Audit and Advisory Services
presents

Bridging the Gap
An Information Sharing Series

Ask The Auditor

Wanda Lynn Riley
Chief Audit Executive
Audit and Advisory Services
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Disclaimer: Advice provided through “Ask the Auditor” is intended for informational purposes and internal use by the University of California, Berkeley. The questions raised and answers provided through “Ask the Auditor” reflect a representative set of circumstances. Your questions may involve a variation of facts which may cause answers/outcomes to be different. Policies and procedures are subject to change and may require interpretation. Where appropriate, campus resources and/or subject matter experts have been identified. Please feel free to contact Audit and Advisory Services directly at audit@berkeley.edu.
Q: Voice and Data Plan Reimbursement

Can you clarify the policy currently in effect for the reimbursement for business use of personal iPhones, iPads and cell phone service (data plans and call charges)? I understand that the IRS determination that all such devices will be considered as personal expenses and that eligible employees will receive a flat monthly allowance for business use has not yet been implemented in the UC system.

What about faculty who request reimbursement for data plans for multiple devices? iPhones and iPads are increasingly common business tools, but how many plans can the University be expected to cover for a single individual?
Q: Voice and Data Plan Reimbursement

Does policy allow for partial reimbursement of a personal voice or data plan on a percentage basis?

A. Yes
B. No
A: Voice and Data Plan Reimbursement

Employees may be reimbursed for the business use of a personally owned cell phone or similar device in limited circumstances. The policy does not allow for reimbursement for the entire cost of a personally-owned cell phone or for a percentage of the total plan.

Employees may be reimbursed only when they incur additional charges for business calls over the plan limit on their personal calling plan. The employee may request reimbursement, at the excess minute rate, for up to the number of minutes exceeding the plan limit for the month OR the total number of business-related minutes, whichever is less. (See example situations below.) No reimbursement can be made for business calls made within the plan minutes.

To be reimbursed, the employee must provide a copy of his or her cell phone bill identifying the business calls and noting the person called and the purpose of each business related call. Many cell phone providers no longer routinely distribute detailed cell phone bills to their customers. In many cases, employees can find more detailed information on their calling plans and bills from the provider's website.
Resources: Voice and Data Plan Reimbursement

Business and Finance Bulletin G-46 Guidelines for the Purchase and Use of Cellular Phones and Other Portable Electronic Resources

http://www.ucop.edu/ucophome/policies/bfb/g46.pdf
Q: What Constitutes Nepotism?

Is it okay for my manager to hire:
- Daughter/son
- Boyfriend/girlfriend
- Spouse/Domestic partner
- Aunt/uncle
- Brother/sister
- Best friend
- Former co-worker
- In-laws
- Step relatives
- Mother/father
- Grand father/grandmother

Can my manager bring a near relative in as a volunteer?
Q: What Constitutes Nepotism?

Does UC policy permit near relatives to work in the same department?

A. Yes
B. No
C. Depends
A: What Constitutes Nepotism?

Personnel Policies for Staff Members 21 G. NEAR RELATIVES

Subject to the Chancellor's approval, the employment of near relatives in the same department may be permitted when such concurrent employment would be in the best interests of the University. For the purpose of this policy, a near relative is defined as a spouse, domestic partner, parent, child (including the child of a domestic partner), or sibling. In-laws and step-relatives in the relationships listed, including relatives of the domestic partner who would be covered if the domestic partner were the employee's spouse, are also defined as near relatives.

UCB Policy 21 Appointment Employment of near relatives is subject to the approval of the control unit head or designee. (Re-delegation of authority to vice chancellors May 30, 2008)
A: What Constitutes Nepotism?

Personnel Policies for Staff Members 82. Conflict of Interest

A. GENERAL

An employee shall not engage in any activities which create a conflict of interest between the employee's assigned functions and any other interest or obligation.

E. FINANCIAL CONFLICT OF INTEREST

An employee may not make or participate in the making of a decision if there exists a financial conflict of interest.

This includes University decisions that may affect:

- Any business in which an employee or immediate family member is a director, officer, partner, trustee, employee, or manager;
- Any business in which an employee or immediate family member has an investment worth $2,000 or more;
- Any real property in which an employee or immediate family member has an interest worth $2,000 or more;
- Any source of income worth $500 or more received or promised 12 months or less before the decision;
- Anyone who has given the employee or immediate family member $420 or more in gifts 12 months or less before the decision is made.
A: What Constitutes Nepotism?

