Legal Issues for New Administrators

Debra Ellers, Interim Senior Associate General Counsel
Kim Rytter, Senior Associate General Counsel
Office of General Counsel
University of Idaho
Office of General Counsel (OGC)

- Reports administratively to President
- Represents the University, not individual faculty, staff or students
- Assists with compliance with many federal and state laws and regulations, and Regents/State Board of Education and University policies
- Provides training to employees on matters with significant legal implications
- Handles claims/lawsuits against the University
Administrators

• Department Chairs/Unit Heads are agents of the University.

• They are responsible for important areas such as personnel administration, unit curricula and budgets.

• Consequently, chairs are often the first ones to learn of operational or student, faculty or staff concerns.
Administrators

• Have a key role in carrying out University policies, ensuring success of faculty, staff, students, and fulfilling legal compliance requirements.
Administrators
Areas of Focus

• University Governing Authorities
• Performance Evaluations
• Ethics/Conflicts of Interest
• Other Key Employment Issues:
  – Accommodations
  – Discrimination/Harassment
  – Leaves
• Records/Information
Sources of Legal Authority

– Federal and State Constitution, Statutes, Regulations

– Common Law (Court Cases)

– Regents Policies

– University Policies (FSH/APM)

– College Bylaws

– Department/Unit Bylaws/Procedures
Sources of Authority--Laws

Many applicable legal requirements—key federal laws addressing employment:

- **Fair Labor Standards Act of 1938** (FLSA—minimum wage, overtime requirements)
- **Equal Pay Act of 1963** (EPA—requires equal pay for men and women performing equal work).
- **Civil Rights Act of 1964**, Title VII (bars employment discrimination based on sex, race, color, religion, national origin.)
- **Age Discrimination in Employment Act** of 1967 (ADEA--bars employment discrimination based on age)
- **Americans With Disabilities Act of 1992** (ADA--bars employment discrimination based on disability, requires reasonable accommodation)
- **Family Medical Leave Act of 1993** (FMLA--requires employers to grant leave for serious health condition of qualifying employee or family member)
- **Uniformed Services and Reemployment Rights Act of 1994** (USERRA—requires employer to provide military leave and job restoration rights for employees with military service or obligations)
Sources of Authority--Laws

• **Immigration and Reform Act of 1986 (IRCA)**-requires completion of I-9 for new employees proving authorization to work in the US—continuing obligation, authorization to work in the US always required.

• **Export Control Laws**--Regulations of agencies controlling technology or imposing economic sanctions, including Dept of Defense, Dept of Commerce, and Dept of Treasury. Certain foreign nationals (eg Iran) can trigger concerns simply by entering certain areas (e.g. labs), or by having access to technology (ongoing research).
Plethora of laws makes for a “regulation rich” environment that the University and its administrators have to operate in.

University has “subject matter experts” in these areas to assist administrators.
Sources of Authority--Policies

- Regents Policies—have the effect of State Law due to the University’s constitutional status; (certain State laws apply per Regents’ dictate, such as discrimination laws, or outside the Regents’ authority, eg, criminal,)
- Faculty Staff Handbook Policies--part of employment contract
- Administrative Procedural Manual-processes, additional requirements
- College By-Laws or other written policies
- Unit By-Laws or other written policies
Policies

• Policies may establish substantive or procedural rights for employees
• A “Policy-Rich” Environment
• “Process is Your Friend”
• Always check Regents/University policy on significant matters before taking action
Summary

Between policies and laws, there is likely a governing authority for every action of an administrator!
Avoiding Pitfalls
Avoiding Pitfalls

• Understand responsibilities
• Seek out opportunities for training/learning
• Use resources to assist; examples:
  – Dean
  – Provost
  – HR
  – Office of General Counsel
  – Office of Sponsored Programs
  – International Programs Office
• Be proactive
Performance Evaluations

Are the basis for important employment decisions, such as non-renewal, tenure and promotion, and raises.
Regents II.G. 4.a, Performance Evaluation

Annual Evaluation - Each year the chair must submit to the dean an evaluation of each faculty member in the department.

This evaluation, together with the input of higher administrators, will be used as the basis for the final recommendation relative to reappointment, non-reappointment, acquisition of tenure, or other personnel action....

“The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated. “
A-1 d. Evaluation of Faculty by Unit Administrators.

Unit administrators evaluate their faculty members. The performance of each faculty member during the review period is judged on the basis of the position description(s) in effect during that period.
FSH 3320, Annual Performance Evaluations and Salary Determination of Faculty Members

B. PERFORMANCE BELOW EXPECTATIONS OF NON-TENURED FACULTY MEMBERS

Requires administrators to take various actions:

B-2. FIRST ANNUAL OCCURRENCE. – administrator must offer to meet, and appoint a mentoring committee

B-3. TWO CONSECUTIVE ANNUAL ASSESSMENTS OF BELOW EXPECTATIONS. If 2 consecutive annual evaluations of below expectations overall or within one or more areas of responsibility, administrator will, at the same time he or she delivers the performance evaluation, arrange a meeting of the faculty member, the unit administrator and, in the unit administrator's discretion, the Dean of the College, to examine strategies to have faculty meet standards
C. PERFORMANCE BELOW EXPECTATIONS OF TENURED FACULTY MEMBERS

C-1. ANNUAL ASSESSMENT OF BELOW EXPECTATIONS. In the event a tenured faculty member receives an annual evaluation of below expectations, the procedures described in B-1 through B-3 above will apply. In the event of an overall score of 1, the provost may determine that further review of the faculty member’s performance is required. This review will be conducted in accordance with the procedures prescribed in 3320 C-2.

