

NY Federal Court Limits Breach of Contract Claims Against Universities for Failing to Follow Internal Termination Policies

BY AIVI NGUYEN • MARCH 27, 2018

On January 25, 2018, the U.S. District Court for the Western District of New York upheld the legal standard established by prior precedence that a breach of contract claim brought by a professor against a university for failure to follow its own internal policies when terminating the professor's employment can only survive if the relevant policies contained provisions that were "contractual and specified procedures the university was required to follow before terminating the professor." In *Koul v. University of Rochester, et al.*, a clinical professor challenged the non-renewal of his employment contract by the University of Rochester, alleging that in making the decision, the university failed to follow its own regulations; disciplinary protocols, procedures, and policies; conflict of interest policy; and conflict of commitment policy, which the professor claimed constituted breaches of his employment agreement.

The court held that the relevant university policies did not contain any language that limited the university's discretion in deciding whether to renew the professor's contract. In other words, while the professor had the right to use the general grievance procedures contained in the policies to challenge the employment decision, the university's decision could not be invalidated for failure to follow the procedures. The court ruled that the professor's claim should have been brought in an Article 78 administrative proceeding that challenged the university's decision as arbitrary and capricious or an abuse of discretion, rather than in federal court as a breach of contract action.

Note: An Article 78 proceeding is unique to New York. However, courts in other jurisdictions may look to administrative procedures like Article 78 when determining whether an aggrieved faculty member claiming that a university's employment decision is a breach of contract is properly before the court or must pursue the action in another venue.

Client Tip: Ensure that your internal policies and procedures do not contain language that limits the university's discretion in employment decisions. In fact, to avoid any confusion, consider including something like the following statement in your relevant documents: "Notwithstanding the policies and procedures set forth herein, the university reserves the authority and discretion to make any employment decisions it deems appropriate."

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