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NCAA Interim NIL Policy: Sponsoring College Athletes – What You Need to Know About NIL Regulations

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Written by

If your marketing team has yet to come to you with questions about the legal issues involved with sponsoring college athletes, they probably will shortly. What was once a slow-drip evolution of state legislatures gradually passing laws permitting college athletes to get paid for their name, image, and likeness (NIL) has turned into a firehose of opportunity after a recent Supreme Court case and the NCAA flipping its previous prohibitions. Primarily a social media-driven phenomenon (shocker!), college athletes with tens or hundreds of thousands, and some with millions, of followers are now able to get paid for lending their name to a brand or product just like any other celebrity or athlete. The key here being that they can get paid while still maintaining their eligibility to continue playing college sports.

Change began in recent years with multiple state legislatures, upset over NCAA restrictions on the ability of collegians to profit from their popularity, passing laws that took direct action to overturn those restrictions in their states. A number of lawsuits were also pressed against the NCAA restrictions, including the case that resulted in the June 21, 2021 Supreme Court decision in *Nat'l Collegiate Athletic Ass'n v. Alston*, 141 S. Ct. 2141 (2021). While the Alston case concerned a broad range of issues, one was the ability of athletes to profit from their NIL. The Supreme Court's decision essentially found the NCAA's restrictions to be an illegal restraint of trade.

The NCAA's response was nothing less than earth-shaking. Effective July 1, 2021, the NCAA suspended its restrictions and limitations on the ability of student-athletes to generate income from their NIL. While the NCAA's policy is an interim one, the green flag has officially been waved – deals are getting done. Big deals, small deals, medium sized deals – companies are rushing in to benefit from the shine, exposure, and stamp of approval that can come from being associated with young college athletes, many of whom have strong social media followings. Since July 1, all student-athletes are free to monetize their NIL to sign endorsement deals, appear in commercials and YouTube videos, get paid to mention brands in their TikTok and Instagram videos, get paid to autograph memorabilia, make appearances at businesses, and in all other creative ways generate cash – all without being deemed ineligible to play college sports by the NCAA.

WHAT YOU NEED TO KNOW

When your marketing team approaches you, ask two specific questions – first, what state is the athlete in, and second, what college does the athlete attend? In the current absence of federal legislation, state law applies, and while they are similar, they are not entirely the same. The generally consistent state law terms include:

- Student-athletes must be allowed to receive compensation for their NIL – schools may not limit their students' ability to do so, or declare the student ineligible based on receiving compensation for their NIL;
- The schools themselves may not compensate the student-athlete for their NIL or for playing the sport at their school;
- Schools must allow student-athletes to retain professional agents and other advisors to help with generating NIL revenue;
- In a nod to the schools' rights, state laws generally prohibit student-athlete NIL contracts that conflict with the school's own sponsorship contracts;
- Student-athletes are required, in most states, to disclose their NIL contracts to their schools, so that the schools can ensure consistency and lack of conflict with their own contract rights; and
- Some states prohibit NIL contracts for so-called sin industry participants, e.g., tobacco, alcohol, adult entertainment, and importantly, gambling.

After checking state law to confirm the legal ability to enter into the proposed NIL deal with the college athlete, the next step is checking the specific school's policy. Each school has its own policy, and again, while most are similar, there may be some important differences. It is also important to note that it is the student-athlete that has the relationship with the school, not the brand sponsor, so the obligation to submit the sponsorship deal to the school is on the student-athlete. That said, it is in everyone's best interest for the brand sponsor to be cognizant of what the school requires and permits. Relevant terms of college NIL policies often include:

- No NIL compensation may be conditioned or contingent on any specific athletic performance or achievement (e.g. score three touchdowns in a game, earn $10,000);
- Disclose any NIL activities prior to finalizing an agreement for the proposed activity, so the school can determine whether a conflict exists with the school's sponsorships;
- Schools generally do not permit or license their own trademarks, logos, symbols, or other IP, without a separate agreement directly with the school;
- No NIL deals for activities that may harm the reputation of the institution (like gambling, adult entertainment, tobacco, or banned substances).
- No NIL opportunities during organized team activities like practice, competitions, team-organized media appearances, or team or university promotional events.

It is not the wild west – there are rules and regulations in place. However, the entire NIL landscape is new, and no one knows the answers to all questions. For example, will schools in states that have legalized recreational marijuana permit a student-athlete (one who is 21 or older) to sponsor a marijuana brand? These kinds of questions will have to play out over the course of time, with each state, school, and athlete making their own rules and carving their own path. Again, while it is not the wild west, the landscape is mostly a bare canvas. Keep up with the laws and the schools' rules to ensure you paint within the lines.