

Negotiating College Coaches' Contracts

November 20, 2024

Martin J. Greenberg

Marquette University Law School: Conversations with the
National Sports Law Institute

I. Introduction

- Rick Majerus got me into the field of representing college coaches in contract negotiations (University of Utah)
 - MOU, guarantees, moral turpitude, employee at will
- Experiences in representing college coaches in contract formation and termination: U of Mich, U of Rhode Island, Wake Forest, U of Utah, Texas State U, DePaul U, NC State U, Northwestern U, Villanova U, U of Albany, U of Cincinnati, Eastern Mich U, U of Georgia, Providence College, New Mexico State U, U of Kentucky, U of Wisconsin, U of W-Milwaukee, U of Southern California.
- Experiences in professional sports: Milwaukee Bucks, Los Angeles Lakers.
- Expert Witness in college coaches' cases: Paterno Et al vs NCAA, Brett Bielema vs Razorback Foundation, et al., Mike Montgomery vs Golden State Warriors, et al., Golden vs. Miami University, et al., Todd Graham vs. Arizona State University, et al.

Greenberg's Coaching Corner

Greenberg's Coaching Corner

Attorney Martin J.

Greenberg has been a sports lawyer and sports law professor at Marquette University Law School for several decades. During that time he has established an expertise in the representation of collegiate coaches. Professor Greenberg currently teaches a course at the Law School titled "Representing Professional Athletes and Coaches," wherein he provides students with specific instruction related to the "formation, interpretation, negotiation and enforcement of sports marketing contracts as well as coaches' contracts." In addition, since Professor Greenberg created the [National Sports Law Institute of Marquette University Law School](#) in 1989, he has provided dedicated research and scholarship related to college coaching contracts. This page provides links to Professor Greenberg's scholarship related to college coaching contract issues.



III. Job Environment of College Coaching

1. Job Movement: When is a contract not a contract? Where job security is as fleeting as the last seconds of a basketball victory? In what field is a contract broken as easily as it is made? The answer to each is the world of college coaching. The first day of the job must often be spent planning for the last day of the job, and often the back end of the contract may be more important than the front end or the package. The average length of time that college football coaches have held their jobs is 3.7 seasons.
2. The Expanded Meaning of Coach: The coach of the new century is not only required to be an instructor, but also has to be a fundraiser, recruiter, academic coordinator, public figure, budget director, television, radio, and internet personality, and an alumni gladhandler.

Job Environment of College Coaching, continued

3. Athletics Arms Race: Bigger and more revenue generating facilities. College athletics is a big business that is akin to its professional ranks. No with student-athletes being paid, new revenues and sources of income will be primary on the athletic director's plate.
4. Big Money: As you can see from some of the highest reported salaries, coaches are making big money. They are CEOs in headphones. They are often times the highest paid state employees.
5. The Newly Defined Student-Athletes: The student-athlete today may be a different athlete then those of years past. The reverence paid to the coaches as a surrogate parent or father figure may no longer be the case. The student-athlete, who the coach has recruited, nurtured, and potentially paved a path for a professional career, may be a part of an insurrection, insurgence, boycott, a plaintiff in a defamation suit, or the focus of public disparagement, or a claimant in an abuse case. With the advent of NIL and college athletes being able to share in Power 4 athletic revenues, and with the House Case more or less ending amateurism, college athletes are now essentially now pros under the guise of academics.

Job Environment of College Coaching, Continued

6. The Importance of Winning: You must win to live out your contract.
7. Rules, Rules, and More Rules: Today the coach operates in an environment controlled by NCAA rules and regulations, which are a voluminous, complicated, and often broken set of guidelines. In addition, the coach is also subject to conference and university rules. The purity of amateur athletics is sometimes shrouded by academic fraud, alumni indiscretion, assistant coach acting beyond their authority, improper payments, travel irregularities, compliance deviations, and the absence of university control.
8. Contract Sophistication: Coaches' contracts can range from a one-page letter of appointment subject to the University's employee handbook with no protections to an eighty (80) page document full of legalese and other types of protected and negotiated clauses.

