

Mitigation Obligations in Luke Fickell's Wisconsin Contract: Common Law Insights

By Martin J. Greenberg and Dalton Hein

A. Luke Fickell, University of Wisconsin – Uncertainty of Mitigation Requirement

Luke Fickell commenced his tenure as head football coach at the University of Wisconsin-Madison on November 27, 2022, following a successful stint at the University of Cincinnati, where he compiled a 57-18 record from 2017 to 2022, including guiding the Bearcats to the first College Football Playoff appearance by a Group of Five program in 2021.¹ The Wisconsin Football Program under Coach Luke Fickell has become a disaster and embarrassment to Badger fans.² As of October 16, 2025, the Badgers stand at 2-4 overall and 0-3 in Big Ten play, mired in a four-game losing streak that includes a humiliating 37-0 shutout loss to Iowa on October 11, 2025, during which “Fire Fickell” chants erupted into a deafening roar from the stands in the first half.³ This downturn represents the worst run of football for Wisconsin in 40 years.⁴ Fickell has been described as the 21st-century equivalent of Don Morton, whose 1987-1989 tenure yielded a dismal 6–27 record amid similar issues of inadequate preparation and strategic uncertainty.⁵

Fickell is not only running out of time to reverse his fate but is inflicting irreparable damage to his reputation, potentially jeopardizing future opportunities to lead a Power 4 program.⁶ In public statements following recent defeats, Fickell has admitted fault, conceding that his team was not adequately prepared and expressing uncertainty about how to navigate adversity.⁷ Wisconsin

¹ Employment Agreement Between Univ. of Wis.-Madison & Luke Fickell (Nov. 30, 2022).

² Kedrick Stumbris, *Wisconsin Football Head Coach Luke Fickell, Again, Has No Answers*, Badger Notes (Oct. 13, 2025), <https://www.badgernotes.com/p/wisconsin-football-head-coach-luke-again-has-no-answers> (last visited Oct. 19, 2025).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Stumbris, *supra* note 2.

⁷ *Id.* (quoting Fickell as stating, “To not be ready, to not have them ready, I’m dumbfounded in a lot of ways – but that’s my job,” and noting his admission that unchanging coaching messages “could be an issue”).

Football Head Coach Luke Fickell once again has no answers.⁸ Wisconsin Athletic Director Chris McIntosh has reportedly assured players that Fickell will return for the 2026 season, providing some internal stability amid the program's struggles.⁹ However, the central question still looms: Will Wisconsin's administration fire Fickell on a not-for-cause basis simply for not winning games?

Fickell's employment agreement, entered into as of November 30, 2022, between the University of Wisconsin-Madison, the Division of Intercollegiate Athletics, and Luke Fickell ("Employment Agreement"), provides the framework for addressing such a termination.¹⁰ This original contract, spanning from November 30, 2022, to March 31, 2030, with provisions for annual extensions based on performance reviews, is valued at approximately \$55 million and features an escalating base salary structure.¹¹ Article V, Termination and Liquidated Damages, A. By University, (2) Termination by University Without Cause, states as follows: "2. Termination by University without cause. This Agreement may be terminated at any time by University by delivering to Coach written notice of University's intent to terminate this Agreement without cause. Termination shall be effective thirty (30) days after the date of delivery of such notice to Coach."¹²

Further, Article V, Section 3, Liquidated damages upon termination by University without cause, with notice, (b) provides:

"In the event the University terminates this Agreement without cause, Coach agrees to make reasonable and diligent efforts to obtain other comparable employment as soon as reasonably

⁸ *Id.*

⁹ Dan Morrison, Wisconsin AD Made Decision on Luke Fickell Clear to Players, Newsweek (Oct. 20, 2025), <https://www.newsweek.com/sports/ncaa/luke-fickell-ad-wisconsin-decision-10901819> (last visited Oct. 20, 2025).

¹⁰ Employment Agreement, *supra* note 1.

¹¹ *Id.* § III(A).