C-2. THREE CONSECUTIVE ANNUAL EVALUATION ASSESSMENTS OF BELOW EXPECTATIONS. In the event of three consecutive annual evaluations below expectations overall or within one or more areas of responsibility, or a pattern of below expectations evaluations over five years (a summary score of 2 or lower), the Dean shall initiate a formal peer review.
Post-Tenure Review

Significance of the Post-Tenure Review?
g. Periodic Performance Review of Tenured Faculty Members -...

(4) Termination of employment, following post-tenure review, “an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.”
Non-faculty Evaluations

- 3340, Performance Evaluation Staff Employees
- 3360, Probation, Promotion, Demotion, and Transfer of Classified Employees
Key for Evaluations (and Other Personnel Processes)

No Surprise Rule!
Evaluations

A common pitfall is to inflate assessments, and "soften" the message, especially for colleagues.

This often creates future problems for decisions relating to other evaluations, tenure, promotion or termination.
Scenario--Evaluations

• You are a new Chair of Modern Languages.

• One of your tenured faculty members, Professor Xena, achieved promotion to full professor 10 years ago, based on her dynamic teaching methods, and creative and well-regarded publications.

• From your initial review of her CV, publications and courses, it appears that she is now “coasting.”

• Her teaching consists of rote tests that change little from year to year.

• Scholarship has diminished considerably, both in volume and quality of journals.
Scenario--Evaluations

• Since achieving tenure, Professor Xena’s evaluations since achieving tenure have all been at least “meets expectations,” with no mention of any concerns.

• Her colleagues tell you she is irascible and high strung.

• Your predecessor was known to be a mild-mannered chair who “just wanted to get along,” and was “conflict-averse.”
Scenario--Evaluations

• Some male students have complained to you this year that Prof. Xena treats women students more leniently, allowing them extra time for assignments.
• Faculty colleagues tell you that Prof. Xena has been acting strangely in meetings, sometimes muttering to herself.
• You are concerned about Prof. Xena’s impact on productivity, collegiality, and the educational environment.
Scenario-Evaluations

It is time for Prof. Xena’s annual evaluation. How do you approach it?
Scenario-Evaluations

• Shortly before your scheduled meeting to discuss the evaluation, you hear through the Moscow grapevine that Prof. Xena and her partner are buying property in Tucson, and plan to move there in a couple years.

• While you don’t know Prof. Xena’s actual age, it’s apparent to you that she’s “no spring chicken.” Her retirement would mean one less headache for you.

• Should you suggest during your evaluation meeting that Prof. Xena consider early retirement?
Recommendations -- Evaluations

- Follow Regents and University policy and college/unit guidelines
- Relate to the PD—but can also reference policies, bylaws or general concerns
- Have specific examples (e.g., “collegiality;” what actions have been shown—mentoring others, assisting colleagues with workload?)
- Accurately assess strengths and weaknesses
- Avoid speculation (generalized statements like “I’m sure she can improve in the future”)
- Gather input over time and from a broad range of sources
- Avoid references to protected class (e.g., age, disability, leaves)
ETHICS and CONFLICTS
Idaho State Board of Education  
GOVERNING POLICIES AND PROCEDURES

SECTION: I. GENERAL GOVERNING POLICIES AND PROCEDURES  
Subsection: G. Conflict of Interest December 2008

1. Policy

Members of the Board and administrators and employees of the institution and agencies serve a public interest role and have a clear obligation to conduct all affairs of the institution, school and agency in a manner consistent with that role.

All decisions of the Board, administrators, and employees are to be made solely on the basis of a desire to promote the best interests of the institution, school or agency and the public good.
1. General Principles of Ethical Conduct

All employees of the institutions, and agencies:

a. shall not hold financial interests that are in conflict with the conscientious performance of their official duties and responsibilities;

...

k. shall disclose potential conflicts of interest to the Chief Executive Officer, or designee, of the institution or agency, and avoid conflicts of interest, potential conflicts of interest, and circumstances giving rise to the appearance of a conflict of interest.
Regents Policy requires DISCLOSURE of potential conflict of interests to the President.

University Policy requires DISCLOSURE, and AVOIDANCE or MANAGEMENT of the potential conflict.
FSH Ethics/Conflicts

• FSH 3170, University Ethics
• FSH 3205, Consensual Romantic or Sexual Relationships
• FSH 3260, Consulting and Professional Workload
• FSH 5600, Financial Disclosure Policy (Research)
• FSH 6240, Conflicts of Interest or Commitment
• FSH 6241, Nepotism
B-1. Employees shall avoid situations that may result in a conflict of interest or commitment with the potential to directly and significantly affect the University’s interests, compromise objectivity in carrying out University responsibilities, or otherwise compromise the performance of University responsibilities. Examples of prohibited conflicts are set out in section C-3. Situations that may be managed to avoid conflict are set out in section B-2; such situations may proceed if approved in writing by the president or the president’s designee, and subject to an authorized management plan that prescribes the necessary steps and management to avoid the conflict.