Employees whose financial interests require them to disqualify themselves from making or participating in a University decision may not participate in any way in the decision, and may not influence any other person with respect to the decision

- Making a decision
  - Hiring someone
  - Approving a purchase
- Participating in making a decision
  - Advising or recommending to a decision maker who hires or approves a purchase
- Influencing
  - Communicating with a decision maker regarding a financial decision
Resources: What Constitutes Nepotism?

Personnel Policies for Staff Members 21 G. NEAR RELATIVES
http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/personnel_policies/spp21.html

UCB Policy 21 Appointment
http://hrweb.berkeley.edu/er/policies/ppsm/implementing/policy-21

Personnel Policies for Staff Members 82 Conflict of Interest
http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/personnel_policies/spp82.pdf

http://www.ucop.edu/ucophome/policies/bfb/bus78/

Kelly Howard, Employment Services Manager
(510) 642-1013 or khoward@berkeley.edu

Barbara VanCleave Smith, Deputy Chief Ethics, Risk, and Compliance Officer
Campus Financial Conflict of Interest Coordinator
(510) 643-4171 or bvsmith@berkeley.edu
Q: Non-U.S. Citizen Volunteer

If a non-US citizen is offered and accepts a position at UC Berkeley and arrives on campus prior to having their employment eligibility status validated, can the individual perform tasks on a voluntary basis until the paperwork is in order?

A. Yes
B. No
C. Depends
A: Non-U.S. Citizen Volunteer

It’s a slippery slope, the risks are many, and it’s not advised. What are some considerations:

• What’s the context? Is this the same work for which you plan to compensate the individual? Are there others in the unit being compensated for the same work?

• What happens if something goes wrong (e.g., an explosion in a lab or the person falls in the workplace)? Is the University liable?

• Might the US Department of Labor perceive the arrangement as a way of circumventing regulations governing hiring practices? Does the arrangement displace a U.S. citizen looking for work?

• Is the University depriving the “volunteer” of compensation for work performed?

• How do federal regulators define volunteer? Will the volunteer receive any benefits with a financial value that may be deemed compensation?

• How will the Department of Homeland Security view the arrangement? If unfavorably, will it impact the individual’s future ability to gain employable status in the U.S.
Resources: Non-U.S. Citizen Volunteer

Contact the Berkeley International Office
2299 Piedmont Avenue
Berkeley, CA 94720-2321
Tel: 510.642.2818
Fax: 510.643.7289
InternationalOffice@berkeley.edu
Q: Building Access for Consultants

How does a department grant building access to a consultant for buildings that require a Cal 1 Card or cardkey for entry?
Q: Building Access for Consultants

Are non-UC affiliates allowed cardkey access to UC facilities?

A. Yes
B. No
A: Building Access for Consultants

Each building/unit has a person (Department Access Key Controller) authorized to make cardkey and building changes. Have the consultant or other individual with a bona fide business reason to gain access to a facility complete the Cardkey Application, secure the appropriate authorization, and submit the request to the UCPD Alarms and Access Control Unit.
A: Building Access for Consultants

Non-Employee Affiliates (e.g., volunteers, independent contractors, consultants) become eligible for Cal 1 Card issuance via a Memorandum of Understanding (MOU) agreement between the Cal 1 Card office and any department desiring to authorize said eligibility.

The MOU agreement will stipulate that all Non-Employee Affiliates in the designated HCM Home Department(s) will be sponsored for Cal 1 Card eligibility with a $25 production fee charged to a designated departmental chart string for each card produced. The MOU is established so that this process does NOT need to be repeated for future Non-Employee Affiliates in the authorizing department that will also likely be needing a card.

Once the Cal 1 Card is issued, the Department Access Key Controller requests access from the UCPD Alarms & Access Control Unit.
Resources: Building Access for Consultants

Campus Access Control Policy
http://police.berkeley.edu/programsandservices/CACP/index.html

University of California Police Department, Berkeley
Alarms and Access Control Unit
1 Sproul Hall, MC #1199, Berkeley, CA 94720-1199
Phone: 510 642-6760
Fax: 510 643-4655
Q: Who Owns the Copyright – UC or You?

When a UC staff member produces a piece of software as a part of his or her job responsibilities who owns the intellectual property?

A. UC  
B. Staff member
A: Who Owns the Copyright – UC or You?

Except as otherwise provided in the Policy on Copyright Ownership, the University shall own all copyrights to works made by University employees in the course and scope of their employment and shall own all copyrights to works made with the use of University resources.

