Recent News out of the University of Illinois Reinforces the Importance of the Details in Employment Offer Letters and Contracts

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Last month, the University of Illinois at Urbana-Champaign drew media attention over the decision by its chancellor to revoke a written offer of a tenured professorship to Steven G. Salaita. Salaita, a Palestinian-American who is a scholar in American Indian studies, had recently come under fire for posting rather provocative tweets, characterized as uncivil by some, that were critical of Israel in its recent conflict in Gaza. The decision to revoke Salaita's job offer appears to have resulted from his tweets, the controversy surrounding them, or both. The issues of academic freedom that Salaita's situation raises have kept this story on the front pages of many higher education publications, and the debate that has ensued over the boundary between protecting academic freedom and curbing perceived "hate speech" continues. Public institutions like the University of Illinois have additional concerns to balance since any perceived censorship of views raises First Amendment issues. The University of Illinois continues to deal with backlash from Salaita's revoked job offer in the form of professors from other institutions who have boycotted planned speeches and other engagements in response.

In addition to the philosophical issues of academic freedom and free speech, the revocation of the University of Illinois' offer of a tenured professorship raises practical issues as well. The University of Illinois was able to revoke its written employment offer to Salaita even after he had accepted it because the offer was expressly contingent on approval by the university's board of trustees. Had there been no such contingency and had the parties entered into a binding employment contract, the university's options would have been contractually circumscribed.

As Tennessee institutions look to attract new faculty, engage new administrators, or simply hire at-will employees, the recent events at the University of Illinois present a good opportunity to review issues that can arise under Tennessee law when new employment relationships are formed.

1. **Offer letters can inadvertently become binding contracts.**

Many employers prefer to make written job offers that include the material terms of the offer, and to have the employee's "acceptance" memorialized in the form of the employee's signature at the bottom of the offer letter. Does this create a contract? It very well may. A contract requires an offer, an acceptance of that offer, and something of value exchanged between the parties, and if an offer letter contains those elements, it may be a binding contract. This possibility raises a host of concerns. One potential concern is what constitutes sufficient "cause" to terminate the contract, since most offer letters don't say anything about the circumstances in which either party can terminate the agreement. Another potential concern is the length, or "term," of the agreement. Tennessee courts generally apply the rule that the intended term of an employment agreement can be determined by how the employee's wages are expressed -- an offer of an annual salary indicates an intended term of a year.

If your institution issues written job offers and asks applicants to sign and return them, consider incorporating express language stating that the offer letter is not a contract, and the institution reserves the right to revise its offer at any time as business needs require.

2. **Employment contracts should anticipate foreseeable issues and provide clear remedies should an issue need to be addressed.**

A well-drafted contract sets out the rights and responsibilities of the parties, and in the employment context, gives the parties a road map for resolving any conflict that arises between an employer and employee. For non-tenured faculty, in what circumstances might the institution believe it prudent to be able to terminate a faculty member? The ease of doing so, in circumstances that are likely to be
uncomfortable already, will depend heavily on how clear the contract is on the right to terminate. Different institutions with different pedagogical missions may strike the balance between academic freedom and institutional values differently. For example, religiously-affiliated institutions may ask faculty to represent the institution’s religious values to both students and the public. Expectations like this should be contemplated in the contract to provide a contractual basis to address any disagreement as to whether statements or conduct are in keeping with those expectations.

3. There are exceptions to the "at will" employment doctrine.

In the absence of a binding employment contract, employment in Tennessee is "at-will," meaning that non-contractual offers of employment can be rescinded, and the employment relationship can be ended by either party even after the employee begins working. There are, however, exceptions to the at-will doctrine that impact job offers.

Tennessee has a statute prohibiting "false or deceptive" representations made by an employer to induce an employee to move to take a job, meaning that employees who believe they were misled about the job they were offered have a legal hook to express their frustration. See Tenn. Code. Ann. § 50-1-102. Tennessee courts also recognize a common law claim for "promissory estoppel" that arises when an applicant is promised a job and the offer is rescinded after the applicant relied on the promise to his or her detriment. Claims like this often arise when an applicant is offered a job and resigns from his or her prior position, only to learn that the job offer has been taken off the table.

Recognizing that institutional needs sometimes change, necessitating revisiting hiring decisions, job offers should clearly express any "caveats" to the offer, should reserve the institution’s right to revise the terms of the offer as business needs change, and should clearly state that the offer does not alter the employee’s at-will status (for at-will employees), or for contractual employees, should state that the institution reserves the right to revise its offer until the parties execute a formal employment contract. When a formal employment contract is drafted, the agreement should provide the institution with the tools to take those actions necessary to fulfill the institution’s business and pedagogical goals.

If you have additional questions about faculty contracts, employment contracts for other positions, or written job offers, please contact the author or any member of Waller.

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