B-2. University employees who have apparent conflicts are expected to disclose them...
FSH 6240—Conflicts of Interest, con’t

3 categories of conflicts:
C-1, routinely allowable, e.g., royalties from books, presentations at professional conferences
C-2, conditionally allowable following disclosure, and development of management plan, e.g., having a financial interest in a company in same area of University responsibilities, requiring one’s own textbook in a class;
C-3, presumptively not allowable, e.g. referrals of University work to an external business in which a family member has a significant financial interest.
You must complete this disclosure annually with your performance evaluation. If you have a conflict to disclose then you also need to complete Form FSH 6240A. Likewise, if there is any change in your circumstance that may give rise to potential conflicts or eliminate potential conflicts previously disclosed, then you will need to complete Form FSH 6240A within 30 days of the change. University of Idaho FSH Policy 6240 Conflicts of Interest or Commitment is available at http://www.webs.uidaho.edu/fsh/6240.html. If you have any questions about the form or about specific potential or actual conflicts of interest, please contact your unit administrator or the Chair of the university’s Ethical Guidance and Oversight Committee. Disclose outside employment for compensation of more than 20 hours/week by completing FORM 6240 B – Disclosure of Outside Employment or Consulting for Compensation.

☐ I have reviewed FSH 6240 and DO NOT have any conflicts of interest, conflicts of commitment or apparent conflicts to report. Please sign and date below.

☐ I have reviewed FSH 6240 and DO have conflicts of interest, conflicts of commitment or apparent conflicts to report. Please, sign below, and fill out form FSH 6240A. Submit completed FSH 6240A to your unit administrator along with separate pages describing a plan to manage each conflict or apparent conflict.

Your signature below certifies that you have reviewed FSH 6240 regarding disclosure of conflicts, and that the information that you provide regarding disclosure of any conflict is accurate to the best of your knowledge as of the date of this document, and you commit to providing an update if a material change occurs in the information you have provided.

Unit Administrator Signature

____________________________________________________

Interdisciplinary/Center Administrator (when appropriate) Interdisciplinary/Center Administrator (when appropriate)
FSH 6240-A, Disclosure

- If a potential conflict, faculty/staff must DISCLOSE on Form 6240-A, with unit administrator review/approval.
- In the case of a conflict that is not prohibited, a MANAGEMENT PLAN plan must be developed. Consider incorporating independent review/decision-making to address the conflict.
- Dean & ad hoc Oversight Committee (currently run through OGC) review and sign Form 6240-A.
I indicated that I have a conflict to report on my performance evaluation and am completing this as part of that report. This report is made following a change of circumstances and replaces my report on my most recent performance evaluation. If you check this box please indicate whether your change gives rise to or eliminates a potential conflict.

**Employee Conflicts of Interest Disclosure**

By signing here, you are certifying that the information that you provide in this form and in the management plan is accurate to the best of your knowledge as of the date of your signature, and you commit to providing an updated form to your supervisor if a material change occurs in the information you have provided. Please sign and date this form and submit it to your department head or chair supervisor/institute director along with separate pages describing the nature of the reported conflict and a plan to manage the reported conflict (please obtain template for management plan from the Chair of the Ethics Committee or online located at [FSH 6240 D-3](#)).

<table>
<thead>
<tr>
<th>Signed</th>
<th>Date</th>
</tr>
</thead>
</table>

**Supervisor Review**

- [ ] I concur with the employee’s conflict(s) and the plan(s) to manage the conflict(s).
- [ ] I do not concur with the employee’s management of one or more conflicts. Attached are my reasons for not concurring.

<table>
<thead>
<tr>
<th>Department Head or Chair / Supervisor / Institute Director</th>
<th>Date</th>
</tr>
</thead>
</table>

**Unit Administrator Review**

- [ ] I concur with the supervisor’s review.
- [ ] I do not concur with the supervisor’s review. Attached are my reasons for not concurring.

<table>
<thead>
<tr>
<th>Dean / Unit Administrator</th>
<th>Date</th>
</tr>
</thead>
</table>

**Committee Action**

- [ ] I concur with the above reviews and the proposed management plan.
- [ ] I do not concur with the above reviews and the proposed management plan. Attached are the required actions.

<table>
<thead>
<tr>
<th>Chair, Ethical Guidance and Oversight Committee</th>
<th>Date</th>
</tr>
</thead>
</table>

- Copy to employee, employee’s supervisor, employee’s unit administrator, and human resources
- Original document on file in the office of the Ethical Guidance and Oversight Committee
Scenario--Conflict of Interest

You are the new chair of the Sociology Department, which includes oversight of Anthropology faculty and curriculum.

Professor Zee is a long term full professor who teaches Introductory Anthropology.

You are reviewing his syllabus for his classes in the upcoming year, and note that he has assigned his class to use a textbook that he wrote, “A Survey of Humankind from the Pleistocene to the Present.”

Do you have any concerns about Prof. Zee’s assignment of his own textbook for his class?
Scenario—Conflict of Interest

Yes. FSH 6240 C-2 b. 6 provides as an example of a conflict:

“Requiring or recommending one’s own or one’s related individual’s (as defined in FSH 6241) textbook or other teaching aids, materials, software, equipment, or the like to be used in connection with University instructional programs from which the person receives income.”
Scenario—Conflict of Interest

You meet with Prof. Zee, and state your concern based on University policy about assigning his own textbook. He says dismissively that if you were any scholar of anthropology, you would know that “A Survey of Humankind from the Pleistocene to the Present” is THE definitive scholarly work in the field. Accordingly, it is the best textbook for the students in his class.

