POLICY

This policy and related policies referenced herein, provide information and procedures which supervisors should follow to minimize the risk of violating employees’ privacy rights. In California courts, the legal boundaries of employee privacy rights continue to expand. Consequently, this policy does not cover all privacy issues.

LMU employees and applicants have certain constitutional and common law rights to personal privacy. At the same time, supervisors have legitimate business reasons for seeking certain information which will enable them to administer University operations effectively. While supervisors have the authority to direct employees and control their conduct, they do not have unrestricted freedom to gather information about their employees.

It is the policy of Loyola Marymount University that supervisors should avoid seeking personal information relating to an employee or applicant unless there is a legitimate business reason for doing so. Supervisors must exercise caution and good judgment when interviewing, testing, and investigating job applicants and current employees because numerous privacy issues can arise. When in doubt whether an action or decision will affect an applicant’s or employee’s privacy rights, supervisors must consult with the Vice President, Human Resources (Westchester), or the Assistant Director, Human Resources/Employee Relations (Westchester), or the Director, Human Resources (Law School).

PROCEDURE

Arrest Records

Supervisors are prohibited by California law from asking an applicant or employee to disclose any information regarding an arrest or detention which did not result in a conviction, or any information regarding a pre-trial or post-trial diversion program. The same law prohibits the supervisor from obtaining such information from any other source or from using it as a basis for making an employment decision about that individual.

If a supervisor determines that an individual has a record of criminal conviction (other than a conviction for marijuana related misdemeanor within the past two years), he/she should contact the Vice President, Human Resources (Westchester), or the Assistant Director, Human Resources/Employee Relations (Westchester), or the Director, Human Resources (Law School) before taking any action or making any decisions. A decision not to hire a job applicant based on a criminal conviction may violate California law if, among other things, the conviction is not job-related and has a disproportionate effect on a protected class. On the other hand, the University may be subject to a negligent hiring claim if the applicant is hired and the conviction is job-related.

Credit Checks and Consumer Investigative Reports

The use of credit information or investigative credit reports in the hiring process is regulated by federal and state laws. Supervisors must never attempt to obtain this type of information on applicants or current employees without prior approval from the Vice President, Human Resources (Westchester), or the Assistant Director, Human Resources/Employee Relations (Westchester), or the Director, Human Resources (Law School).

Department of Motor Vehicles Records

Verification of a good driving record is a condition of employment for some University positions. The University will check the driving records of applicants applying for positions which require operation of a University owned vehicle. The driving records of current employees will also be checked if their job requires them to operate a University owned vehicle.

Drug Testing

Although LMU does not require drug testing at this time, the University reserves the right to initiate this requirement, consistent with applicable laws, at a later date.
Medical Records

Federal and state laws govern the use, disclosure, collection and maintenance of employee medical records. Specifically, the California Confidentiality of Medical Information Act limits an employer’s use and disclosure of employee medical information and the Americans With Disabilities Act requires that employee and applicant medical information and history be collected on separate forms and maintained in files separate from his/her personnel file.

The Human Resources Office at each campus has established procedures to ensure the confidentiality of employee medical information and its protection from unauthorized use and disclosure. Those procedures include providing instructions regarding confidentiality to individuals handling files containing medical information and maintaining security systems restricting access to such files. Unless required by a subpoena, the use and disclosure of employee medical information is prohibited unless the employee has signed an authorization permitting use or disclosure.

Personnel Records

The official University personnel records are maintained by the custodians of records. At the Westchester campus, the custodian for staff personnel records is the HRIS Manager, the custodian for full-time faculty records is the Academic Senior Vice President, and the custodian for part-time faculty records are the Deans of the colleges. At the Law School, the Director, Human Resources is the custodian for staff personnel records and the Dean of the Law School is the custodian for faculty records. The custodian for benefits records for both campuses is the Benefits Manager. The custodian for payroll records for both campuses is the Payroll Manager.

The custodians at both campuses provide an adequate system for the security of records. Precautions are taken to achieve reliability of the data and to prevent misuse of the data. When appropriate, the custodian provides a way for an employee to become informed of the information kept about him/her and how it is used.

Personal Relationships, Marital Status, and Avoidance of Favoritism

Supervisors are prohibited by state and federal law from unwarranted employee lifestyle intrusions. The issue of employee lifestyles involves, among other things, living arrangements as well as romantic and social relationships. Supervisors must also avoid intruding into, and basing employment decisions on an employee’s marital status, non-marital personal relationships, association with individuals in a protected class, political affiliations, or sexual orientation.

In accordance with University policy on employment, persons in a close relationship may be employed within the same division, but not in a supervisor-subordinate relationship. The purpose is to avoid favoritism or the appearance of preferential treatment. If it is found that a supervisor and subordinate are in a close relationship, one of the parties may be transferred to another position. It is each party’s responsibility, supervisor and subordinate, to disclose a close relationship. Failure to disclose may result in disciplinary action.

"Close relationship" as used here includes blood relatives, persons related by marriage, persons dating one another and persons living together.

"Supervision" refers to the direct supervisor-subordinate relationship.

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1 See MEDICAL RECORDS.
2 See PERSONNEL RECORDS.
3 See DISCIPLINE.
For reasons stated previously, supervisors should also avoid hiring persons in a close relationship to work within the same department and should never have persons in a close relationship reporting to the same supervisor. It is the responsibility of the hiring supervisor to make inquiries of job applicants regarding close relationships to current LMU employees. The hiring supervisor must then report his/her findings to the Human Resources Department if those findings conflict with policy. Only the Division Senior Vice President may approve hiring persons in a close relationship to work within the same department.

Photographs and Fingerprints

The University does not require a photograph of an individual until after a hiring decision is made, and then normally to provide the staff member with an identification card. Fingerprints are not obtained before a hiring decision is made and would not normally be requested after an individual has been hired. Supervisors must not ask job applicants to submit photographs or fingerprints because of their potential for use in impermissibly screening out persons from protected classes.

Physical Examinations

Physical exams are normally not required for job applicants or current employees. Federal and state laws place a number of restrictions on the use of physical examinations for applicants and employees. However, by law, an employee’s fitness to return to work after a medical or disability leave must be monitored. The supervisor must notify the Benefits Manager (Westchester) or the Director, Human Resources (Law School) when an employee is out ill for more than five days and when an employee wishes to return to work after a medical or disability leave.

Searches, Surveillance, and Electronic Monitoring

The University may, at any time, with reasonable suspicion and in consultation with the Human Resources Department and Division Head, inspect or search any property of the University, including but not limited to employee lockers, employee work areas, employee desks, all file cabinets, and any form of electronically recorded information, including computer files and telephone voice recordings, whether or not such property is designated as being for the exclusive use of that particular employee.

Prior to conducting a search of LMU property or an employee’s personal items, monitoring electronic mail or voice mail, or confronting an employee regarding suspected drug abuse, supervisors must first consult with the Vice President, Human Resources (Westchester), or Assistant Director, Human Resources/Employee Relations (Westchester), or the Director, Human Resources (Law School).

Smoking

The University wishes to provide a workplace and study environment which is healthy, conducive to productivity, and comfortable for all members of the campus community. Therefore, smoking is permitted only outside of University buildings which house offices, work areas and classrooms. Smoking illegal substances is prohibited at all times. This policy applies to faculty, staff, religious, students and visitors. Employees who wish to smoke may do so only during breaks and lunch time.

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6 See SMOKING.
7 See DRUG FREE CAMPUS.