measures when violations occur.

The final obligation imposed by the Act is that the University must help promote legal alternatives to illegal file sharing. The University is already providing legal alternatives such as: video resources are available at Kelvin Smith Library; free audio resources such as iTunes are accessible via the University's network; and there is a Residence Hall Association movie program.

In addition to providing notification to students, under the Act, the University must also take steps to "effectively combat" illegal file sharing. Over the next year, the Department of Education shall be promulgating rules defining that phrase and what is specifically required. In the meantime, the University already has taken good faith steps to meet that legal requirement.

It should be noted that the University is attempting to meet its obligations under the Higher Education Opportunity Act while at the same time not impeding the ability of our faculty and students to effectively use the IT resources to meet their legitimate educational and research goals.

Office of General Counsel
Strategic Legal Seminar Series

UPMIFA Presentation
by Michele Krantz now
available
on our
website.



ASK THE BARRISTER

A: You can have *intra-institutional* discussions regarding a student's educational performance without getting written consent from the student because FERPA does not prohibit such discussions if there is a legitimate educational purpose.

Have a question? Ask the Barrister @
www.case.edu/president/counsel/

Gift Cards

Many questions have arisen concerning use of University funds to buy gift cards as a way of recognizing employees. This issue has now been clarified in the University's revised Employee Recognition Policy (www.case.edu/bizpolicies/employee/employee.pdf). The policy states that either the Provost or Senior Vice President for Administration must approve use of University funds (this includes any funds in University accounts, whether central accounts, school accounts or departmental accounts) for employee gifts and/or rewards before the funds are so used. In addition, per IRS regulations, cash awards and gift cards are considered taxable income to the recipient. Therefore, use of University funds for employee rewards must be reported to the Controller's office. Please review the Employee Recognition Policy for more information.

New Disability Law News cont'd

disabled. Under the ADAA, you may be disabled. The new law states that mitigating measures -- medications or assistive devices you use to manage the problem -- are not considered in determining whether an employee is disabled. For example, individuals could still be disabled even if they could use medication, prosthetics, hearing aids, assistive technology, or medical equipment to reduce or manage the problem. In addition, individuals in remission from the medical condition, such as from cancer, may be disabled.

Supervisors should not try to determine if an employee or student is disabled or provide accommodations for a disabled person. Instead, the good news is that the University has several offices that handle disability accommodation issues and questions for supervisors and employees. For employees, contact the Office of Inclusion, Diversity and Equal Opportunity at 368-8877. For students, contact the Office of Disability Resources in the Office of Educational Services for Students at 368-5230. They can help you sort through this new disability law.