He further says that if you won’t let him use his own book, it’s interfering with his academic freedom, and he’ll submit a grievance to the Faculty Appeals Hearing Board.

What are your next steps?
Scenario—Conflict of Interest

Under FSH 6240-C-2, this type of conflict may be allowable IF an authorized management plan is in place.

Possible options for management of this conflict:
--Have Prof. Zee provide reviews or other credible data that show his textbook is the definitive treatise
--Document that it’s a low cost textbook in the field, and benefits students
--Find out if the royalties would be de minimis. If not, suggest that Prof Zee consider options, such as to donate a portion of the royalties to a scholarship fund, or use it for class enrichment, or make other use of royalties that benefits the class or University, to mitigate conflict
--Complete Form 6240-A, include a management plan, with periodic review and follow up.
FSH 3260, Consulting and Professional Workload

A-1. Consulting. As used herein shall mean any professional activity for which a UI employee is paid that is external to UI or clearly beyond the assigned duties for which the employee is appointed and paid by UI.

B-1. Consulting. Consulting activity must have prior written approval by the employee's departmental head or supervisor and dean or director/administrator consistent with section C herein, prior to initiation of the consulting activity. Each department must have a process for implementing this policy that has been approved by the dean of the college or the head of the unit. ...
Any consulting activity requires completion and approval of **FORM 3260 A University of Idaho CONSULTING: Request to Engage in Professional Consulting**

Approval from dept chair and dean must be received prior to any consulting activity. If a COI exists, that process must also be followed separately.

- Describe the subject, scope and purpose of consulting activity including client details:
- Provide an estimate of the amount of time that will be required to complete the consulting activity:
- State whether the proposed activity will require the use of University resources, and if so, identify the resources that would be used:
- If consulting activity will require the use of university resources (i.e., supplies, equipment, or facilities), the employee must enter into a contract with the University to use those resources at a reasonable rate. The contract for use of University resources must be approved and signed by the VP for Finance or designee, and must be executed prior to initiation of the consulting activity.
D-2. Disclosure of Outside Employment and Consulting: All employees who work more than 20 hours per week for the university and who have outside employment of more than 20 hours per week or who perform consulting for compensation, pursuant to FSH 3260, must complete the Disclosure of Outside Employment or Consulting for Compensation form (Form 3260B/6240B on an annual basis. An updated Form 3260B/6240B must be submitted throughout the year if a person accepts outside employment or consulting.
FORM 3260B/6240B ANNUAL Disclosure of Outside Employment (20 hours/week or more) or ANY Consulting for Compensation

Name
Department
Vandal No.
Position Title

Please provide the following information for all non-University of Idaho employers that are providing you compensation.

<table>
<thead>
<tr>
<th>Outside Employer</th>
<th>Period of Employment</th>
<th>Estimated Hrs Per week</th>
<th>Nature of Outside Employment and its Relationship to the University</th>
</tr>
</thead>
</table>

**Employee Disclosure of Outside Employment**

*By signing here, you are certifying that the information that you provide in this form is accurate to the best of your knowledge as of the date of your signature, and you commit to providing an updated form to your supervisor if a material change occurs in your compensation from outside employment.*

Signed __________________________   Date _____________

**Supervisor Review**

*The supervisor’s signature here reflects that he or she has reviewed this form.*

Department Chair / or Unit Administrator / or Institute Director __________________________   Date _____________

- Copy to employee, supervisor or unit administrator, and human resources
- Original document on file in the office of the chair of the Ethical Guidance and Oversight committee, campus zip 83815
Scenario--Consulting

• You are Chair of the Biology Dept. Dr. Player is a rising star, specializing in molecular biology, with an outstanding research portfolio.

• She comes in beaming one morning, saying it will be a great Christmas for her family--she has just landed a lucrative engagement as an expert witness on behalf of Monsanto Corp in a patent dispute.
Scenario--Consulting

You, as the Chair, should:

A. Have Dr. Player hire you as her research assistant as part of her expert witness work, so you can cash in on the bonanza.

B. Congratulate Dr. Player on supplementing her modest University salary.

C. Have Dr. Player complete Form 3260 A Consulting: Request to Engage in Professional Consulting,” AND ensure she understands that she cannot start her consulting engagement with Monsanto until (unless) APPROVED.
NEPOTISM. No preferential treatment will be afforded to individuals based on relationships that may place undue or inappropriate influence on terms and conditions of employment and/or employment decisions.
Nepotism-FSH 6241

B-2. Approval and management of a supervisory relationship between related individuals; Confidentiality. Except in the case of a romantic or sexual relationship between supervisor and employee (see below), a person may work under the supervision of a related individual or in the same work unit only if the working relationship is addressed in a nepotism management plan, Form 6241A, approved by the Executive Director for Human Resources....
FSH 3205-CONSENSUAL ROMANTIC OR SEXUAL RELATIONSHIPS

• **B. Policy.** In order to foster healthy professional relationships at all levels of the institution, it is the policy of the University of Idaho that no employee shall enter into or continue a romantic or sexual relationship with a student or employee over whom she or he exercises academic, administrative, supervisory, evaluative, counseling or other authority.
FSH 3205—Consensual Relationships

B. (con’t) The employee in the position of authority must disclose the romantic or sexual relationship to his or her immediate supervisor or to the next level supervisor.

