

Tenure Evaluation Challenges

Monica Barrett, Bond Schoeneck & King Thomas D'Antonio, Ward Greenberg Heller & Reidy Heather A. Salko, United Educators (moderator)

Today's Speakers

Monica Barrett Member, Bond Schoeneck & King New York, New York

 Thomas D'Antonio
Partner, Ward Greenberg Heller & Reidy Rochester, New York

Agenda

- UE Tenure Claims Study
- Discrimination Claims
- Medical and Other Leaves of Absence
- Other Issues Impacting Tenure Reviews

Tenure Claims Study

- Released July 2017
- 78 Tenure Denial Claims
- January 2011 December 2015
- 18% of claims alleged **Breach of Contract**



Risk Research Bulletin Problems Arising From Tenure Denials: A Review of Recent Claims

Tenure, permanent employment granted to a professor after review, improper composition of the review committee, a probationary period, is important to a thriving academic atmosphere, and remains the goal of most academics. As part-time faculty increase, and available tenure-track positions decline, achieving tenure has become even more crucial to those pursuing academic careers.

United Educators (UE) reviewed 78 tenure denial claims1 received from 2011-2015. We analyzed each to determine common themes, costs, and lessons to help institutions avoid such claims or better navigate those they do face.

not fully staffing the promotion and tenure committee. have been greatly reduced. This change indicates that institutions have absorbed past lessons about the importance of adhering to the prescribed process.

During this period, 18 percent of claimants alleged breach of contract for failure to follow the outlined tenure review process. These breach of contract claims (see "Snapshot of Tenure Claims") revolved around lack of clear tenure criteria or adding criteria at the time of the

Despite this progress, UE's review reveals that many longtime best practices regarding tenure remain relevant. ¹ Claims are defined as notice to the institution of the intent to hold it liable.

and failure to grant an appeal properly. Past common

mistakes, such as seeking additional outside reviewers or

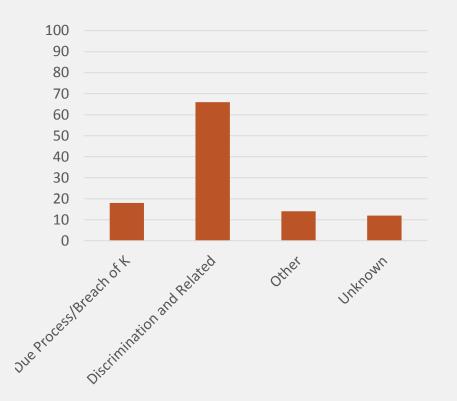
Claims include attorney demand letters. Equal Employment Opportunity Commission (EEOC) or similar state agency charges, and lawsuits. Tenure denial claims are those involving allegations that stem from a faculty member completing the tenure review process but not being granted tenure. Claims may also include notice to UE of tenure denials that the institution believes may lead to a later legal claim.

