

When Coaches Can't Compete -- Non-Competes in Sports

Insights

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UNIVERSITY OF ARKANSAS RELEASES FOOTBALL COACH'S CONTRACT



In the lucrative world of big time college football, universities continually try to gain an edge over the competition by, among other things, luring top notch coaches with generous multi-million dollar contracts. One such instance of this occurred in late 2012, when the University of Arkansas hired Bret Bielma away from the University of Wisconsin to coach its football team. Prior to joining the Arkansas football program, Bielma had a highly successful tenure as the coach of Wisconsin's football team, which included multiple conference titles, regular bowl appearances and annually competing for national championships. Bielma's decision to leave Wisconsin, after such a successful run at the university, to join Arkansas surprised many who follow college football. While it was already well-known that Bielma was being paid a multi-million dollar annual salary to coach the football team, Arkansas recently released a complete copy of [Bielma's contract](#).

In addition to containing the standard language one would expect to see, Bielma's contract with Arkansas also includes a non-compete provision. Broken down to its basics, the non-compete clause prohibits Bielma from coaching another one of the football teams in the Southeastern Conference ("SEC"), the conference Arkansas competes in, at anytime between December 4, 2012 and December 31, 2018. The scope of the non-compete clause is limited to the 14 members of the SEC as of the date Bielma's contract went into effect. Putting aside buyouts and other provisions in the contract, the non-compete clause does not prohibit Bielma from leaving Arkansas to coach another university's football program outside the SEC. The provision further acknowledges that Arkansas would suffer irreparable harm in the absence of the protections afforded by the non-compete clause and provides that Arkansas is entitled to injunctive relief "[i]n the event of a breach or threatened breach."

The entire non-compete clause in Bielma's contract reads as follows:

Covenant Not to Compete. The parties covenant and agree that the University is a member of the SEC and competes against other SEC member institutions for students, faculty, and staff. Additionally, the parties covenant and agree that the University's football program competes against other SEC member institutions for prospective student-athletes, financial support, and prestige. The parties further covenant and agree that the competitiveness and success of the University's football program affects the overall financial health and welfare of the Athletic Department and that the University maintains a vested interest in sustaining and protecting the well-being of its football program, including, but not limited to, the recruitment of prospective student-athletes to the institution and the financial integrity of its athletics programs. To avoid harming the University's interests, Coach covenants and agrees that this covenant not to compete shall be in full force and effect during the period beginning on December 4, 2012, and ending on December 31, 2018, and shall survive Coach's termination of the Agreement prior to the expiration of the Term or any mutually agreed upon extensions of the Term for any reason whatsoever. Coach and/or any individual or entity acting on Coach's behalf, shall not seek or accept employment in any coaching capacity with any other member institution of the SEC. For purposes of this covenant not to compete, the University and Coach agree that it shall apply only to the 14 member institutions of the SEC existing as of December 4, 2012. This covenant not to compete, however, shall not apply if the University exercises its right to terminate the Agreement for convenience or if the Coach terminates this Agreement for cause based upon the University's material breach of this Agreement.

Nothing contained in this Agreement shall be deemed, construed or operate as a waiver of any immunities to suit available to the University or the members of the Board of Trustees or any University officials, representatives or employees. In the event of a breach or threatened breach of this provision, the University shall be entitled to injunctive relief as well as any other applicable remedies at law or in equity. Coach understands and agrees that without such protection, the University's interests would be irreparably harmed, and that the remedy of monetary damages alone would be inadequate. This covenant not to compete shall be independent of any other provision of this Agreement, and the existence of any claim or cause of action by Coach against the University,

whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement of this provision by the University.

In short, as the clause makes readily apparent, Arkansas has taken preemptive measures aimed at both dissuading Bielma from jumping ship to coach another football team in the ultra-competitive SEC and thwarting efforts by other SEC schools to recruit Bielma to coach their football team.

The inclusion of a non-compete clause in Bielma's contract is noteworthy for a number of reasons. Initially it highlights how non-compete clauses can be broadly utilized, in an array of industries, in an effort to protect an employer's business interests. While enforceability is a completely separate issue, Arkansas, similar to many other institutions, is attempting to protect the substantial investment it has made in an employee, here the coach of its football team. Moreover, if Bielma ever violated the non-compete clause by going to another school in the SEC, it would likely result in a expensive and highly publicized legal battle between universities. It is an open question if a court in Arkansas or another jurisdiction would ultimately enforce the clause and enjoin a football coach of Bielma's stature from working at another school in the SEC. At a minimum, however, the non-compete clause provides Arkansas with substantial leverage over any other university in the SEC that attempts to hire Bielma to coach its football team before the expiration of the clause on December 31, 2018. The simple takeaway from the non-compete clause appears to be that Arkansas has no interest in losing its multi-million dollar football coach to a rival school in the SEC.

Industry Focus

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