II. College Coaching – Term of Contract

- 5-10 years
- Extension and re-negotiating provisions
- Consensual or automatic roll-over provisions
- Extension based upon bonus achievement
 - “Indiana Football Coach Kurt Cignetti picks up \$50K bonus as Hoosiers get their 6th Big Ten win of the season by beating Michigan State. Hoosiers are 9-0, and Cignetti now has \$350,000 in bonuses so far, plus automatic 1-year contract extension and \$250,000 raise beginning next season.” @ByBerkowitz, 11/2/2024

IV. Coaches' Remuneration: The Package

1. Institutional Pay

- Salary
- Life and health insurance
- Vacation with pay
- TIAA, CREF
- Tuition waivers
- Complementary Tickets
- Annuity
- Longevity Bonus
- Contractual Bonuses

2. Outside Income

- Shoes, apparel, equipment endorsements
- Television, radio, and internet shows
- Speaking engagements
- Personal or public appearances
- Summer camps

3. Perquisites

- Housing allowance
- Moving allowance
- Membership in clubs
- Automobile usage
- Business opportunities
- Dependent travel
- Additional insurance
- Interest free loans

Example of Perquisites

Coach's Employment Agreement, Texas A&M University and Michael Elko dated Nov. 27, 2023

Payment for Services and Benefits

4.2 Additional Benefits. University agrees to provide the following additional benefits to Coach during the Term of this Agreement:

- a) Use of Two luxury vehicles provided through the car program in athletics;
- b) A membership at a country club in Bryan/College Station where University shall pay or reimburse Coach for initiation fees, dues and charges for University business and Coach will be responsible for personal charges and expenses;
- c) 12 football season tickets in prime location;
- d) Up to 5 single game tickets to regular season away football games;
- e) Up to 5 season tickets to any other sport requested;
- f) Suite provided for family - East Side 8th Level;
- g) 40 hours of personal private plane usage booked through Athletics Airshare contract;
- h) Temporary Housing for up to 120 Day and \$75,000 relocation bonus paid within 30 days of the full execution of this Agreement; and
- i) Two complimentary parking passes to regular season home football games.



Financial Engineering – CEO in Headphones

- Signing bonuses
- Retention, continuation, longevity bonuses
- Up-step life insurance
- Deferred compensation
- Buyout of previous employment contract
- Post-coaching employment
- Interest free or forgivable loans
- Retirement plans, annuity
- Expense account
- Relocation payment
- Disability payment
- Entrepreneurial sharing



Highest Paid Coaches (Football)

1. Kirby Smart, Georgia, \$13M
 2. Dabo Swinney, Clemson, \$11.5M
 3. Lincoln Riley, USC, \$11M
 4. Steve Sarkisian, Texas, \$10.3M
 5. Kalen DeBoer, Alabama, \$10M
 6. Mike Norvell, Florida State, \$9.8M
 7. Brian Kelly, LSU, \$9.5M
 8. Ryan Day, Ohio State, \$9.5M
 9. Lane Kiffin, Ole Miss, \$9M
 10. Josh Heupel, Tennessee, \$9M
 11. Mark Stoops, Kentucky, \$9M
- 

Highest Paid Coaches (Basketball)

- Bill Self, Kansas, \$9.6M
- John Calipari, Kentucky, \$8.5M
- Tom Izzo, Michigan State, \$6.196M
- Bruce Pearl, Auburn, \$5.716M
- Rick Barnes, Tennessee, \$5.7M
- Scott Drew, Baylor, \$5.132M
- Dan Hurley, Uconn, \$5M, New Contract \$50M/6 years
- Brad Underwood, Illinois, \$4.7M
- Kelvin Sampson, Houston, \$4.6M
- Nate Oats, Alabama, \$4.5M

Bonuses – Cumulative vs. Non-cumulative

Coach's Employment Agreement, Texas A&M University and Michael Elko dated November 27, 2023