1/10 Problems Arising From Tenure Denials: A Review of Recent Claims

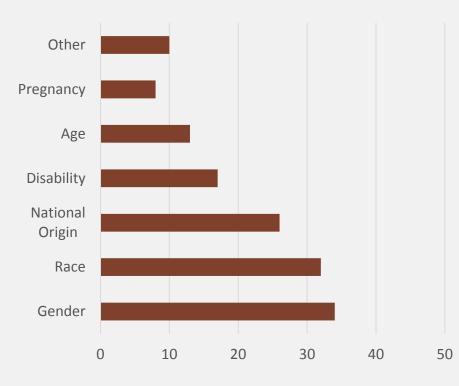
Tenure Evaluation Challenges

Tenure Claims Study

Allegations



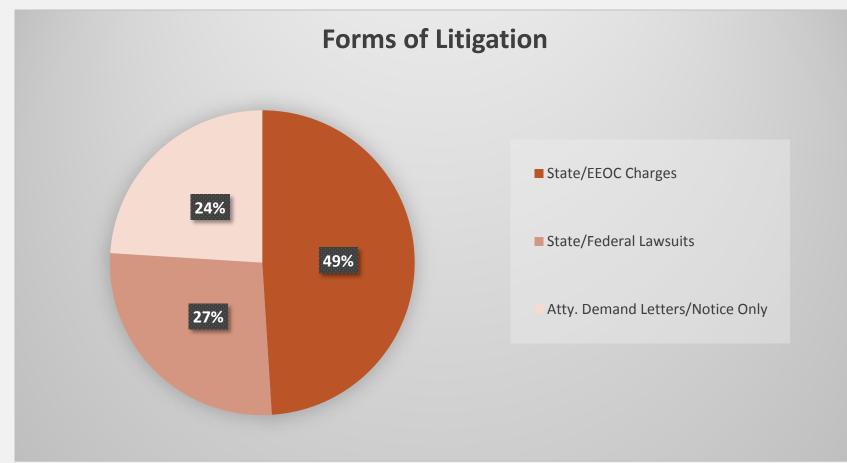
Discrimination-Related Claims



Retaliation claims: 31%

Tenure Evaluation Challenges

Tenure Claims Study



The Four Cs

- Clarity
- Candor
- Consistency
- Caring

Good Practice ⁱⁿTenure Evaluation

Advice for Tenured Faculty, Department Chairs, and Academic Administrators

A Joint Project of The American Council on Education, The American Association of University Professors, and United Educators Insurance Risk Retention Group

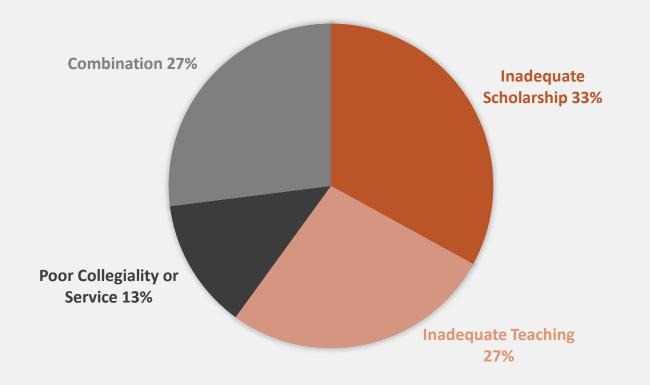
United Educators



AAUP AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Tenure Claims Study

REASONS FOR TENURE DENIAL



Discrimination Claims

- Allegations by candidate during tenure process
 - Who is the alleged bad actor?
 - Potential to impact tenure review
 - Need to conduct an investigation
 - How quickly can you adequately investigate?
- Should you stop the tenure review process?
- What does your policy say?

Discrimination Claims

- Allegations made against the tenure candidate.
- Place a hold on or stop the tenure review?
- What does your policy say?
- Obtain candidate agreement

Questions & Answers

Session #1



When Candidates Take Leave

- Medical or Family Leave
- AAUP Statement of Principles on Family and Academic Work, updated 2014
- Approval of Leave
- ADA Implications: interactive process
- Honest evaluations

When Candidates Take Leave

- Stopping or Extending the Tenure Clock
 - Automatic
 - By Request
 - Pros/Cons
- Limits on Leave



Questions & Answers

Session #2



Other Issues Impacting Tenure

- Collegiality
 - What is Collegiality?
 - Often not articulated in tenure policy

outside department during university request investigation needs unsuccessful crucial about scholarship medical Monica whether candidates course alleged different against discrimination leave being harassment impact issues confidentiality evaluations policies handle iunior claim process claims collegiality withoutown one family example teaching period say most often before committee complaint earlier issue always any consider s time earlier office service casesclockchair institution all tenured review evaluation candidate other leaves student internal some institutions _ member's more think important take academic made sexual because applicant good through accused allegations member graduate misconduct probationary policy committees faculty members

Other Issues Impacting Tenure

- Collegiality
 - Defending a legal case with "collegiality" as a deciding factor
 - AAUP position on Collegiality

On Collegiality as a Criterion for Faculty Evaluation

(2016 REVISION)

The statement that follows was approved by the Association's Committee A on Academic Freedom and Tenure and adopted by the Association's Council in November 1999. Committee A revised the statement in 2016.

Other Issues Impacting Tenure

Confidentiality

- What is confidential in the process?
- Records retention
- Tracking information without personal identifiers
- #MeToo & #Time'sUp Movements

Questions & Answers

Session #3



Conclusion

Training Tools

The Goal is Fairness - 2017

The Goal Is Fairness

The Goal Is Fairness

About This Learning Program

The Goal Is Fairness includes the resources necessary to have a hands-on tenure evaluation workshop emphasizing the importance of clarity, consistency, candor, and caring. A short video, PowerPoint presentation, and facilitator's guide make it easy for you to deliver this session to those involved in the tenure review process at your institution. Optional scenarios can be used to spur further discussion on annlicability of these concepts to your specific situation.





Please visit <u>www.EduRiskSolutions.org</u> for more information on tenure and other risk management topics.



Copyright © 2015 by United Educators Insurance, a Reciprocal Risk Retention Group. All rights reserved. Contents of this document are for members of United Educators only. Permission to post this document electronically or to reprint must be obtained from United Educators.