

KEEPING OUT OF LEGAL TROUBLE: TIPS FOR USC FACULTY

At the request of the Academic Senate, this guide for faculty is published by the General Counsel and Provost offices. This list is meant only as a helpful quick reference guide; it is not all-inclusive. You cannot take it as a full statement of how the law applies to you. It does not constitute official University policy or a statement of the University's legal position, and is not part of your employment agreement with the University. There are detailed Faculty Handbook provisions and other University policies on many of the topics covered at www.usc.edu/policies.

The Vice Provost for Faculty Affairs is also available as a source of guidance on our policies.

Feel free to contact the Office of the General Counsel if you:

- have questions about this reference guide;
- need advice on your job-related legal rights and duties, or
- suspect you have a USC-related legal problem.

Some helpful numbers:

For legal issues:

Office of the General Counsel
Extension 0-7922
Fax: 0-3249, or 0-8649
E-mail: gcoffice@usc.edu

Whenever you learn of possible sexual harassment, or discrimination:

Office of Equity and Diversity
Extension 0-5086
E-mail: lnolan@usc.edu

For questions or problems about compliance with government rules:

USC Compliance - Help and Hotline
Extension 0-2500
E-mail: llacorte@usc.edu

For information on IRB procedures:

University Park: Extension 0-6709
Health Sciences Campus: (323) 223-2340 or (323) 223-2349

For assistance with resolving disputes:

Faculty Mediation Officer
Extension 0-4794
E-mail: mcohen@law.usc.edu

The University stands behind faculty members

Indemnity

USC will generally indemnify a faculty member for necessary expenses or losses when the faculty member is accused of conduct occurring within the course and scope of his or her duties and while pursuing the academic purposes or interests of USC. There are certain exceptions provided by law, such as when the conduct is knowingly unlawful, grossly negligent, or has only a tenuous connection with the individual's duties. The faculty member's duties might include, for example, teaching, conducting research, serving on committees, mentoring, advising or evaluating colleagues, or doing academic administration.

Providing a lawyer

USC will try to determine whether a faculty member qualifies for indemnification in a particular case as soon as possible. If the faculty member qualifies, and agrees, he or she will be represented in court by a lawyer provided by USC without payment by the faculty member—and if the faculty member loses the lawsuit, USC will generally indemnify the faculty member for the legal damages. (However, USC advances these costs subject to the faculty member's agreement to repay them if it turns out that the advance was not appropriate, *e.g.*, because the facts turn out to show that the faculty member was not acting in the course and scope of his or her duties as a faculty member). In cases where the facts are not clear, USC may decide, instead of advancing fees, to wait for resolution of the dispute to see if the facts turn out to show that the faculty member qualifies for indemnification. Similarly, a faculty member may decide to forego representation by USC and hire his or her own lawyer, and USC will indemnify his or her losses and reasonable legal expenses afterwards if the facts show that the faculty member qualifies for indemnification.

Subpoenas and other legal papers

If you get a subpoena or other legal papers relating to your USC work, immediately contact the General Counsel's office. If possible, the process server should be sent to the General Counsel's office to serve the papers there: Bovard Administration Building, room 352 (south wing, third floor).

Dealing with colleagues and others

Sexual harassment

We are dedicated to an academic environment free of sexual harassment. USC does not allow unwanted sexual intimacy or the creation of a sexual work environment. It is prohibited to give anyone better treatment than others, or worse treatment, based on past or promised sexual favors. Retaliation for making a complaint is also prohibited.

The full text of the Sexual Harassment Policy and complaint procedures for faculty are set forth in Section 3-14 of the Faculty Handbook, available online at www.usc.edu/policies.

The Faculty Handbook provides that a person who believes a faculty member has harassed him or her should report that fact to the University's "Designated Investigator" of sexual harassment complaints. The "Designated Investigator" is the Office of Equity and Diversity (OED). While the Handbook also provides that one can report sexual harassment by a faculty member to one of several "Designated Recipients," including the chair of the faculty member's department or his or her dean, these Designated Recipients must forward the complaint to the OED. It is therefore more expedient to promptly forward all complaints of sexual harassment, formal or informal, directly to the OED. If you learn of an incident and fail to report it, you may incur legal liability both for yourself and the University.

Equal Opportunity

The University is firmly committed to providing equal opportunity to men and women of every race, creed and background.