Payment for Services and Benefits

4.3 Incentives. Coach shall receive incentives based on athletic and academic performance of the Team, or post-season recognition as follows:

(a) Regular/Season/Coach Incentives

- | | |
|--|-----------|
| 1. Team Appears in SEC Championship Game: | \$100,000 |
| 2. SEC Coach of the Year (solo or shared): | \$50,000 |
| 3. Associated Press Coach of the Year Award: | \$100,000 |
| 4. Team Achieves Multi-year APR of 960 or above: | \$50,000 |

(b) Post-Season Incentives

1. Level 1: \$1,000,000 Team Makes the College Football Playoff (CFP)
2. Level 2: \$1,500,000 Team Advances to CFP Quarter Finals and/or Wins the SEC Conference Title
3. Level 3: \$2,000,000 Team Advances to the CFP Semi-Finals
4. Level 4: \$2,500,000 Team Advances to the CFP Championship Game
5. Level 5: \$3,500,000 Team Wins the National Championship

The Incentives set forth above in Section 4.3(a) are cumulative and those in Section 4.3(b) are not cumulative. If Coach accomplishes Levels 1-5 of the post-season incentives in Section 4.3(b), one additional year will be added to the Term of this Agreement. Payment from the University to Coach will be made within thirty (30) days of the completion of the Team season in which the Incentive is earned with the exception of the Academic Progress Rate (“APR”) Incentive which will be paid within thirty (30) days of the official NCAA release of the Team APR in each Contract Year during the Term.

Bonuses, continued

Employment Agreement, University of South Carolina and Dawn Staley dated October 1, 2021

5. Incentive-Based Supplemental Compensation ("Performance Compensation").

5.01: In each Contract Year during the term of this Agreement, Coach shall have the opportunity to earn and receive Performance Compensation from the University as follows:

(a) SEC Regular Season Conference Wins. Coach may earn:

\$15,000 for winning 11 or more SEC Regular Season games in the 16-game format.

(b) SEC Championships. Coach may earn the greater of:

(1) \$75,000 for winning the SEC Regular Season Championship; or

(2) \$50,000 for winning the SEC Tournament Championship; or

(3) \$100,000 for winning both the SEC Regular Season Championship and the SEC Tournament Championship.

(c) NCAA Post-Season Tournament (not the NIT Post-Season Tournament). Coach may earn the greater of:

(1) \$25,000 for an appearance in the NCAA Post-Season Tournament; or

(2) \$50,000 for an appearance in the NCAA Post-Season Tournament's final 16 games (Sweet 16); or

(3) \$100,000 for an appearance in the NCAA Post-Season Tournament's final 8 teams (Elite 8); or

(4) \$250,000 for an appearance in the NCAA Post-Season Tournament's final 4 teams (Final Four); or

(5) \$500,000 for winning the NCAA Post-Season Tournament National Championship.

(d) Coach of the Year. Coach may earn either or both of the following:

(1) \$25,000 for being named the SEC Coach of the Year by the Associated Press ("AP") or SEC Coaches, or both; and

(2) \$25,000 for being named the National Coach of the Year by the AP, or Naismith, or both.

(e) Top 25 in Final Poll. Coach may earn:

\$15,000 for finishing in the Top 25 in the final poll of the AP or Coaches Poll, or both.

5.02: Any Performance Compensation due under this Section 5 shall be paid by the University to Coach within forty-five (45) days after the conclusion of the Team's final game in such basketball season. In no event shall any Performance Compensation paid to Coach pursuant to this Section 5 be considered part of Coach's Base Salary.

