

# Out-of-State Work Policy: Issues and Considerations

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UNIVERSITY OF  
MARYLAND

THE OFFICE OF FACULTY AFFAIRS

# Employee Status and Supports

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- All University of Maryland (UMD) employees are:
  - Employees of the State of Maryland (MD).
  - Subject to UMD and USM policies and procedures.
  - Subject to the laws and regulations of MD.
  - Entitled to, as appropriate to their employment status/eligibility, benefits as provided by the USM and MD, and through USM and UMD policies and procedures.
- All of our supports (OGC, UHR, OFA, FSAP, etc.) are generally designed around employees engaging in their duties in MD and/or at a UMD facility.

# Out-of-State Work (OOSW) Overview

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- USM adopted a Policy on Out-of-State Work for Employees (VI-6.20), which:
  - Requires each USM institution to create a policy governing OOSW.
  - Applies to “all employees of the University System of Maryland (USM), across all regular and non-regular categories of faculty, staff, and student employment” who regularly work outside of MD.
  - Includes out-of-country work.
  - Requires each USM institution to comply with all applicable laws, regulations, and legal requirements in each jurisdiction where out-of-state or country work is performed.
  - Requires the execution of an OOSW agreement with each out-of-state employee that:
    - “Establishes the agreement’s term or duration, location where the work will be performed outside the state or country, the work duties or assignments, schedule, and the responsibilities and obligations of the institution and the employee.”
- Formed working group comprised of administrative unit representatives (OFA, UHR, OGC, ESSR, ISSS, Academic Units) to initially assess the USM policy and its implications and requirements for UMD.



# Complying with USM Policy

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- To begin developing a policy and guidance requires an analysis minimally of the following:
  - Current status of UMD OOSW.
    - Questions:
      - How many employees conduct a majority of their work out-of-state?
      - Where are our out-of-state employees located?
      - How are out-of-state employee arrangements currently being reviewed and approved?
      - Are there situations in which we have ongoing out-of-state location needs/arrangements (e.g., national labs, agency regional locations)?
  - Laws, regulations, & requirements of other states & countries.
  - Collective bargaining implications (staff).
  - Operational impact and functions.
  - Ability of certain types of work to be conducted in other jurisdictions.
    - Export controls, foreign influence, granting agency restrictions, use of UMD IT resources.
  - Risks & liabilities - for UMD and employees.



# Working Group Activities

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- The Working Group engaged in a number of activities to better understand OOSW matters, such as:
  - Consulted with our various peers (HR, Legal, Faculty Affairs, International Programs, other).
  - Interviewed selected individuals at peer institutions.
  - Engaged with USM and the Office of the Attorney General.
  - Developed a methodology for gathering OOSW employee data.
  - Reviewed the policies and procedures of other universities.



# Other Institutions

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- Some of the university policies and procedures reviewed included UW-Madison, Iowa, Ohio State, Penn State, Nebraska, UC, and UMB.
  - Found a wide range of approaches to OOSW:
    - Some permit OOSW.
    - Some do not permit OOS work at all.
    - Some permit OOSW only in certain jurisdictions/states.
    - Some do not permit international employment.
    - Some do not permit teaching faculty to be out-of-state.
  - All require a centralized request, review, approval, and agreement, typically administered by the university's HR unit.
  - Some universities entered into arrangements with Employers of Record (EOR for OOS employees).

\*EOR: an entity that legally employs workers on behalf of another business.

# Selected Risks/Concerns Regarding OOSW Identified to Date

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- Laws, regulations, and legal requirements differ by state/country, as well as local jurisdictions (e.g., county, city).
- Need to comply with the laws of states/countries in which work is regularly performed
  - Labor, employment, tax, licensing, privacy, data, IP, etc.
- Need to secure insurance to protect UMD & its out-of-state workers from claims, litigation, fines, sanctions, etc., in other jurisdictions.
- Need to ensure compliance with any employee protections as may be required by out-of-state jurisdictions.
- Potential inequities in OOSW arrangements due to a lack of UMD-wide criteria.
- OFA, UHR, ISSS, others do not have the ability to support out-of-state employees.
- OGC & OAG attorneys are not licensed to practice law in other states/countries and cannot represent UMD/employees in out-of-state litigation.
- Limitations on FSAP counselor services in jurisdictions where they are not licensed to provide care.



# Two Core Decisions

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- From our analysis to date, there are two core aspects to an OOSW approach:
  - Policy
    - Answering key questions such as should OOSW be permitted, and if so, for whom and under what circumstances and conditions?
  - Procedures
    - How should OOSW requests be received, processed, assessed, and approved?
    - What criteria should be used to ensure consistency and equity across UMD, and guide decisions?
    - How should OOSW employees be employed – e.g., directly through the institution or through a third party (EOR), or some combination?
      - It is not clear that an EOR can work for research-funded positions as the University would not technically be the employer.
- The policy choices we might make have a substantial impact on implementation (procedures).
- Must be able to support the approach we might take to ensure expedient processing and that UMD and employee risks are mitigated to the extent possible.





# Current State of OOS Employees

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- Payroll address as proxy for out-of-state employees.
- ~2100 out-of-state employees
  - 1,276 paid faculty reside\* outside of MD.
    - 813 in DC and VA
    - 124 in DE, PA, and WV
    - [937 reside\* in contiguous jurisdictions (DC, DE, PA, VA, WV)]
    - 349 reside\* in other jurisdictions
  - 831 staff reside outside of MD.
    - ~200 out-of-state in non-contiguous jurisdictions
  - Mostly in CA, FL, GA, MA, NC, NJ, NY, TX.
    - At least one person in 46 non-MD locations

\*Based on payroll address.

# Where We Are Now

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- University Human Resources (UHR) will lead UMD's efforts to develop an OOSW policy, guidance, and process for receiving and reviewing OOSW requests.
  - OFA had been working towards interim guidance for OOSW faculty, but that has been put on hold.
- OFA and UHR engaging in efforts to more accurately determine how many OOS faculty and staff there are.
  - If not already documented, may require documentation of those arrangements via an OOSW agreement.
- OGC is leading the effort to secure external counsel to help understand employment matters in other jurisdictions.

# Working Group Members

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