Copyright is the intangible property right granted by Federal statute for an original work fixed in a tangible form of expression. Copyright provides the owner with the following exclusive rights in a work: to reproduce, to prepare derivative works, to distribute by sale or otherwise, to perform publicly, and to display publicly.
A: Who Owns the Copyright – UC or You?

<table>
<thead>
<tr>
<th>UC Owned</th>
<th>Originator Owned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sponsored Work (unless the sponsored agreement states otherwise)</td>
<td>Scholarly/Aesthetic Work (unless they are also sponsored works or contracted facilities works)</td>
</tr>
<tr>
<td>Commissioned Work (copyright ownership shall be specified in a written agreement)</td>
<td>Personal Work</td>
</tr>
<tr>
<td>Institutional Work</td>
<td>Student Work</td>
</tr>
</tbody>
</table>

Generally other copyright ownership is governed by a written agreement.
Resource: Who Owns the Copyright – UC or You?

Policy on Copyright Ownership

http://www.ucop.edu/ott/staff/copyr.html

Associate Campus Counselor Julie Conner
Office of Legal Affairs
200 California Hall, MC#1500
University of California
Berkeley, CA 94720-1500
Phone: (510) 642-7122
Fax: (510) 643-5980
Q: Faculty and Facebook Friends

Is there a policy which prohibits faculty from friending their students on Facebook or other social networks?

A. Yes
B. No
A: Faculty and Facebook Friends

Is there a policy which prohibits faculty from friending their students on Facebook or other social networks?

No, a systemwide committee has formed to develop a social networking policy. Stay tuned.
Q: Holiday Gifts from Vendors

The holidays are approaching. Are all gifts from vendors and potential vendors prohibited or just those to individuals?

A. Yes  
B. No  
C. Depends
A: Holiday Gifts from Vendors

- Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications. Refrain from soliciting or accepting money, loans, credits, or prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers that might influence, or appear to influence, purchasing decisions.

- Gifts from Health Care Vendors to a Health Care Individual are prohibited.

- Free samples, vouchers, supplies, or equipment designated for a Health Care Individual are considered Gifts and are prohibited. Vendors may donate their product to a unit of the University if the administrative head of the unit approves the donation with certain restrictions.
Resources: Holiday Gifts from Vendors

Business and Finance Bulletin BUS 43 – Materiel Management (Principles of Purchasing and Code of Ethics)

http://www.ucop.edu/ucophome/policies/bfb/bus43.html

Health Care Vendor Relations Policy

Q: Surplus Equipment – Can I buy it?

There are several laptop computers which are no longer in use by the department. A department staff member would like to purchase the computers. Is this allowable?

A. Yes
B. No
A: Surplus Equipment – Can I buy it?

Prohibition of Sales to Certain Employees and Their Near Relatives

1. No one employed in a department that reports to either the Surplus Administrator or the Equipment Administrator, or a near relative of such employee, may buy excess property directly from the University.

2. No one employed in a department that generates excess property, or a near relative of such employee, may buy excess property originating in that department directly from the University.

3. The principal driver of a University-owned motor vehicle, or a near relative of such employee, may not buy such motor vehicle directly from the University.

These limitations apply to any organization (including non-profits) owned or operated by an employee or near relative of such employee, or in which such employee or near relative holds an administrative position.

Exceptions to these provisions must be approved by the Executive Vice President-Chief Financial Officer, the Vice President-Agriculture and Natural Resources, the appropriate Chancellor or Laboratory Director, or the campus officer delegated by the Chancellor or Laboratory Director to control property.
Resources: Surplus Equipment – Can I buy it?

University of California – Business and Finance Bulletin BUS-38
Disposition of Excess Property and Transfer of University-Owned Property
http://www.ucop.edu/ucophome/policies/bfb/bus38.pdf

System Contact: Pat Cheney
Email: Pat.Cheney@ucop.edu
Phone #: 510-987-0474

Campus Contact: Eric Anglim, Acting Equipment Manager
Email: eanglim@berkeley.edu
Phone #: 510-409-8908
Q: Salary Information – Private or Not?

Why are University employees’ salaries not confidential information?
Q: Salary Information – Private or Not?

What employee information is confidential?

A. Date of hire
B. Current salary
C. Job description
D. Reason for separation
E. All of the above
A: Salary Information – Private or Not?