¹² *Id.* art. V, § A(2).

possible, and to mitigate the amount of liquidated damages to which he is entitled under this Agreement, as follows: If Coach accepts any coaching position in the National Football League, or at any NCAA Division 1 program, the total amount of liquidated damages the University is obligated to pay, and Coach is entitled to receive, as specified herein, shall be reduced every month by an amount equal to Coach's annual gross base salary paid for such month under Coach's new employment agreement, until the expiration date of any payment period hereunder. Coach agrees to notify the University as soon as reasonably possible after accepting such new employment. For avoidance of doubt, Coach shall not be required to accept any position if accepting such position is not in the best interests of his coaching career."¹³

Section III, Term of Employment, of Fickell's Employment Agreement, states:

"C. The Director of Athletics or designee shall, at an appropriate time, conduct an annual review of Coach's performance under this Agreement utilizing the applicable evaluation criteria set forth by the Division of Intercollegiate Athletics. Beginning with the annual review following the 2023 football season, University, based upon satisfactory performance by Coach, the recommendation of the Director of Athletics or Designee, and approval of the UW-Madison Athletic Board, shall annually extend the Term of this Agreement by one year, with a salary as described in Section IV.C. Below, the latter of which increases by \$100,000 per contract year as set forth in the Additional Compensation Agreement."¹⁴

Through an Open Records Request, an Amendment to Employment Agreement dated February 1, 2024, was provided, which extends Fickell's Term of Employment until March 31, 2031, pursuant to Section III.C.¹⁵ Rumor indicates a Second Amendment to Fickell's Employment

¹³ Id. art. V, § 3(b).

¹⁴ Id. § III(C).

¹⁵ Amendment to Employment Agreement Between Univ. of Wis.-Madison & Luke Fickell (Feb. 1, 2024) (obtained via Open Records Request; on file with author).

Agreement exists, not provided in the Open Records Request, presumably extending the Term to March 31, 2032, also pursuant to Section III.C.¹⁶ Presuming the Termination Not for Cause and Mitigation of Damages provisions remain unchanged in these amendments, as is standard, Fickell retains an obligation in good faith to seek other employment.¹⁷ Specifically, Fickell has a duty to make a reasonable and diligent effort to obtain other comparable employment as soon as reasonably possible, and to mitigate the amount of liquidated damages to which he is entitled under the Agreement.¹⁸ The contract defines comparable employment as any coaching position in the National Football League or at any NCAA Division 1 program, not limited to head coaching but including assistant or coordinator roles.¹⁹ The result of such employment would be that the total amount of liquidated damages the University is obligated to pay, and Coach is entitled to receive, shall be reduced every month by an amount equal to Coach's annual gross base salary paid for such month under Coach's new employment agreement.²⁰ Notably, the contract states that Coach shall not be required to accept any position if doing so is not in the best interests of his coaching career.²¹ For the 2025 season, Fickell's salary is \$7,825,000, with potential bonuses, and a buyout if terminated without cause on or before December 1, 2025, of \$27,493,333, payable in monthly installments subject to mitigation.²²

Even though some claim publicly that Fickell has a guaranteed contract and is entitled to be paid the liquidated damages without having to mitigate damages (i.e., seeking on a good faith basis comparable employment to offset what the University of Wisconsin would owe him), the

¹⁶ *Id.* (presumed based on standard practice under § III(C)).

¹⁷ Employment Agreement, *supra* note 1, art. V, § 3(b).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Employment Agreement, *supra* note 1, § IV (detailing base salary of \$3,000,000 annually with biweekly payments and additional compensation escalating by \$100,000 per contract year); Amendment, *supra* note 14 (extending term and maintaining salary structure).

contract's explicit terms contradict this.²³ All University of Wisconsin contracts reviewed contain similar not-for-cause and mitigation provisions, all but ensuring that, if unchanged by extensions, Fickell must take mitigating actions to reduce the university's financial exposure.²⁴