If the parties are unable, or do not agree, to immediately end the romantic or sexual relationship, the supervisor must take prompt and appropriate action to end the relationship of authority.
Administrator Responsibilities

• Nepotism—Report to HR, develop management plan

• Consensual Relationships—take action if become known, discuss course forward with Dean, Provost, OGC. These cases may result in transfer/discipline/separation, so should be handled with caution and confidentiality.
Other Key Areas of Concern

• Statements about harassment, discrimination or other unfair treatment;

• Notice or information requesting accommodations or leave due to health condition, parenting or military service, whether for self or family member; or

• Statements about accidents, safety or violence concerns, law or policy violations

Administrators are not expected to resolve these situations, but simply to document relevant facts, seek assistance from, and report them immediately to, appropriate University resources.
Discrimination Laws

Federal laws (and analogous state laws) prohibit discrimination in employment terms and conditions based on:

• Race, religion, color, sex, or national origin (Title VII of the Civil Rights Act of 1963);
• Age (over 40) (Age Discrimination in Employment Act of 1967);
• Disability (also requires reasonable accommodation) (Americans With Disabilities Act of 1990).
• Executive Order 11246—covers sex, race, religion, color, sex, national origin for federal contractors—sexual orientation and gender identity recently added
Policies on Discrimination/Harassment

• Regents’ Policy II.P.1-3, Statement of Non-Discrimination, Equal Employment Opportunity, and Sexual Harassment
• FSH 3060—Affirmative Action and Equal Opportunity
• FSH 3065--Affirmative Action and Equal Employment Opportunity in Hiring
• FSH 3200—Policy of Non-Discrimination
• FSH 3210—Anti-Discrimination Policy
• FSH 3215—Non-Discrimination on Basis of Sexual Orientation and Gender Identity/Expression
• FSH 3220—Sexual Harassment
Discrimination Laws and Policies, con’t

Prohibit “adverse action” based on “protected class” [race, color, age, disability, sex, religion, national origin, veteran status, genetic information, sexual orientation, gender identity]
Adverse Action

Employment action having tangible negative effect:

• Failure to hire
• Hostile working environment (harassment)
• Poor performance evaluation
• Denial of tenure or promotion
• Denial of merit raise
• Termination of employment
Reporting Harassment/Discrimination

Office of Human Rights, Access and Inclusion (HRAI), hrai@uidaho.edu, 208-885-4285
See HRAI website for more information: http://www.uidaho.edu/diversityandhumanrights/hrai.

Mandatory reporting for chairs/unit administrators

Retaliation for reporting is strictly prohibited!
Accommodations

• Allow qualified employee with a disability to perform essential functions of job—change in equipment, methods to perform, work schedules, etc.

• Must be reasonable.

• Employer is required to engage in interactive process with employee requesting accommodation—don’t just say NO!
Resources

• Disability/Accommodation Issues for All Employees—Faculty and Staff
• APM 50.52
• Contact HR
• Wes Matthews, Executive Director HR
  wmattherws@uidaho.edu, 885-3478
• Brandi Terwilliger, Director of HR
  brandit@uidaho.edu, 885-3008
Federal Leave Laws

Federal Law provides leave rights and job protection to qualified employees for:

• Serious health condition of self or family member (Family Medical Leave Act-FMLA).
• Parental care for newborn or newly adopted child (FMLA).
• Military service or obligations (Uniformed Services Employment and Re-employment Rights Act (USERRA) and FMLA).
Leaves—Key Points

Status of family/medical/military leave should be treated as a “protected class.”

Avoid penalizing faculty/staff for taking the leave, in areas such as:
- Performance evaluations
- Merit pay
- Tenure or promotion decisions
- Non-renewal decisions
Leaves

Resources:
--FSH 3710, Leave Policies
--Human Resources, Benefits, benefits@uidaho.edu, (208) 885-3697

--FSH 3520 F-9, Tenure Extension due to family, medical or other exceptional circumstances.
--Provost’s Office
Leaves and Accommodations--Scenario

You approved your admin assistant to “work from home” on a project for a few days. During the work day, the employee decides to go to the store for some work supplies, and gets in a car accident while returning home. The employee has filed a worker’s compensation claim.

1. The employee tells you she has sustained a back injury that will require going to the chiropractor 3 times per week for 2 hours at a time, with treatment expected to last 1 month. The employee has previously exhausted all sick leave.

What are the considerations for you as the administrator?
Scenario-Leaves and Accommodations, con’t

2. One month later, the employee says she has developed post-traumatic stress syndrome from the car accident, and can no longer drive. The employee’s job functions sometime require her to visit other University sites, with no ready public transportation. She requests that you revise her position description to remove visiting other sites as a responsibility, so she doesn’t have to drive.

• What are your responsibilities?
• What actions might you take?
Security/Workplace Violence

Report Concerns about Faculty, Staff, Students, Visitors:

If Emergency, 911

If Non-Emergency, Matt Dorschel, Executive Director of Public Safety and Security, 885-7209, mdorschel@uidaho.edu

University has Threat Assessment Team, chaired by Director of Public Safety and Security
Conclusion: Best Practices

• Focus on success and a professional environment for your faculty, staff and students
• Avoid jokes, stereotyped comments or the like implicating “protected classes”
• Report to, and get assistance from, appropriate resources immediately with any discrimination, accommodation or leave issues
• Have fair and consistent personnel processes that follow applicable policies and by-laws:
  – evaluations
  – promotion and tenure
  – termination
Public Records

Regents/SBOE require University to follow Idaho’s Public Records Act, Idaho Code Title 74, Chapter 1.