In light of this commitment, faculty members should not take factors like age, gender, race and ethnicity into account when making personnel decisions. Faculty members should therefore avoid using language that suggests that such factors are relevant; for example, that a department needs "young blood," needs to "retire the old-timers" to free up positions, or has "too many long-term professors." Avoid inadvertent use of language like that in reports, conversations, memos or correspondence, including e-mail. Do not carelessly speak of these factors as proxies for characteristics that are actually relevant; for example, we do take account of creativity, fresh ideas, productivity and current knowledge of the field, but we do so without regard to age.

Likewise, a hiring committee should never discuss whether a woman is married or intends to have children during the course of her career. Avoid asking such questions in interviews.

The full text of the Equal Opportunity and Affirmative Action Policy for faculty is set forth in Section 3-13 of the Faculty Handbook, and Discrimination and Harassment Complaint Procedures for staff and faculty are set forth at www.usc.edu/policies.

Libel and Slander

The general laws on libel and slander apply equally to faculty members as to all other people, and they apply to all forms of communication, including e-mail. Defamation is "libel" if it is written or printed, and "slander" if it is oral.

A rough definition of libel and slander is any statement of supposed fact that cannot be proved true, communicated to someone without need to hear it, that accuses anyone else of a crime or

lack of fitness for his or her career, or otherwise injures his or her reputation (example: calling a colleague a “plagiarist”). There is no good reason to publicize to a large group (*e.g.*, by department-wide e-mail) your complaints about anyone, or to forward e-mails containing potentially libelous statements to others. Communicate complaints only to those with a reason to know, such as the department chair, dean, school faculty council president or Academic Senate president. Whatever you set forth in e-mail or writing should be accurate, factual, and phrased so that you would not mind hearing it read aloud in court.

Threats and physical force

Words that threaten force may be taken seriously by those who hear them and create fear. All forms of physical force are unacceptable. University policy prohibits violence in the workplace and requires a threat assessment team to investigate. The University’s Violence in the Workplace Policy may be viewed at www.usc.edu/policies.

Students

Students’ rights to fair, prompt and courteous treatment are detailed in Section 4 of the Faculty Handbook.

Most student information, including grades, cannot be divulged to others (even parents) except USC faculty and staff with a need to know.

University and Federal policies prohibit posting or making publicly available (such as giving orally in class) a student’s grades. Posting a copy of the grade sheet with students’ names or students’ identification numbers (Social Security numbers) is a clear violation of that policy. Posting grades in any manner which allows a student’s name to be identified with a grade is not allowed.

Further information on posting grades, returning assignments, sending grades to students, access to student records, parents’ requests, letters of recommendation and emergencies is available at <http://www.usc.edu/dept/ARR/ferpa/faculty.htm>.

Internal grievances and complaints

You have many sources to assist you. For reports or complaints of sexual harassment or discrimination, you should go directly to the Office of Equity and Diversity. Otherwise, you should start through channels within your school, with the department chair and then the dean. Then turn where you feel most comfortable:

- The Faculty Mediation Officer.
- Within the Academic Senate, the Faculty Rights and Responsibilities Committee or the President.

- Within the Provost's office, the Vice Provost for Faculty Affairs.
- For psychological issues, confidential help from the Staff/Faculty Counseling and Consultation Center.
- For teaching issues, the Center for Excellence in Teaching.
- If you are unsure whom to call, try USC Help and Hotline at Extension 0-2500.
- If informal processes fail, you may file a formal grievance. The Academic Senate Office has the forms. Grievances must be filed within nine months of the event to be grieved.

Merit reviews, third-year reviews, promotion and tenure

Clarity and consistency

We apply equal processes and standards to everyone, and must be consistent among candidates with different personal characteristics such as race, gender, disability, age and national origin.

The criteria actually applied should match the stated criteria, following the Faculty Handbook, individual school policies, and the established guidelines on faculty evaluation, promotion and tenure. These established guidelines are part of the Academic Environment policies set forth at www.usc.edu/policies. Department chairs should clearly communicate the criteria and timeline early in the career of the probationary faculty member.

Everything to be considered on tenure should go into the dossier. Positive or negative developments that come up after the dossier is prepared should be added as a supplement. Any private letters or conversations on the merits of a tenure candidate, outside the normal review process, should be documented in the dossier if they are taken into account.

