Faculty Handbooks as Enforceable Contracts: A State Guide
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Today’s Agenda

- Updated Resource on Faculty Handbooks as Enforceable Contracts; AAUP Website
- Contract Issues and Overview of Case Law
- Specific Case
- Questions and Comments
Faculty Handbooks Guide

Faculty Handbooks as Enforceable Contracts: A Guide

Faculty handbooks can provide a powerful tool to help faculty members vindicate their rights when facing termination or other unwarranted personnel actions. A faculty member generally has a contract or letter of appointment. Courts are often asked to decide whether a faculty handbook—which can include policies, rules, and procedures under which professors work—also establishes a contractual relationship between a professor and an institution. The issue usually arises in the
Disclaimer

The guide is not exhaustive and is not intended as legal advice. Instead it provides general legal information about this area of the law. The Association urges you to consult a lawyer in your state who is experienced in higher education or employment law. Should you require assistance locating appropriate counsel, the AAUP may be able to refer you to a local attorney. In addition, the AAUP legal department maintains other material that may be of assistance to AAUP members and their lawyers who are pursuing contract cases. For an attorney referral or for additional information, please e-mail legal.dept@aaup.org for assistance.
Faculty handbooks can provide a powerful tool to help faculty members vindicate their rights when facing termination or other unwarranted personnel actions. A faculty member generally has a contract or letter of appointment. Courts are often asked to decide whether a faculty handbook—which can include policies, rules, and procedures under which professors work—also establishes a contractual relationship between a professor and an institution. Contract claims are primarily based on state law and the law affecting the claims varies greatly from state to state.
Contract Issues

Must a faculty handbook be expressly incorporated by reference into a professor’s letter of appointment for the handbook terms to be enforceable?


Contract Issues

May a faculty handbook become part of a professor’s employment contract based on the university’s established practices even when no express reference to the handbook exists in that contract?

*Hulen v. Yates*, 322 F.3d 1243 (10th Cir. 2007).


Contract Issues

Must a faculty handbook meet the legal contract requirements of offer, acceptance, and consideration before the handbook is enforceable as an employment contract?


Contract Issues

What is the legal effect of a disclaimer in a faculty handbook in which a college or university disavows any intent to be contractually bound by the contents?

Smith v. Board of Supervisors for the University of Louisiana System, et. al., Case No. 13-5505 (E.D. La., Dec. 11, 2015).


Whiting v. University of Southern Mississippi, et. al., 62 So. 3d 907 (Miss. 2011).


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Contract Issues

Are contractual claims different for faculty members at public institutions?

Ex Parte Ala. Dept. of Postsecondary Educ. and Chattahoochee Valley Community College (In re Hamilton v. Alabama Department of Postsecondary Education and Chattahoochee Valley Community College), 50 So.3d 439 (2009) (cert. denied May 7, 2010).


Contract Issues

Do faculty members at public institutions have a constitutionally protected due process and property interest in continued employment based on a handbook’s provisions?


*Klassen v. University of Kansas School of Medicine, et. al., 2015 U.S. Dist. LEXIS 63845 (Dist.Kan., May 15, 2015).*

*Raymond v. Board of Regents of the University of Minnesota, Civil No. 15-35 (DWF/LIB) (Mn. October 20, 2015).*
Significant Legal Case


- Tenured professor offered & accepted a tenured position
- Later notified that chancellor would not take the routine step of submitting the appointment to the board of trustees for approval
- The court
  - denied the university’s motion to dismiss
  - ruled that the contract was not negated by the "subject to approval" language in his letter
  - ruled that the professor had a viable claim for violation of his due process rights, since the contract gave him a "property interest" in his job.
- The decision is a victory for the AAUP, who censured the university in June 2015.
Questions?
Thank you!

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