“Public Record” is defined to include, but not be limited to:

“Any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency....”
Idaho Code Sec. 74-101(13)
Public Records

Any member of the public (an individual, a business, media, etc.) can request to examine and copy any public record.

Examination must be allowed within a set period, typically within 10 working days, unless a limited exception applies.
A. POLICY.

A-1. The University of Idaho, at the direction of the regents, has developed a policy for the examination or copying of public records in its custody. **Unless otherwise exempted, all UI public records are open to inspection and copying by any person, subject to reasonable regulations. ...**
A-2. Except in the case of legal compulsion, the following UI records are among those not open to public inspection or copying without the prior written consent of the person or persons to whom such records pertain: (a) the personnel records of employees, other than the employee's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace, and department,
Confidential Information—Employee Records

• Under Idaho Public Records law, an employee can obtain copies of any record about them—including both official personnel files and any “unofficial files” or records
• Exception for ongoing criminal investigations
• Third parties can obtain certain personnel records, such as titles, salary, job descriptions.
Confidential Information—Medical Information

Medical information/records about employees or students are also confidential, under the Americans with Disabilities Act and University policy (FSH 6500).

Medical records should be maintained separately and confidentially from “official” files.
Requests for information related to grants may also have other protections under federal law, such as proprietary/trade secret information (typically limited to ongoing research).
Confidential Information— Students

Disclosures of student information/records to those without a “need to know” are generally prohibited under federal law, FERPA.

Disclosures can occur inadvertently, such as putting student educational records on shared drives or University websites.
Records-Handling

Assume that any e-mail or other record you create while working or using University resources is subject to disclosure—either to the PUBLIC or the subject individual (employee or student).

Ask yourself: Would I want the media (President, my mother, the employee, etc...) to see this document?
Records--Handling

Assume that any record or information you RECEIVE is confidential, and don’t share it other than those within the University with a business “need to know,”

unless you understand the exception allowing for disclosure, and it applies.

Any questions about confidentiality, check with OGC.

OGC is responsible for responding to public records requests, which should always be referred to counsel’s office. See APM 65.03, Public Records Requests.
Legal Matters

• Any communications from outside attorneys should be referred immediately to OGC.

• Any written claims, subpoenas, demands or lawsuit documents should be referred immediately to OGC.
Office of General Counsel

Location: Administration Building 127
Mailing address: 875 Perimeter Drive, MS 3158
Moscow, ID 83844-3158
Phone: 208-885-6125
Email: counsel@udiaho.edu
Other University Resources

  --or by phone (800) 775-1056

• Ombuds—Barb Beatty (208) 885-7668, barbarabeatty@uidaho.edu

Confidential assistance when problems arise and individuals are unsure of their options and/or need assistance when pursuing solutions.
4. Performance Evaluation

a. Annual Evaluation - Each year the chair of a department must submit to the dean of the chair’s college an evaluation of each faculty member in the department. This evaluation, together with the input of higher administrators, will be used as the basis for the final recommendation relative to reappointment, non-reappointment, acquisition of tenure, or other personnel action, whichever is appropriate.

The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated.
B. PERFORMANCE BELOW EXPECTATIONS OF NON-TENURED FACULTY MEMBERS

B-1. If the unit administrator determines that a non-tenured faculty member is performing below expectations, the unit administrator should consider the variety of possible causes, other than inadequate effort on the faculty member’s part, that might be responsible for the performance.

It is not the unit administrator’s role to diagnose the cause of the problem but to suggest sources of appropriate professional help and to encourage the employee to seek such help. Faculty members and unit administrators may obtain referral information and advice from the University Ombuds and Human Resources.

B-2. FIRST ANNUAL OCCURRENCE.

a. In the event that a non-tenured faculty member receives an annual evaluation concluding that he or she has performed below expectations (2 or lower) within one or more areas of responsibility, the unit administrator will, at the same time he or she delivers the performance evaluation, offer to meet with the faculty member to identify the reasons for the performance below expectations. At this meeting the faculty member and the unit administrator will review the current Position Description and examine strategies that would permit the faculty member to improve his or her performance.

b. In the event that a non-tenured faculty member receives an annual evaluation concluding that he or she has performed below expectations (2 or below) in the overall score, the unit administrator will at the same time he or she delivers the performance evaluation, offer to meet with the faculty member to identify the reasons for evaluating the performance as below expectations. At this meeting the unit administrator will appoint a mentoring committee by selecting three individuals from a list of five faculty members nominated by the faculty member, or if the faculty member makes no nominations, will appoint three faculty members of her/his choosing. The mentoring committee’s purpose is to help the faculty member improve performance. The members of the committee need not be drawn from the same unit as the faculty member. The faculty member or unit administrator may request that the University Ombuds attend meetings of the mentoring committee and faculty member.
B-3. TWO CONSECUTIVE ANNUAL ASSESSMENTS OF BELOW EXPECTATIONS. In the event of two consecutive annual evaluations concluding that the non-tenured faculty member has performed below expectations overall or within one or more areas of responsibility (2 or lower) the unit administrator will, at the same time he or she delivers the performance evaluation, arrange a meeting of the faculty member, the unit administrator and, in the unit administrator's discretion, the Dean of the College. The faculty member or the unit administrator may request that the University Ombuds attend the meeting.