In total - \$685,000

Termination for Cause

Coach's Employment Agreement, Texas A&M University and Michael Elko dated November 27, 2023

5.1 Termination by University for Cause. [. . .] For purposes of this Agreement, " Cause" shall mean;

(a) Coach shall neglect or otherwise fail or refuse to perform his duties outlined herein as Program Head Coach in any material respect after receiving written notice of such failure or refusal from the Director, and Coach fails to cure such failure or refusal to the reasonable satisfaction of Director within fifteen (15) days after- the written notice from Director;

(b) Coach shall breach any material covenant, terra, or condition imposed under the terms of this Agreement, and Coach fails to cure such breach to the reasonable satisfaction of Director within fifteen (15) days of written notice from Director;

(c) Coach allows or condones, whether directly or by negligent supervision, a serious or major violation (or a pattern of violations) of any NCAA, Conference, University, or System rules by any member of the Program Staff or other person under Coach' s supervision and direction, including student -athletes in the Program, provided that such violation(s) was/were known by Coach or Coach had reason to know of such violation or pattern of violations;

(d) Failure by Coach to report immediately (after becoming aware thereof) to the University' s athletics compliance staff and, as appropriate, to the Director or other responsible University officer, any alleged violations of University, Conference or NCAA rules by Coach or, upon becoming aware thereof, by any Program Staff members, student -athletes, other persons under Coach' s supervision, or by third parties that become known to Coach, which failure, following the reasonable review of the Director (i) creates material risk for the University or (ii) negatively affects the University or the Program in a material manner;

(e) Failure by Coach to promptly report to the University' s Title IX coordinator or the Athletic Department' s Senior woman Administrator, or law enforcement in the case of an emergency situation, any information Coach knows relating to alleged or suspected illegal gender discrimination, sexual harassment, sexual assault, sexual exploitation, intimate partner violence, stalking and/ or related retaliation;

Termination for Cause, Continued

Coach's Employment Agreement, Texas A&M University and Michael Elko dated November 27, 2023

5.1 Termination by University for Cause. [. . .] For purposes of this Agreement, " Cause" shall mean;

(f) Coach is found to be involved in misconduct or gross negligence resulting in a violation or a pattern of violations of Conference or NCAA rules, regulations, by-laws and interpretations;

(g) Coach' s failure or refusal to promptly provide information or documents to which he has access in response to any reasonable requests, inquiries or investigations by the University, System, Conference, NCAA, or a law enforcement agency; or taking any action to interfere with or impede such an inquiry or investigation, including directing or otherwise instructing any Program Staff member, student -athlete or other person not to cooperate or comply with such an inquiry or investigation;

(h) Coach engages in bookmaking, illegal gambling, or otherwise violates the NCA.A.'s sports wagering prohibition, or condones or encourages such activity by any coaches or student athletes, or Coach provides information or data relating to the Program to a person known to Coach, or who reasonably should have been known to Coach, as a gambler, bettor or bookmaker;

(i) Possession, use, sale, or manufacture of any narcotics, drugs, or other controlled substances, steroids, or other chemicals, without a prescription, by Coach in a manner that is prohibited by the University rules, Conference or NCAA. rules, or applicable law, or Coach knowingly allows the possession, use, sale, or manufacture of any narcotics, drugs, alcohol, controlled substances, steroids, or other chemicals, without a prescription, by any student -athlete in a manner that is prohibited by the University rules, Conference or NCAA rules or applicable law, or Coach' s failure or refusal to participate and cooperate in the University' s implementation and enforcement of any narcotic, drug, alcohol, controlled substance, steroid, or other chemical testing program(s);

(j) Fraud or dishonesty by Coach while performing the duties required by this Agreement, including, but not limited to, falsifying, altering, or otherwise fraudulently preparing any document(s) or record(s) of, or required by the University, the NCAA, or the Conference pertaining to the Program, recruits, or student - athletes, transcripts, eligibility forms, compliance reports, expense reports, or any other document pertaining or related to any sanction of the Program;

(k) whether- or not relating to Coach' s employment by University, Coach is determined to have engaged in, or is found to have previously engaged in, scandalous, unethical, unmoral or criminal behavior, including an act of dishonesty, theft, moral turpitude or violence which, in the reasonable opinion of the Director, brings the University into public disrepute, contempt, scandal or ridicule and negatively affects the reputation of the University; or

(l) University takes action to discontinue the Program.

