



Legal Pitfalls to Avoid in Name, Image, Likeness (“NIL”) Contracts

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A majority of states have passed laws allowing collegiate student-athletes to profit from their name, image, and likeness (“NIL”). **Michigan’s law became effective on December 31, 2022.** It allows student-athletes to sign endorsement deals, participate in advertising campaigns, and hire agents, consultants and attorneys to help arrange and negotiate these deals. For the sake of both the sponsoring entity and the student-athlete, these deals should be memorialized in the form of a written contract.

A contract is an agreement between parties to perform certain duties, and it is enforceable by law. While verbal agreements can be valid contracts, it is best to ensure contracts are in writing for a variety of reasons. A typical NIL contract involves a student-athlete agreeing to endorse a business in exchange for money. While this may seem like a straightforward arrangement, both parties should be interested in having a well-drafted contract.

NIL Contract Basics

An NIL contract will likely include the following: the parties to the contract, the obligations each party has in terms of performance, a date by which each party shall complete their obligations, what happens if a party does not fulfill their promise, and payment. Attorneys work to make sure each that each of these contractual terms are clearly written and leave nothing up to interpretation.

A. The Parties.

This term within an NIL contract spells out who specifically is obligated to perform and who will be held accountable if performance is not fulfilled. Sometimes this is very simple: a student-athlete and a business. However, it can become more complex when there are agents, public relations companies, more than one endorsing business, and other athletes involved.

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B. Obligations of the Parties.

This portion of the contract lays out exactly what each party must do to fulfill their obligations. The contract may require a student-athlete to endorse a business by wearing apparel from a sponsoring business, appear at a company golf outing, record a television commercial, or post one or more photos or videos on Instagram.

For example, a well-drafted contract that obligates a student-athlete to endorse a sponsoring business on Instagram will detail how many photos, videos, or reels the student-athlete must post over a defined period of time, how often content should be posted, specific product placement within the posted content, using designated hashtags (including the "#ad" sponsored post disclosure), that the student-athlete must obtain approval from the sponsoring business before posting content, and how long the content must remain on the student-athlete's Instagram page. It may even require the student-athlete to remain in compliance with their university's NIL policy and remain in overall good standing with the university.

The expectations each party has must be clearly written so each understands their obligations. Student-athletes need to be especially careful in understanding their obligations so they can receive payment.

C. Payment.

This term will outline when and how much the student-athlete is paid for completing their duties. How is the student athlete paid? Is payment made after each social media post? Is the full payment amount reasonable and fair? These are all important points that must be addressed in the contract.

D. Other Considerations.

NIL contracts need to be drafted with the law of the governing state in mind. Michigan's law, for example, prohibits student-athletes from entering into a contract where they are required to wear a sponsor's apparel during team activities. Most but not all states have laws governing NIL activities. Each state's laws are slightly different, so ensuring compliance is incredibly important.

In addition to complying with Michigan's NIL law and NCAA regulations, student-athletes must also comply with their university's policies regarding NIL activities. Universities tend to have specific guidelines and reporting requirements for student-athletes to adhere to when seeking endorsement deals.

Working with an NIL attorney who is familiar with state, NCAA and university policies will help ensure NIL deals are soundly structured and comply with all applicable regulations and policies.

Foster Swift's NIL Legal Services Group provides a wide-range of legal counsel and services for NIL collectives, businesses and organizations involved with or planning NIL initiatives and student-athletes participating in NIL deals. Contact Tony Dalimonte at adalimonte@fosterswift.com/248-785-4733 or Michael Cassar at mcassar@fosterswift.com/517-371-8110.