The intent of the meeting is to review

a. the current position description and revise it if necessary to address the issues identified during the discussion.

b. the strategies implemented in the previous year and to identify why the strategies did not result in the faculty member meeting expectations. The parties should re-examine strategies that would permit the faculty member to improve his or her performance.
C. PERFORMANCE BELOW EXPECTATIONS OF TENURED FACULTY MEMBERS

C-1. ANNUAL ASSESSMENT OF BELOW EXPECTATIONS. In the event a tenured faculty member receives an annual evaluation of below expectations, the procedures described in B-1 through B-3 above will apply. In the event of an overall score of 1, the provost may determine that further review of the faculty member’s performance is required. This review will be conducted in accordance with the procedures prescribed in 3320 C-2.

C-2. THREE CONSECUTIVE ANNUAL EVALUATION ASSESSMENTS OF BELOW EXPECTATIONS. In the event of three consecutive annual evaluations below expectations overall or within one or more areas of responsibility, or a pattern of below expectations evaluations over five years (a summary score of 2 or lower), the Dean shall initiate a formal peer review.
g. Periodic Performance Review of Tenured Faculty Members -...

(4) Termination of employment - If, following a full and complete review, a tenured faculty member’s performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.
B-1. Employees shall avoid situations that may result in a conflict of interest or commitment with the potential to directly and significantly affect the University’s interests, compromise objectivity in carrying out University responsibilities, or otherwise compromise the performance of University responsibilities. Examples of prohibited conflicts are set out in section C-3. Situations that may be managed to avoid conflict are set out in section B-2; such situations may proceed if approved in writing by the president or the president’s designee, and subject to an authorized management plan that prescribes the necessary steps and management to avoid the conflict.

B-2. University employees who have apparent conflicts are expected to disclose them in compliance with this policy. In all matters, employees are expected to take appropriate steps, including consultation if issues are unclear, to avoid both conflicts of interest and commitment and the appearance of such conflicts.
FSH 6240—Conflicts of Interest, con’t

3 categories of conflicts:

C-1, routinely allowable, e.g., royalties from books, presentations at professional conferences

C-2, conditionally allowable following disclosure, and development of management plan, e.g., having a financial interest in a company in same area of University responsibilities, requiring one’s own textbook in a class;

C-3, presumptively not allowable, e.g. referrals of University work to an external business in which a family member has a significant financial interest.
You must complete this disclosure annually with your performance evaluation. If you have a conflict to disclose then you also will need to complete Form FSH 6240A. Likewise, if there is any change in your circumstance that may give rise to potential conflicts or eliminate potential conflicts previously disclosed, then you will need to complete Form FSH 6240A within 30 days of the change. University of Idaho FSH Policy 6240 Conflicts of Interest or Commitment is available at http://www.webs.uidaho.edu/fsh/6240.html. If you have any questions about the form or about specific potential or actual conflicts of interest, please contact your unit administrator or the Chair of the university’s Ethical Guidance and Oversight Committee. Disclose outside employment for compensation of more than 20 hours/week by completing FORM 6240 B – Disclosure of Outside Employment or Consulting for Compensation.

- I have reviewed FSH 6240 and DO NOT have any conflicts of interest, conflicts of commitment or apparent conflicts to report. Please sign and date below.
- I have reviewed FSH 6240 and DO have conflicts of interest, conflicts of commitment or apparent conflicts to report. Please, sign below, and fill out form FSH 6240A. Submit completed FSH 6240A to your unit administrator along with separate pages describing a plan to manage each conflict or apparent conflict.

Your signature below certifies that you have reviewed FSH 6240 regarding disclosure of conflicts, and that the information that you provide regarding disclosure of any conflict is accurate to the best of your knowledge as of the date of this document, and you commit to providing an update if a material change occurs in the information you have provided.

_____________________________________________________
Unit Administrator Signature

_____________________________________________________
Interdisciplinary/Center Administrator (when appropriate)
FSH 6240-A, Disclosure

• If a potential conflict, faculty/staff must DISCLOSE on Form 6240-A, with unit administrator review/approval.

• In the case of a conflict that is not prohibited, a MANAGEMENT PLAN plan must be developed. Consider incorporating independent review/decision-making to address the conflict.

• Dean & ad hoc Oversight Committee (currently run through OGC) review and sign Form 6240-A.
FORM FSH 6240A - Disclosure of Conflicts
TO BE COMPLETED WHEN YOU HAVE A CONFLICT TO DISCLOSE OR A CHANGE IN
CIRCUMSTANCES

EMPLOYEE INFORMATION
Name ___________________________ Department ___________________________
Vandal No. ___________________________ Position Title ___________________________
Campus Phone No. ___________________________ Email Address ___________________________

I indicated that I have a conflict to report on my performance evaluation and am completing this as part of that report.
This report is made following a change of circumstances and replaces my report on my most recent performance evaluation. If you check this box please indicate whether your change gives rise to or eliminates a potential conflict: _____________.