There is helpful advice in a publication of the American Council on Education, available free online, at www.acenet.edu/bookstore/pdf/tenure-evaluation.pdf.

Candor

No annual or third-year review should ever suggest that the individual's record is sure to earn tenure, nor convey unmixed or excessive optimism. The tenure decision is made only at the end of the process after both external and university-level evaluations.

A negative tenure decision should not be the first criticism an individual receives; annual and third-year reviews should be candid and clear. They should include specific examples illustrating the quality of performance, constructive criticism of any potential areas for improvement, and practical guidance for future efforts.

Caring for unsuccessful candidates

Treat with professionalism and decency a colleague who is denied tenure or who will not be reappointed. The department chair should convey the disappointing news with compassion. Colleagues should take care not to isolate the person socially. Active efforts to assist the individual in relocating to another position redound to the benefit of both the individual and the university. For more suggestions, see chapter 4 of the American Council on Education booklet at www.acenet.edu/bookstore/pdf/tenure-evaluation.pdf.

Non-reappointment and dismissal

There are established procedures which must be followed. Department chairs and principal investigators must consult in advance with the deans, and deans will coordinate with the Provost's office. In general, a faculty committee should consider the individual's CV and evaluations, as well as the department's needs, before recommending to the dean non-reappointment of a full-time faculty member. The School of Medicine has its own Procedures for Non-Tenure-Track Faculty Appointment, Promotion, Reappointment, Non-reappointment and Mid-contract Termination. Dismissal for cause, which is very rare, must follow the detailed process established in the Faculty Handbook.

Your words and deeds

Employment references and recommendations

Avoid volunteering an evaluation that has not been requested. If another institution requests a reference for a former USC faculty member, you are entitled to give your opinion whether the quality of the individual's work met the standards of the position the individual held at USC. However, if you give a negative reference, you risk being sued for defamation. In such cases, the safest course of action is simply to confirm dates of employment and last position held. Do not give unwarranted praise that covers over faults, as this also might result in legal liability. Remember that even a confidential letter may someday appear as a court exhibit.

The University policy on requests for references for staff employees is set forth at Staff Employment Policies and Procedures section 1.6 (see www.usc.edu/policies). Only University Payroll Services is authorized to respond to requests for references from non-USC employers. The University will only provide job title and dates of employment.

If a student requests an employment reference, you need his or her written permission if you include private information, such as grades.

Signing letters and contracts

Avoid signing letters that make or seem to make USC commitments unless you are certain you have official authority to do so and the contents have the needed level of approval. These letters

may amount to USC contracts, and only the president and the senior vice presidents have authority to sign USC contracts or authorize others to do so. For example, be careful in signing letters about:

- appointments
- purchases
- cooperative arrangements
- distance learning projects

Only the University as a corporation, not schools or departments, enters into contracts or holds property.

No one except the Provost should ever promise tenure -- including a chair or dean writing an offer letter. Department chairs should clear with their deans any letters to prospective hires that can be read to make USC commitments, and deans should consult with the General Counsel's office if offer letters deviate from the usual templates. Even authorized letters should avoid phrases that sound like open-ended commitments (like promising specific lab space, or summer teaching opportunities, without mentioning that circumstances may change in the future.)

E-mail

Do not write anything in an e-mail you would mind seeing in the L.A. Times or as a court exhibit. Avoid e-mailing while angry or upset. Remember that e-mail can sound harsher than the same words conveyed in person with a smile or body language. Be careful about the difference between the "reply" and "reply to all" e-mail commands. Remember that e-mail messages are not confidential and are subject to inspection.

Saved e-mail tends to accumulate and clog the computer system. The best practice is to delete all e-mail (incoming and outgoing) and empty the trash folder before the end of each day, having saved hard copies or ZIP copies of whatever you need. As a routine, at the end of each month you should go back and clear out files you had not deleted daily. If you have a need to maintain a record, print out a hard copy or save to a ZIP disk.

Research and teaching

Grants

You should write yourself into a grant proposal for the percentage of your time you plan to work on the project, and then your grant should pay for that same percentage of your salary -- on the very important condition that you actually do put in that time. Government grants pay for a percentage of your salary and should never be used to increase your rate of compensation. A faculty member on an academic year appointment who is working on a grant project during the summer may be paid a "summer salary" at his or her regular rate of compensation using grant funds.

Do not put relatives or significant others on your grant -- exceptions require written permission from the Provost's office.