B. Explanation of Mitigation Concept

Mitigation of damages is a core principle in contract law, obligating the non-breaching party to take reasonable steps to minimize losses stemming from a breach, thereby avoiding unnecessary accumulation of harm.²⁵ In employment contracts, this doctrine requires the wrongfully terminated employee to diligently pursue comparable alternative employment, with any earnings from such work deducted from the original employer's liability to prevent unjust enrichment or double recovery.²⁶ As secondary sources emphasize, the aggrieved party "may not sit idly by and allow damages to accumulate, but rather must make reasonable efforts to minimize those damages."²⁷ Fickell's contract embodies this concept by requiring "reasonable and diligent efforts" to secure comparable employment, explicitly limited to NFL or NCAA Division I coaching positions, after termination without cause.²⁸ Upon acceptance, offsets are applied monthly, reducing liquidated damages by the equivalent of his new annual gross base salary, with the coach obligated to notify the university promptly.²⁹ This mechanism not only caps institutional liability but includes an exception for positions not in the "best interests of his coaching career," such as those involving demotion, instability, or reputational harm, thereby safeguarding Fickell's professional trajectory

²³ Stumbris, *supra* note 2.

²⁴ Martin J. Greenberg, *Are Mitigation Clauses Still Utilized in College Football Coaching Contracts?*, Greenberg's Coaching Corner (July 2024) (on file with author).

²⁵ Greenberg, *supra* note 23, at 2

²⁶ *Id.*

²⁷ *Id.*

²⁸ Employment Agreement, *supra* note 1, art. V, § 3(b).

²⁹ *Id.*

while enforcing mitigation.³⁰ This approach reflects a balanced application of the doctrine, tailored to the high-profile nature of collegiate coaching.³¹

C. Common Law Duty Under Wisconsin Law to Mitigate in Employment Contracts with Liquidated Damages

Presuming that Fickell had a guaranteed contract, as explained above, and no written duty to mitigate damages, he may still have a common law duty under Wisconsin law to undertake a duty to mitigate damages by virtue of his employment contract.³² Wisconsin courts assess the enforceability of liquidated damages clauses under a totality of circumstances test, examining factors such as the difficulty of ascertaining actual damages at the time of contracting and whether the stipulated amount represents a reasonable forecast of harm, viewed both prospectively and retrospectively.³³ In *Wassenaar v. Panos*, the Wisconsin Supreme Court enforced a stipulated damages provision in an employment contract without applying mitigation.³⁴ It held that a valid liquidated damages clause replaces the need for actual damages proof, thus rendering mitigation inapplicable.³⁵ However, *Wassenaar* primarily addressed the clause's reasonableness and proportionality to actual harm, not whether a common law duty to mitigate persists in the absence of explicit contractual language.³⁶ Distinguishing stipulated damages (agreed-upon contractual sums) from liquidated damages (those judicially deemed reasonable and enforceable), the case does not directly resolve the issue of an implied common law duty under Wisconsin law when a contract is silent on mitigation.³⁷

³⁰ *Id.*

³¹ Greenberg, *supra* note 23, at 2.

³² Greenberg, *supra* note 23, at 2.

³³ *Koenings v. Joseph Schlitz Brewing Co.*, 377 N.W.2d 593, 600 (Wis. 1985).

³⁴ *Wassenaar v. Panos*, 331 N.W.2d 357, 363 (Wis. 1983).

³⁵ *Id.*

³⁶ *Id.* at 360.

³⁷ *Id.*

Likewise, in *Koenings v. Joseph Schlitz Brewing Co.*, the court upheld a stipulated damages clause for a substantial reduction in responsibility equivalent to termination.³⁸ It reversed a trial court's imposition of mitigation and reinstated the full award, reasoning that reasonable anticipatory harm negates post-breach reductions.³⁹ Yet, *Koenings*, like *Wassenaar*, focused on clause validity rather than an inherent common law duty absent terms.⁴⁰ In *Kramer v. Board of Education of School District of Menomonie Area*, post-termination earnings that exceed the contract value entirely offset damages, demonstrating mitigation's role in averting over-compensation, though the case lacked a liquidated damages provision.⁴¹ Absent a direct Wisconsin Supreme Court ruling mandating mitigation in silent liquidated damages employment contracts, uncertainty prevails.⁴²