"While we are aware that some employees may regard this as an intrusion of their privacy, please remember that you are public employees working for a public institution – and as such, your compensation, under the California Public Records Act, is considered a public record.

This is outlined in the staff personnel policy in Personnel Policies for Staff Members (PPSM) 80(C):
http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/personnel_policies/spp80.html

"Information which is public information and which should be released upon request includes name, date of hire, current position title, current salary, organizational unit assignment, date of separation, office address and office telephone number, current job description, full-time or part-time, and appointment type."

http://www.ucop.edu/acadadv/acadpers/apm/apm-160.pdf, states that any "non-personal" information "is public information and is available upon request to any person or entity without limitation." It defines "non-personal" academic personnel information as including name, date of hire or separation, current position title, and current rate of pay."
A: Salary Information – Private or Not?

In International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court, 42 Cal. 4th 319 (Cal. 2007), the Supreme Court held that the names and salaries of highly paid public employees are not exempt from disclosure pursuant to the “personnel” exception (or any other exception) of the Public Records Act. The Court concluded that there was a fairly small privacy interest in the information, given the widespread practice of publicly releasing such information by public employers. The Court went on to say that: “Counterbalancing any cognizable interest that public employees may have in avoiding disclosure of their salaries is the strong public interest in knowing how the government spends its money,” and “Salaries and other terms of compensation constitute municipal budgetary matters of substantial public interest warranting open discussion.” (Id. at 333).
Resources: Salary Information Private or Not

November 8, 2006 Letter to University employees from Gerald L. Parsky
Chairman The Board of Regents of the University of California

Personnel Policies for Staff Members (PPSM) 80(C):
http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/personnel_policies/spp80.html

Academic Personnel Manual (APM) 160
http://www.ucop.edu/acadadv/acadpers/apm/apm-160.pdf
Q: Grant Fund Hopscotch

The compliance briefing referred to "grant fund hopscotch," describing an employee working on a project that is not directly related to the grant for which they were being paid to do research.

Does the term "grant fund hopscotch" apply to a situation where an employee spends 90% of their time researching their grant, but spends the other 10% of their time doing administrative work and teaching work that is only partially related to the grant they are supposed to be researching.

In this scenario, the teaching and administrative work is being done for a supervisor not assigned to the grant in question. The two people are members of the same university research center, but the supervisor in question most likely does not have any access to the grant on which the other person is working.
Q: Grant Fund Hopscotch
Is this “grant fund hopscotch”?
A. Yes
B. No
C. Depends
A: Grant Fund Hopscotch

6. Preciseness of Certifications

OMB Circular A-21 provides for “a degree of tolerance” in the preciseness of effort reporting. UCOP has defined the preciseness tolerance at +/- 5%. Therefore, an individual may certify a level of effort for an award or activity that is within five percentage points of their best estimate of the actual effort expended during the reporting period.
Resources: Grant Fund Hopscotch

UCB Policy - Effort Reporting – Certifying Effort on Sponsored Projects
http://campuspol.chance.berkeley.edu/policies/EffortReporting.pdf

Lori Cripps, Director - Extramural Funds Accounting
Phone: (510) 642-1371
Email: lcripps@berkeley.edu

Office of Management and Budget CIRCULAR A-21 Revised 05/10/04
http://www.whitehouse.gov/omb/circulars_a021_2004
Q: Collection of Employee Debt to UC

Our department reimbursed the wrong employee for travel expenses. We notified the employee of our error and requested the return of the money. Communication in an attempt to recover the money has been ongoing for two years to no avail. This individual now cites financial hardship and has made no attempt to repay this amount. What are my options for collecting an amount due from an employee?
A: Collection of Employee Debt to UC

1. Escalate the matter through the University’s hierarchy.

2. Contact Billing and Payment Services and formalize the debt by establishing a CARS account. The account may subsequently be sent to collections.

3. California labor laws precluding deducting payments from wages without the employee’s permission.

4. Highly sensitive and unlikely but the debt could be reported to the State Franchise Tax Board which may recover it from future refunds.
A: Collection of Employee Debt to UC

5. Contact Disbursement about the possibility of withholding future travel reimbursements until the debt is cleared.


7. Consider filing a criminal report.

8. Consider whether or not there is a statute of limitation. (It is three years from the date that we discovered or reasonably should have discovered the errant payment. Updated 10/28/2011.)

9. Consider withholding approval of future travel until the debt is repaid. (Updated 10/28/2011)
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