Do not pay anyone from a grant who is not actually working that percentage of time on that grant.

The Principal Investigator ultimately is responsible for the scientific, technical and fiscal management of his or her grant, regardless of the funding source. This means that even if the Principal Investigator delegates responsibility, he or she must ensure that, among other things:

- the research is conducted appropriately
- reports are filed as requested by the sponsor and the University
- intellectual property is disclosed
- expenditures are appropriately charged and allocated (*i.e.*, a grant should only pay for expenses which directly benefit that grant)
- compensation is appropriately charged based on the percent of effort individuals work on the grant. Principal Investigators are responsible for certifying the salaries charged to their respective grants via a salary certification.

Hiring Consultants

Principal Investigators should be wary of certain provisions in outside entity consulting agreements (such as intellectual property assignments, confidentiality agreements and non-compete clauses) that may create conflicts with their USC duties and obligations. Contact the Office of Contracts and Grants if you have questions in this area.

Human subjects

Always remember the Institutional Review Board requirements. The IRB's objective is to ensure the protection of human subjects in research. Toward that end, those conducting research with human subjects must be in compliance with IRB requirements. Remember, there are two IRBs: one primarily for behavioral research and one primarily for bio-medical research.

Conflict of interest

The basic principle is to disclose situations that may create the appearance of a conflict of interest, and to seek guidance through your department chair and dean on how to manage the conflict. Principal Investigators should seek guidance from the Disclosure Review Committee and the Vice Provost for Research since there is a central committee that manages conflicts of interest in research. For more information, see the USC Conflict of Interest in Research Policy at www.usc.edu/dept/contracts/conflict.pdf. A new policy will be posted at www.usc.edu/policies.

Intellectual property

To protect your own rights as well as the University's on patents and copyrights, check the Intellectual Property Policy at www.usc.edu/policies.

Compliance

For questions on compliance with government regulations, or to report compliance issues, call the USC Help and Hotline at extension 0-2500.

Patient Care

There are detailed requirements on credentialing and compliance. To the extent you engage in private practice, you must comply with the Medical School Faculty Practice Plan and the USC Care physician billing compliance requirements. Call USC Care or the USC Help and Hotline if you have questions.

Classroom use of copyright material

Complicated rules cover what "fair use" is allowed; check with the copy center. Always credit the copyright owner as well as the author.

Computer downloading and copying

Downloading or copying songs/videos/movies using programs like Napster may violate the copyright laws and can cost you your USC internet-access, plus possible lawsuits. Copying a program you have not paid for may also violate copyright law.

Censorship of research results

USC does not allow this. Do not sign agreements with sponsors that allow them to stop you from publishing. The Vice Provost for Research can help with such issues.

Authorship disputes

Keep evidence of what has been agreed upon with co-authors or those who might claim to be co-authors. Give proper credit to students and colleagues in conference presentations, reports, proposals and publications. Seek advice from senior colleagues, including your department chair and dean, if problems arise. The Vice Provost for Research can advise.

Taking jobs elsewhere

The Faculty Handbook permits the equivalent of one day a week for external consulting, subject to university approval.

Occasional outside teaching comes under a different Faculty Handbook provision than consulting and requires advance written permission from your dean. It is generally limited to emergency requests from the other school, and visiting appointments. You cannot hold a simultaneous faculty appointment elsewhere without extraordinary permission from the Provost.

Supervising personnel

Discipline and dismissal

Remember that staff do not work for you personally; they are USC employees, subject to the established staff policies. No staff employee may be terminated without Personnel Services' approval. Staff Employment Policies and Procedures may be viewed at www.usc.edu/policies.

Although staff members are employed at-will, we endeavor to address most performance problems through a series of escalating disciplinary steps rather than terminating in the first instance. (In some cases, however, an act of misconduct may be so egregious that immediate termination is appropriate.) When a staff member's job performance needs improvement, call it to the individual's attention, along with explanations of what the individual should be doing and advice for improvement. Document your communication by following it up in writing or by e-mail. Save a hard copy, put a copy in the personnel file maintained by the school, and let the individual know that you are doing so. The individual can also put a response in the file. If you think that someone should be fired, consult with Personnel Services rather than just telling the individual that he or she is fired.

We hope you have found this information helpful. Should you have any questions, feel free to call any of the offices listed on the first page.