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# Faculty Handbooks as Enforceable Contracts: A State Guide



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## Nancy Long Presenter

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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

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## Faculty Handbooks Guide

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### 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

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## 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](mailto:legal.dept@aaup.org) for assistance.

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## Background

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.

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## 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?

*Rafalko v. University of New Haven et. al.* 129 Conn. App. 44, 19 A.3d 215 (2011).

*Mawakana v. Board of Trustees of the University of the District of Columbia*, 2015 U.S. Dist. LEXIS 89685 (July 10, 2015).

*Pinder and Sigman v. John Marshall Law School, LLC*, 11 F. Supp.3d 1208 (2014), recons. denied, 2014 U.S. Dist. LEXIS 84800 (N.D. Ga. June 23, 2014).

*Golovan v. University of Delaware, et. al.* 2014 U.S. Dist. LEXIS 157130 (2014).

*Prescott vs. St. Mary's of the Wood College*, No. 84A01-1407-PL-287, 2014 Ind. App. LEXIS 1487 (November 12, 2014)(unpublished).

*Traster v. Ohio Northern University*, 2015 U.S. Dist. LEXIS 179190 (U.S. Dist. Ct. Northern District of Ohio) (Dec. 18, 2015).

*Abatena v. Norfolk State University et. al.*, 2014 U.S. Dist. LEXIS (E.D. Virginia May 7, 2014).

*Rajpal v. Livingstone College, Inc.*, 718 S.E.2d 738 (N.C. Ct. App. 2011).

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## 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 (10<sup>th</sup> Cir. 2007).

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

*Howard University v. Sybil J. Robert-Williams*, 37 A.3d 896 (2012).



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## 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?

*Goswami v. DePaul University*, 2014 U.S. Dist. LEXIS 4322 (N.D. Ill. Jan. 14, 2014), *sum. j. denied*, 2015 U.S. Dist. LEXIS 5937 (N.D. Ill. January 20, 2015).

*Vatner v. Board of Trustees of the University of Medicine and Dentistry of New Jersey*, 2015 U.S. Dist. LEXIS 13135 (D. N.J. February 3, 2015).

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## 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).*

*Oiler v. Roussel, et. al., 2014 U.S. Dist. LEXIS 64687 (W.D. La., May 2, 2014).*

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

*O'Brien v. Fifth Third Mortgage Company, 2015 U.S. Dist. LEXIS (E.D. Pa. May 13, 2015).*

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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).

*Pollock v. University of Southern California*, 112 Cal. App. 4<sup>th</sup> 1416 (2003).

*Frazier v. North Carolina Central University*, 2015 N.C. App. LEXIS 957 (N.C. Ct. App. November 17, 2015).

*Lord v. Erie County*, 476 Fed. Appx. 962 (3d Cir. Pa. 2012).

*Steven Maranville v. Utah Valley University*, 568 Fed. Appx. 571 (10th Circ. Utah 2014).

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## 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?

*Rao v. Christopher Gondi, et. al., 2015 U.S. Dist. LEXIS 173049 (N.D. Ill. Dec. 30, 2015).*

*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).*

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## Significant Legal Case

### ***Salaita v. Kennedy, 2015 U.S. Dist. LEXIS 102854 (N.D. Ill. Aug. 6, 2015)***

- 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.

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Questions?

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# Thank you!

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