Coach's Employment Agreement, Texas A&M University and Michael Elko dated November 27, 2023

Termination and Suspension

5.1, continued

Coach will be provided written notice of reasons for the termination of Coach' s employment with the University. within ten (10) days of receipt of the notice, Coach may request an opportunity for a hearing with the University vice President and Chief Financial Officer to seek reconsideration of University' s decision to terminate this Agreement. This right shall be Coach' s exclusive opportunity for review and hearing relating to termination of this Agreement, and Coach hereby waives any right to any other review or hearing tinder University or System rules, policies and regulations. Coach' s failure to request an opportunity for a hearing within the ten (10) day period shall result in Coach' s abandonment of any further right to an opportunity for a hearing. Upon by Coach, University shall promptly schedule a hearing, within five (5) days of any request. Coach' s failure to appear at any hearing scheduled based upon Coach' s request for an opportunity for a hearing shall also constitute abandonment of any further right to an opportunity for a hearing unless such failure to appear is the result of exigent circumstances and the parties mutually agree to a re -scheduled hearing date. Upon such a hearing, the University Vice President and Chief Compliance officer (or similar position) shall render a decision and that decision shall constitute 5. 2 final action by the University in the matter.

Randy Walker, Northwestern University: Due Process

Prior to any contemplated suspension or termination of Employee, University shall be required to provide Employee with written Notice of contemplated suspension or termination of employment and a statement of the reasons and factual basis and support therefor. Employee, from the date of receipt of said written Notice, shall have five (5) calendar days from receipt thereof to deliver a written Request for a hearing on the contemplated action. Written Request shall be delivered to the office of the Chancellor or President of the University. If no written request is received by the Chancellor or President as provided herein, a contemplated suspension termination shall become final five (5) calendar days following the Employee's receipt of said Notice. Upon receipt of a written Request for hearing, the Chancellor or President shall appoint a three (3) person Hearing Panel composed of the Chief Judge of the County in which the main office of the University is located, the President of the local Bar Association who in turn shall select a third arbitrator to consider the matter and hear reasons for and against the contemplated suspension or termination. The Employee shall have the right to appear before the Hearing Panel with a representative, if he desires, including legal representation, to comment on the reasons given for the contemplated action and to present evidence. The Hearing Panel shall not be bound by formal or technical rules of evidence but shall be governed by the arbitration rules of the American Arbitration Association. The decision of the Hearing Panel shall be final and conclusive as to the employment status of the Employee. Employee shall be afforded any and all necessary due process including the right to hire counsel, call witnesses, conduct discovery, examine documentation and cross examine witnesses so that Employee is given a fair and unbiased hearing as to his employment status. The cost of arbitration shall be borne by the University.

- Martin J. Greenberg, *Termination of College Coaching Contracts: When Does Adequate Cause to Terminate Exist and Who Determines its Existence?*, 17 Marq. Sports L. Rev. 197 (2006) Available at: <http://scholarship.law.marquette.edu/sportslaw/vol17/iss1/8>.

Moral Turpitude

- Moral Turpitude constitutes acts of inherent baseness or vileness, shameful wickedness, depravity with regard to a person's duty to society in general.
- Behavior that is considered immoral, depraved, or unjust, and violates community standards or sentiment.
- Often the words “moral turpitude” are used as a basis for termination for cause in coaches' contracts.
- It may make a difference in defining this term if you are from New York or Utah.

Which of the following constitutes Moral Turpitude in your opinion?