Nonetheless, a common law duty under Wisconsin law to mitigate likely applies unless expressly waived, informed by federal interpretations and secondary authorities.⁴³ In *Jarosch v. American Family Mutual Insurance Co.*, applying Wisconsin law, the Seventh Circuit enforced mitigation by deducting avoidable losses in a breach claim, underscoring the doctrine's relevance to employment contexts.⁴⁴ Secondary sources bolster this: American Jurisprudence states that, while valid liquidated clauses may dispense with mitigation in certain views, common law generally demands reasonable efforts to minimize losses without explicit waiver, promoting economic efficiency and preventing double profits.⁴⁵ *Williston on Contracts* affirms that enforceable liquidated provisions avoid penalties, but silence may trigger mitigation to curb waste,

³⁸ *Koenings*, 377 N.W.2d 593, 600 (Wis. 1985).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Kramer v. Bd. of Educ. of Sch. Dist. of Menomonie Area*, 635 N.W.2d 857, 859 (Wis. Ct. App. 2001).

⁴² Greenberg, *supra* note 23, at 2.

⁴³ Greenberg, *supra* note 23, at 2.

⁴⁴ *Jarosch v. Am. Fam. Mut. Ins. Co.*, 837 F. Supp. 2d 980, 1005 (E.D. Wis. 2011).

⁴⁵ 22 Am. Jur. 2d Damages § 536 (2025).

drawing from overarching contract policies.⁴⁶ Scholarly analyses of service contracts highlight courts' pragmatic imposition of mitigation unless clauses explicitly bar it.⁴⁷ Thus, in a hypothetical silent Fickell contract, this common law duty under Wisconsin law would compel efforts to secure comparable coaching roles, with offsets against liquidated damages, aligning with compensatory principles and mitigating penal effects.⁴⁸

D. Comparison to Other Contracts

In contrast to Fickell's mitigation-required agreement, numerous coaching contracts omit such duties, enabling full guarantees without offsets.⁴⁹ In my July 2024 article, "Are Mitigation Clauses Still Utilized in College Football Coaching Contracts?," prompted by Jimbo Fisher's not-for-cause termination at Texas A&M, triggering a \$77,562,500 buyout, I noted the absence of any mitigation provision, obligating Texas A&M to pay the entirety even if Fisher secured new employment, allowing "double dipping."⁵⁰ Reviewing contracts of the 25 highest-paid FBS coaches, 10 lacked mitigation clauses.⁵¹ Fisher's deal specified: "University shall pay twenty five percent (25%) of such amount in a lump sum within (60) days of the effective date of termination of the Agreement, and the remaining balance shall be paid to Coach in equal annual payments beginning one hundred twenty (120) days after the effective date of the termination of this Agreement and continuing through the original end date of this Agreement, December 31, 2031."⁵² These examples illustrate the spectrum, where explicit no-mitigation terms expose universities to full liability, differing from Fickell's offset framework.⁵³

⁴⁶ 24 Williston on Contracts § 65:1 (4th ed. 2025).

⁴⁷ Greenberg, *supra* note 23, at 2.

⁴⁸ *Id.*

⁴⁹ Greenberg, *supra* note 23, at 1.

⁵⁰ *Id.*

⁵¹ *Id.* at 3.

⁵² *Id.* at 1.

⁵³ *Id.*

E. Trends and Implications

Trends indicate a split in coaching contracts: mitigation provisions like Fickell's limit university risk amid rising salaries, while no-mitigation guarantees prioritize coach protections, often straining budgets, as evidenced by recent SEC buyouts nearing \$27 million.⁵⁴ Good lawyering requires drafting explicit waivers for genuine guarantees, for good and valuable consideration, and in light of the terms and conditions of the contract:

“The coach should not be required to mitigate damages or make a good faith and due diligence effort to find other comparable employment. The contract, concerning liquidated damages, is guaranteed even if the coach secures other employment. If the coach obtains other employment, the amounts therefor shall not be an offset of the amounts owed by the coach under the terminating university.”⁵⁵

This paragraph intends a waiver of mitigation duties, whether by contract or by the common law of the state in which the university is located.⁵⁶ In Wisconsin, such language is crucial given the potential common law duty under state law in silent clauses, ensuring no litigation over “double dipping” and fostering contractual certainty.⁵⁷

⁵⁴ Greenberg, *supra* note 23, at 2.

⁵⁵ *Id.* at 4.

⁵⁶ *Id.*

⁵⁷ *Id.*

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