

# Legal Issues for Chairs

In today's institution, the role of department chair carries legal responsibilities regarding management of faculty and staff, as well as oversight of the department's interaction with students. As a department chair, there are several basic principles to remember in order to minimize adverse legal consequences.

"The first basic principle to keep in mind is that as an employee of the institution the chair nominally acts as agent for the principal; his or her acts, when committed within the scope of employment are attributable to the college or university. There are two sequelae that flow from this principle. The first is that as chair, your actions are no longer merely individual. You are acting for the institution and, intentionally or not, you are committing the institution."\*

## Don't Make Promises You Cannot Keep

This means that you must exercise a great deal of care whenever you make a commitment, or even imply a commitment, to a faculty member, a staff member or a potential faculty member. In any discussion your statements can be taken as contractually committing the institution. If you don't actually have the authority to make a monetary or resource commitment, or the ability to guarantee tenure, early tenure, a merit increase or other such advancement for example, do not imply to a faculty member or potential faculty member that you do! Casual remarks have been, and will continue to be, misinterpreted regarding these kinds of situations. Avoid making promises or commitments that are beyond your authority. If you have any doubt, discuss such situations with your Dean, or contact the Vice Chancellor of Academic Personnel regarding matters related to faculty. In matters regarding staff members, contact Campus Human Resources for appropriate guidance.

"The other sequela of the principle of the chair acting as agent is that one of your major responsibilities is carrying out your institution's procedures. In the event that you fail to act in a timely manner as designated in those institutional procedures, you implicate the institution. You can effectively place your institution in a position of having breached a contract."\*

## Understand Policies and Procedures

As a department chair, institutional policies and procedures are your business. Like it or not, you should have a working knowledge of the primary policies and procedures that affect faculty, students and staff. This includes familiarity with local Academic Personnel guidelines, the Faculty Code of Conduct (Academic Senate), the Academic Personnel Manual (University of California) and Personnel Policies for Staff Members (University of California). You must also be aware of the Agreement that governs members of collective bargaining agreements. Beyond these there are applicable California statutes and regulations, as well as Federal laws and regulations that relate to employment, discrimination, contractual agreements, research ethics, records management and constitutional rights.

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## Discrimination and Harassment

Allegations of discrimination and harassment are perhaps the most frequently cited problems that arise in a university department. These situations may involve students, faculty and/or staff members and can arise from situations in which one party perceives unfair, rude, inconsiderate or bad treatment by others. In severe instances, retaliation or threatening behavior may also occur or be suspected.

As department chair, you must take all complaints related to discrimination or harassment seriously. The way that you respond to such complaints sets the tone for the individuals involved. You are responsible for developing and sustaining a climate of respect and inclusion for all members of the university community. Realize that it is very difficult for most people to come forward with complaints of this nature and that they fear that they will not be taken seriously or that negative repercussions will result. As chair, if you suspect that situations of discrimination or harassment are occurring in your department, you should discuss the situation with Academic Personnel, Campus Human Resources and/or university legal counsel in order to determine how best to proceed. These kinds of

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## *Cover Story Continued*

### **Ask For Help – No One Knows It All**

Understandably most department chairs will not have the time to develop a complete understanding of all of these policies, procedures, union agreements, laws, regulations and the accompanying documentation. Thankfully, experts exist on your campus to provide advice and counsel on these matters. Make it a habit to ask questions and contact the appropriate offices and departments for help before you go astray regarding institutional policy, procedure or law. In a court case, “ignorance” will not count as an excuse. Utilize the Academic Personnel Office and Campus Human Resources as a starting point. See the Resources section of this notebook for more information about your local campus contacts.

### **Keep Others in the Loop**

Lastly, remember to give the appropriate people a “heads up” whenever you are about to make a decision that has the possibility of resulting in a legal action. This means alerting your Dean’s office, the Vice Chancellor of Academic Personnel, university legal counsel, Campus Human Resources (staff issues) and any administrator whose duties relate to the matter at hand (e.g. Sexual Harassment Prevention Office). These people can help you act wisely and they are also the people who will be involved in defending the institution should legal issues arise. ■

Adapted from:

Hecht, Higginson, Gmelch and Tucker (1999). **The Department Chair as Academic Leader**. Phoenix, Arizona: American Council on Education Oryx Press.

\*Chapter 12, Legal Issues for Chairs, p. 213

## *Discrimination and Harassment Continued*

situations do not get better with time when left unattended, so no matter how difficult it may be, addressing the situation early is the best course of action.

### **Know procedures and resources available**

It is important to become familiar with the different campus complaint procedures and the offices responsible for providing assistance. Call upon these offices for assistance if you learn of or suspect that any instances of discrimination or harassment are occurring in your department.

### **Exercise discretion**

If someone comes to you with information about discrimination or harassment, exercise discretion. Do not share this information with others, except those who need to know based on their official capacities. Legal problems such as defamation or invasion of privacy can occur if you spread information to others.

### **Do not promise confidentiality**

Do not promise confidentiality to someone who brings you a complaint. As a representative of the institution, you are going to have to share the information with the appropriate authority within the university. You should explain this at the start of any conversation related to discrimination or harassment. You should also explain that you will use discretion in handling the matter and that you will help protect the individual from retaliation if necessary.

### **Accommodate disabilities**

Under state and federal law, the university is required to accommodate persons with disabilities in the workplace and enable access for persons with disabilities. As chair, you may encounter issues around accommodating faculty, staff or students with disabilities. Consult your local ADA & 504 Compliance Office or other campus resources for advice.

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### *Discrimination and Harassment Continued*

#### **Set the tone for an inclusive departmental climate**

If you witness possible discrimination or harassment in the form of remarks made in poor taste, rude behavior, off color jokes or biased comments, take action. Take the department member aside and discuss the situation with them. Let the person know what your expectations are in terms of appropriate behavior in the department workplace. As the chair it is your role to establish and sustain a welcoming climate for everyone. This includes addressing instances when department members are making colleagues feel uncomfortable. Stopping these behaviors early can save everyone a lot of pain in the long run.

#### **Prevent retaliation**

In the event that someone in your department makes a complaint, it is your responsibility to ensure that no retaliation is taken against that individual. University policy prohibits retaliation against complainants, witnesses and supporters. Consult with legal counsel and other appropriate resources within the institution for advice regarding prevention of retaliation.

Specific policies, procedures and resources exist for addressing complaints of discrimination, harassment and retaliation. Refer to the appropriate offices on your campus for more information. See the Resources section of this notebook for a list of your campus resources.■

Sections based on:

Ann H. Franke, Esq. "Discrimination and Harassment: The Legal Landscape." Department Leadership Project, American Council on Education. <http://www.acenet.edu/resources/chairs/>

## **Nondiscrimination and Harassment**

It is the policy of the University not to engage in discrimination against or harassment of any person employed by or seeking employment with the University of California on the basis of:

- race
- color
- national origin
- religion
- sex
- gender identity
- pregnancy<sup>1</sup>
- physical or mental disability
- medical condition (cancer-related or genetic characteristics)
- ancestry
- marital status
- age
- sexual orientation
- citizenship
- status as a covered veteran<sup>2</sup>

This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.

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<sup>1</sup> Pregnancy includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth.

<sup>2</sup> Covered veterans includes veterans with disabilities, recently separated veterans, Vietnam era veterans, veterans who served on active duty in the U.S. Military, Ground, Naval or Air Service during a war or in a campaign or expedition for which a campaign badge has been authorized, or Armed Forces service medal veterans.