



Could the Collective Association Provide an Alternative to Employment Status for Student-Athletes? 5 Tips for Universities

Insights

10.20.23

An alternate solution to the ever-increasing push to make collegiate student-athletes employees may finally be on the horizon. The lack of uniformity in state name, image, and likeness (NIL) laws has created an uneven playing field – and caused some of the largest donor-led collectives to form the Collective Association, which could be the first step in creating a uniform set of rules governing student-athlete compensation for universities and the collectives supporting them. More importantly, the formation of the Collective Association could eventually lead to a model for student-athlete compensation that does not involve employment status. Here's what you need to know about the Collective Association, what it could mean down the line for universities and their student-athletes, and five tips you can consider as you navigate this new future.

What is the Collective Association?

The Collective Association was originally formed in July by several NIL collectives at high-profile universities that regularly compete for league and national championships. Within a month, many additional collectives joined the association, and more expected in the near future.

The stated intent of the Collective Association “is to advocate for student-athletes, share best practices, and act as a unified voice to shape the development of the NIL Market and beyond.” Because NIL collectives deal with all parties involved in student-athlete compensation, including universities, donors, the NCAA, agents, corporate brands, and sponsors – in addition to the student-athletes themselves – the Collective Association offers a very unique and valuable perspective regarding the identification of real-world problems and possible remedies in order to shape the future of student-athlete compensation.

One of the most glaring issues identified is the vast differences in state laws, some of which are intended to create advantages for some schools to the detriment of others. For example, the state of Missouri passed a law in May allowing high school prospects to become immediately eligible for NIL benefits if they sign with an in-state school, meaning those players could be getting paid six to eight months before they ever suit-up for their first college practice. On the other hand, the state of Florida recently repealed its initial NIL law after its restrictions put in-state schools at a disadvantage when recruiting against schools in other states.

How Does This Impact Universities and Their Student-Athletes?

The Collective Association has made clear that it holds similar views as athletic administrators but also wants to be proactive in this new world where college athletes are being compensated for their NIL. In particular, it hopes to work with conference commissioners, state legislatures, and Congress to formulate solutions.

These include a college-athlete agent registry, uniform regulations, proposals for uniformity among state laws, and eventually an overarching federal law tailored to resolve the most pressing issues facing NIL compensation. An employer-employee relationship between universities and their student-athletes would lead to increased regulation thereby creating a myriad of problems for both parties, but it is an outcome that has been rapidly gaining support.

However, the most impactful solution the Collective Association has already begun to explore with the NCAA is assisting in the creation of a revenue-sharing model that could potentially avoid the increasing push for student-athletes to be designated as university employees. Specifically, the model would involve compensating student-athletes using the money received from television network contracts with athletic conferences, among other revenue streams.

In late July, the Collective Association proposed an initial framework in which a portion of television revenue distributed to the athletic conferences would be directed to designated collectives of each member school equally. The individual collectives would thereafter distribute the funds to the student-athletes, utilizing its third-party status as a possible way to avoid triggering athlete employment.

Thus, while there are several legal hurdles that likely prevent the implementation of the current version of student-athlete compensation model, the general framework proposed by the Collective Association and the resulting discussions represent a significant first step for universities concerned with a possible future of student-athlete employment. The Collective Association can also provide additional proactive solutions to incentivize schools to be a part of a governing body and abide by applicable regulations in contrast to the NCAA model of punishing schools for not abiding by NCAA rules.

5 Tips for Universities and Colleges to Stay Ahead of the Game

What proactive steps can universities and colleges take to strategically position themselves in the ever-evolving world of NIL and emerging Collectives? Here are five tips for schools to best position themselves:

1. Stay up to date with [proposed changes in NIL laws](#) in your prospective state. State legislatures have demonstrated amending NIL laws to stay competitive are a priority. These laws affect how involved schools can be with NIL opportunities for student-athletes as well as govern liability for university employees and officials.

2. Assess whether you will need to create new positions in your university or can use existing resources to assist with facilitating NIL compensation to student-athletes and educating them to make informed financial decisions. For example, many universities are offering financial literacy courses to their student-athletes, while others have hired NIL Coordinators to further educate athletes, administrators, and coaches about the topic.
3. Keep tabs on any NCAA policies and guidelines that arise concerning NIL and compensation for student-athletes and whether there is any conflict with state law. The NCAA has already issued interim policies and guidelines clarifying its policies related to NIL, with more expected to come.
4. Consider developing strategies and relationships to work cooperatively with collectives to make sure their goals are in sync with your university's goals and that the collectives have implemented appropriate controls for NIL compliance. This could mean meeting periodically with the leaders of your university's collective(s) to ensure that all parties are aligned concerning the manner in which resources are to be allocated and that the collective has put in place an appropriate structure for NIL compliance.
5. Monitor trends in NIL compensation for your student athletes to determine if additional advice needs to be provided to your student-athletes.

Conclusion

If you have additional questions about the potential changes on the horizon, feel free to reach out to your Fisher Phillips attorney, the authors of this Insight, or any member of our [Sports Industry Group](#) or [Higher Education Team](#). We'll continue to monitor the status of NIL legislation and will provide updates as warranted, so [make sure you are signed up for Fisher Phillips' Insight System](#) to receive the latest news directly in your inbox.

Related People



Michael E. Bonner
Associate
954.847.4726

Email



Brett P. Owens

Partner

813.769.7512

Email

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