

# FLORIDA'S NAME, IMAGE, AND LIKENESS BILL CREATES NEW MARKETING OPPORTUNITIES – AND COMPLIANCE OBLIGATIONS – FOR EMPLOYERS

Insights  
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After much discussion over the last year, Florida's name, image, and likeness (NIL) legislation for college athletes will go into effect on July 1, allowing college athletes to receive compensation based on their name, image and likeness. While universities and athletic conferences will remain forbidden from paying student-athletes for their athletic performances, student-athletes can now sign endorsement deals and profit from advertising and marketing campaigns for third-parties. The new legislation will assuredly create opportunities for businesses that desire to enlist college athletes as part of their marketing campaigns. This is particularly true for those in college towns that will likely look to retain student-athletes as independent contractors for promotional purposes and rely upon an athlete's social media presence to create buzz for products, brands, and events. But the law will also create workplace law obligations for employers. What do you need to know about this new NIL law before you venture into uncharted territory?

## 3 Main Considerations Your Business Should Take into Account

If your business wants to head down this path and capitalize on the NIL law starting July 1, there are three main considerations you should take into account before proceeding.

### 1. Create a Compliant Written Contract

Companies hiring college athletes for promotional purposes should prepare a written contract to define the relationship between your brand and the student-athlete.

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Any such contracts should also ensure compliance with the Fair Trade Commission (FTC) rules and regulations for advertising products and services. The FTC previously released a disclosure guide to assist with compliance for products and brands promoted on social media platforms. The [FTC's rules and regulations](#) place responsibility not only on promoters, but also on the brands that partner with them.

For example, student-athletes promoting products on social media must make it obvious when they have a material connection with a brand when making certain kinds of posts. Material connection to a brand includes a personal, family, employment relationship or a financial relationship such as a brand paying or giving free or discounted products or services to student-athletes. You should take reasonable steps to outline the student-athlete's obligations in this regard and require they agree in writing to comply with this rule.

## **2. Develop Clear Boundaries**

Marketers will want to clearly define key elements of the relationship in your written agreements with student-athletes. Besides outlining the duration of the relationship, your agreement should contain clear expectations regarding social media posts, approval protocols, and competitor restrictions. It is also important to ensure your written agreement confirms the correct legal classification of the student-athlete as they related to your business – they remain at all times an independent contractor and are not an employee of your business. You will also want to work with your legal counsel to ensure your relationship with the student-athlete in fact doesn't veer towards an employee-employer arrangement regardless of your written contract.

## **3. Consider Conduct and Other Provisions**

You may also want to include provisions requiring athletes to conduct themselves professionally and for exclusive content control. Additionally, you may want to include "claw back" provisions that would sever or alter the business relationship triggered by a transfer in schools or other material changes to the student-athlete's marketability.

Any athletes who enter into a contract for use of their name, image, or likeness must disclose the existence and

terms of the contract to the university they attend. Additionally, athletes may be prohibited from entering into compensation contracts for use of their NIL if a contract term conflicts with any other contracts to which their universities are a party. You may want to confirm in writing that the student-athlete agrees to satisfy these legal obligations so that you don't get dragged into a legal challenge should they fail to comply.

## What's Next?

The new law prohibits schools from preventing or unduly restricting an athlete from seeking representation (which can only be provided by a licensed sports agent or an attorney in good standing with the Florida Bar) in connection with securing name, image, and likeness compensation. Therefore, we expect to see a surge in NIL business immediately spring up soon after the July 1 start date. In summary, Florida's name, image, and likeness law will create new opportunities for student-athletes and businesses that desire to hire athletes for marketing campaigns. Due to the importance of compliance, you should ensure that you adhere to the best legal practices to mitigate risks while maximizing value for their brands.

While Florida's NIL law will be the first to go into effect next month, an increasing number of states will soon step to the plate and enact their own laws. Georgia, Alabama, New Mexico, and Mississippi have already followed suit in passing such laws that will soon take effect, as the first wave of states to legalize student-athletes profiting off their appearances swells in number. If your business has additional questions on this process, feel free to reach out to your Fisher Phillips attorney, the author of this Insight, or [any attorney in our Florida offices](#).

We'll continue to monitor the status of this type of NIL legislation and will provide updates as warranted, so [make sure you are signed up for Fisher Phillips' Insight service](#) to receive the latest news directly in your inbox.