Employee Conflicts of Interest Disclosure

By signing here, you are certifying that the information that you provide in this form and in the management plan is accurate to the best of your knowledge as of the date of your signature, and you commit to providing an updated form to your supervisor if a material change occurs in the information you have provided. Please sign and date this form and submit it to your department head or chair supervisor/institute director along with separate pages describing the nature of the reported conflict and a plan to manage the reported conflict (please obtain template for management plan from the Chair of the Ethics Committee or online located at FSH 6240 D-3).

Signed ___________________________ Date ___________________________

Supervisor Review
☐ I concur with the employee’s conflict(s) and the plan(s) to manage the conflict(s).
☐ I do not concur with the employee’s management of one or more conflicts. Attached are my reasons for not concurring.

Department Head or Chair /Supervisor/Institute Director ___________________________ Date ___________________________

Unit Administrator Review
☐ I concur with the supervisor’s review.
☐ I do not concur with the supervisor’s review. Attached are my reasons for not concurring.

Dean / Unit Administrator ___________________________ Date ___________________________

Committee Action
☐ I concur with the above reviews and the proposed management plan.
☐ I do not concur with the above reviews and the proposed management plan. Attached are the required actions.

Chair, Ethical Guidance and Oversight Committee ___________________________ Date ___________________________

- Copy to employee, employee’s supervisor, employee’s unit administrator, and human resources
- Original document on file in the office of the Ethical Guidance and Oversight Committee
FSH 3260, Consulting and Professional Workload

A-1. Consulting. As used herein shall mean any professional activity for which a UI employee is paid that is external to UI or clearly beyond the assigned duties for which the employee is appointed and paid by UI.

B. POLICY. Faculty and staff on full-time appointment owe their primary employment responsibility to UI. They are expected to fulfill, to the best of their abilities, the responsibilities established in their respective position descriptions. Full-time employment requires a work effort of at least 40 hours a week. No employee is to receive additional compensation from any source for work performed as a part of his or her regular full-time UI employment. [See also FSH 3170.

B-1. Consulting. Consulting activity must have prior written approval by the employee's departmental head or supervisor and dean or director/administrator consistent with section C herein, prior to initiation of the consulting activity. Each department must have a process for implementing this policy that has been approved by the dean of the college or the head of the unit. ...
Any consulting activity requires completion and approval of FORM 3260 A University of Idaho CONSULTING: Request to Engage in Professional Consulting.

Approval from dept chair and dean must be received prior to any consulting activity. If a COI exists, that process must also be followed separately.

- Describe the subject, scope and purpose of consulting activity including client details:
- Provide an estimate of the amount of time that will be required to complete the consulting activity:
- State whether the proposed activity will require the use of University resources, and if so, identify the resources that would be used:
- If consulting activity will require the use of university resources (i.e., supplies, equipment, or facilities), the employee must enter into a contract with the University to use those resources at a reasonable rate. The contract for use of University resources must be approved and signed by the VP for Finance or designee, and must be executed prior to initiation of the consulting activity.]
FSH 6240
CONFLICTS OF INTEREST OR COMMITMENT

D-2. Disclosure of Outside Employment and Consulting: All employees who work more than 20 hours per week for the university and who have outside employment of more than 20 hours per week or who perform consulting for compensation, pursuant to FSH 3260, must complete the Disclosure of Outside Employment or Consulting for Compensation form (Form 3260B/6240B on an annual basis. An updated Form 3260B/6240B must be submitted throughout the year if a person accepts outside employment or consulting.
Nepotism-FSH 6241

B-2. Approval and management of a supervisory relationship between related individuals; Confidentiality. Except in the case of a romantic or sexual relationship between supervisor and employee (see below), a person may work under the supervision of a related individual or in the same work unit only if the working relationship is addressed in a nepotism management plan, Form 6241A, approved by the Executive Director for Human Resources....
B. Policy. In order to foster healthy professional relationships at all levels of the institution, it is the policy of the University of Idaho that no employee shall enter into or continue a romantic or sexual relationship with a student or employee over whom she or he exercises academic, administrative, supervisory, evaluative, counseling or other authority.
B. (con’t) The employee in the position of authority must disclose the romantic or sexual relationship to his or her immediate supervisor or to the next level supervisor.

If the parties are unable, or do not agree, to immediately end the romantic or sexual relationship, the supervisor must take prompt and appropriate action to end the relationship of authority.
a. Tenure Defined - Tenure is a condition of presumed continuous employment following the expiration of a probationary period and after meeting the appropriate criteria. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause.
e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and non-tenured faculty; student representation; and one (1) or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.
Regents Policy

f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure.
DEFINITION OF TENURE. Tenure is a condition of presumed continuing employment that is accorded a faculty member by the regents, usually after a probationary period, on the basis of an evaluation and affirmative recommendation by a faculty committee with concurrence by the faculty member’s departmental administrator and college dean and by the president.

PURPOSE OF TENURE. Tenure has as its fundamental purpose the protection of academic freedom in order to maintain a free and open intellectual atmosphere.
University Records—FSH 6520

A. POLICY.

A-1. The University of Idaho, at the direction of the regents, has developed a policy for the examination or copying of public records in its custody. Unless otherwise exempted, all UI public records are open to inspection and copying by any person, subject to reasonable regulations. ...
A-2. Except in the case of legal compulsion, the following UI records are among those not open to public inspection or copying without the prior written consent of the person or persons to whom such records pertain: (a) the personnel records of employees, other than the employee's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace, and department,....