

Executive Compensation

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Many College Presidents Lack Written Employment Contracts

By PAUL FAIN

All college presidents technically hold employment contracts. But whether the terms of those contracts are spelled out clearly is a different story. One-third of public university chiefs do not have formal written agreements, *The Chronicle* found in a survey of 165 public universities where such documents are considered public information.

Some of the collected agreements (which are posted on *The Chronicle's* [Web site](#)) are extensive legal documents. For example, Lester A. Lefton, president of Kent State University, holds a 12-page contract with an eight-page attachment detailing his deferred compensation. However, some contracts, including those at the University of Colorado at Boulder and the University of Missouri at St. Louis, are just brief letters of appointment from governing boards. Several of the 56 presidents who hold no formal, written contracts — such as Daniel D. Reneau, president of Louisiana Tech University — were hired a decade or more ago, when such agreements were less common. Mr. Reneau has been president since 1987. Another common reason for the lack of contracts is that governing boards may prefer that presidents be "at will" employees, who serve at the pleasure of boards and can be easily fired.

Additionally, many boards may prefer to keep compensation details away from public scrutiny. Several experts on presidential pay criticize the number of "handshake" contracts in higher education. They say written contracts provide stability to the volatile, high-pressure role of the presidency, which is increasingly seen as a corporate-style CEO position.

Frank L. Kurre, national managing partner of the higher-education and nonprofit division at Grant Thornton LLP, an accounting firm, says governing boards that follow "proper stewardship"

will negotiate written employment agreements with their chief executives. "I think it's at least a best practice," he says.

The Association of Governing Boards of Universities and Colleges agrees, recommending the use of presidential contracts in guidelines for trustees.

The reason some boards shy away from written contracts, compensation experts say, is fear that the details of presidential pay will be seized upon and criticized by faculty unions and the news media.

"Many people don't want to put it in writing," Mr. Kurre says. But he says governing boards should nonetheless use contracts to be "fiscally transparent."

Job Security

Boards that do not draw up contracts for their presidents are "behind the curve," says Raymond D. Cotton, a Washington-based lawyer who specializes in presidential compensation. Mr. Cotton worked on many of the contracts collected in *The Chronicle* survey and says written agreements bring stability to presidencies.

Lawyers and pay experts agree that presidents are driving the increased use of contracts. "They want some form of job security," says Patrick L. Clancy, a Washington-based employment and labor lawyer with Venable LLP.

Also important for presidents is having a clear description of their pay and benefits.

Compensation packages have become much more complex in recent years, with many presidents now receiving deferred compensation, one or more bonuses, and various fringe benefits. A good contract can prevent conflict over what a president is owed, which can become a problem when the relationship between president and board goes sour.

A Free Hand

The value of presidential contracts is somewhat murkier for boards than for presidents.

Boards also want stability, and are typically looking for a decade's commitment from a new president. Mr. Cotton says a contract creates security. But he says some trustees believe that "if there's nothing written, that gives the board freedom to do whatever they want."

While most compensation experts agree that that is a mistaken assumption, some say it carries a whiff of truth. In many states, an "at will" employee can indeed be fired easily.

The University of North Carolina system has long steered clear of formal contracts with its president and chancellors. Jim W. Phillips Jr., chairman of the system's Board of Governors, says the practice gives the board a "freer hand" on many issues, including compensation and questions of "continued employment."

"I think that's a good thing for the public," he says.

However, Mr. Cotton says terminated presidents can challenge a firing even if there is no written agreement. For example, a discrimination lawsuit could allege that the employee was dismissed because of race or gender.

Also, a fired president could challenge the presumption that he was an at-will employee, arguing that some form of employment agreement was violated by the termination. That approach has varying potential for success, depending on case law in each state. If a written contract is in place, a lawsuit is far less likely, lawyers say.

"It's much better to have a contract," says Howard S. Ende, a former general counsel for Princeton University, who is with the Princeton, N.J., office of Drinker Biddle & Reath.

But Mr. Phillips says the lack of contracts has never been a problem in North Carolina.

"In order to get quality people, the people we wanted, it hasn't been an issue," he says. "The university is better off, and the chancellor is not ill served."

The Fine Print

Contract lawyers also say that boards can still fire presidents who have written agreements.

While most presidential contracts have terms of three or more years, some presidents have rolling agreements that are renewed on an annual basis. If a board wants to oust a president, it can wait until the contract is up and get a quiet presidential exit by not renewing the contract.

But a problem-free departure depends on the contract's details.

For example, Mr. Cotton points to the "defective" employment agreement held by John A. Fallon III, former president of Eastern Michigan University. The university's governing board voted in July to end the contract of Mr. Fallon, who was under fire for his handling of a student's murder on the campus. He had also clashed with the board on other issues.

Mr. Fallon's seven-page contract says he may be "terminated at any time by the board." But Mr. Cotton says the document gives Mr. Fallon enough wiggle room to challenge his firing in court. He did so last month, filing a civil suit alleging that he was "irreparably harmed by his precipitous and unwarranted termination."

The key to a good contract, lawyers say, is clarity and detail. As examples, Mr. Cotton points to the employment agreements held by presidents at the major public universities in Florida. When those documents were drafted, he says, some trustees and university administrators fretted about using detailed, explicit language about compensation and severance.

The result, however, is a better-informed public and no lawsuits, Mr. Cotton says.

"The earth hasn't crumbled in Florida."

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