Arkansas Football and Non-Competes?

Insights
12.07.15

Three years ago, we addressed the question of why college football programs do not use non-compete restrictions to prevent coaches from moving to direct rivals. At the time, we mentioned the fact that Arkansas was a program that had utilized a non-compete restriction with its then-current coach, Bobby Petrino:

In fact, a notable example of a college coach who does indeed have a non-compete restriction - Arkansas' Bobby Petrino - establishes the limits of the approach. The non-compete provision in Petrino's original contract with Arkansas prevented him from leaving Arkansas to coach another team in the Razorbacks' division: the SEC West. When Petrino signed a new agreement with Arkansas in January 2010, the scope of the non-compete expanded to cover every team in Arkansas' conference, i.e. from a five-competitor non-compete to an eleven-competitor restriction. It would be very difficult to fashion a non-compete restriction to prevent coaches from making most coaching moves because the universe of competitors is limited by geography and conference affiliation.

Arkansas' motivation in tying Petrino down with a non-compete was fairly obvious in light of the coach's history of moving between jobs. In the end, Petrino's employment with Arkansas ended not

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

because of Bobby choosing to leave, but rather because of Petrino engaging in some less-than-exemplary personal conduct.

While Petrino's employment with Arkansas was somewhat fleeting, the athletic department has chosen to stick with the policy of having football coaches sign non-compete restrictions. This issue came up very recently when Kirby Smart, the new head coach at Georgia, reached out to Petrino's ultimate replacement, Bret Bieleman, to ask for permission to talk to Arkansas offensive coordinator Dan Enos about taking the same position at Georgia. Bielema shot the recruitment effort down by referencing Enos' non-compete provision:

"Kirby called me early this morning, asked me for permission to talk to Dan and I just basically said, I understand if you've got to talk to Dan, if that's something you want to do, but he's got a non-compete clause in the SEC. So that kind of null and voids those things from really becoming real within our conference."

The episode illustrates a value of non-compete restrictions, which is to prevent the loss of a key employee. Arkansas' use of non-compete restrictions stands in contrast to its conference rivals, which appear to eschew the provisions as evidenced by the frequent flow of coaches between league members. In the last week, Georgia has hired Alabama's defensive coordinator and South Carolina hired Auburn's defensive coordinator. And this is prior to the coaching carousel getting really active, which often happens after the bowl games.

One final side note: Enos' non-compete restriction states as follows:

"You covenant and agree not to accept employment in any coaching capacity, except for a head coach position, with any other SEC institution ... prior to the expiration date of the term and any mutually agreed upon extensions of the term."

Under Georgia's old non-compete law, this restriction would have been unenforceable for at least two reasons. First, by restricting Enos from working in any coaching capacity, it went beyond the role that he actually performed for Arkansas - offensive coordinator - and thus would have been held to be overly broad in terms of scope of activity. Second, because the covenant covers "any other SEC institution," it would have been viewed as a shifting provision in that the ultimate geographic scope could not be determined at the time of signing because the league (and thus the geographic scope) could have expanded. These arguments would likely fail under Georgia's new restrictive covenant statute, which went into effect on May 11, 2011. Thus, the change in the law deprives us of the potential spectacle of Georgia and Arkansas litigating (possibly in two different jurisdictions) over the hiring of an offensive coordinator.

Related People

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

Michael P. Elkon
Partner
404.240.5849
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.