1. Fraud
2. Larceny
3. Solicitation of a prostitute
4. Cheating on your income tax returns or failing to file your tax returns
5. Issuance of a bad check
6. Sexual harassment
7. Public drunkenness
8. Driving under the influence
9. Carrying a concealed weapon
10. Nude pictures on your office wall
11. Public urination

You Get Hired to Get Fired: Termination Not-For- Cause

Coach's Employment Agreement, Texas A&M University and Michael Elko dated November 27, 2023

5.2 Termination by University Without Cause. The University shall have the right to terminate this Agreement before the expiration of its stated Term, without Cause. 'Termination without Cause shall mean termination of this .Agreement on any basis other than those set forth in Section 5. 1 above. Termination without Cause shall be effected by delivering to Coach written notice of the University' s intent to terminate this Agreement without Cause effective on a date set forth In such notice, such date shall not be earlier than thirty (30) days from the posted date of such written notice or from the date of delivery to Coach if the University personally delivers such notice. If the University exercises its right under this section to terminate without Cause, Coach shall be entitled to payment of any salary, incentives and/or bonuses or business reimbursements earned through the effective date of termination and damages as provided for in Section 5. 3 below, 5. 3 and Coach agrees to accept such amounts in complete satisfaction of any and all obligations due and owing to Coach by University.

Termination Not-For- Cause, continued

5.3 Damages Upon Termination by University Without Cause. (Elko)

5.3.1 If the University terminates this Agreement without Cause prior to its expiration with three or more years remaining in the Term and in connection therewith terminates the employment of Coach, University agrees to pay to Coach liquidated damages in an amount equal to 75 percent of the total Base Salary that would have been paid to Coach for the remaining Terms of the Agreement under Section 4. 1 above. To be clear, the liquidated damages calculation shall not include any incentives, benefits, retirement, or other compensation described in Sections 4.2 or 4.3 above. If the University terminates the Agreement without cause and there are less than three years remaining in the Term, University agrees to pay to Coach liquidated damages in an amount equal to 80 percent of the total Base Salary payable during the remaining Term of the Agreement under Section 4. 1 above. The liquidated damages amount shall be paid monthly commencing on the first day of the month following the month in which the termination date occurs and continuing each succeeding month until the date the Term would have ended as specified in Subsection 1. 1 above. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that termination of this Agreement by the University without Cause prior to its expiration will result in damages that are impossible to ascertain or estimate, and the foregoing sums are mutually agreed on as compensation and not effect, as a penalty. The University will make such payments after making appropriate deductions and withholding for taxes.

5.3.2 while the University' s obligation to pay liquidated damages remains in Coach agrees to mitigate the University' s obligation to pay liquidated damages under this section 5.3 hereof and to use his best efforts to obtain employment in another coaching or similar football related professional position. For put -poses of this subsection, " best efforts" means acting promptly and in good faith, taking all necessary and reasonable steps to obtain employment in another- coaching or professional position at market value at the earliest possible date, and continuing such efforts without interruption, The University shall have the right to request evidence of the efforts made by Coach to obtain such other employment, and Coach must provide such evidence in a prompt and timely manner. It is agreed that the liquidated damages paid by the University hereof shall be offset and reduced on a monthly basis by the gross compensation earned by Coach personally or through business entities owned or controlled by Coach. For purposes of this subsection, "gross compensation" shall mean without limitation, gross income from base salary or wages, talent fees, or other types of compensation paid to Coach by an employer for a, including a business entity owned or controlled by Coach, consulting fees, honoraria, fees received by Coach as an independent contractor, or other employment- related compensation of any kind whatsoever.

Termination Not-for-Cause

Since Jimbo Fisher (Fisher) was fired not for cause, there was approximately \$77 million remaining on his contract.

Fisher's contract explains the buyout's payment schedule as follows: 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.

Fisher's Contract, which runs through December 31, 2031:

Total Buyout: \$77,562,500

Lump Sum (25%) owed (within 60 days): \$19,390,625

Eight payments, starting no later than March 11, 2024 and continuing annually through 2031: \$7,271,484

“Fisher has no duty to mitigate his salary by finding another job, so if he is coaching somewhere in the near future, his new salary will not offset what Texas A&M owes him.”

Mitigation Chart

Coach	University	Date	Mitigation
Mark Stoops	University of Kentucky	11/26/2012	No
James Harbaugh	University of Michigan	12/29/2014	Yes
Kiby Smart	University of Georgia	1/1/2016	No
Kirk Ferentz	University of Iowa	2/1/2016	No
Lane Kiffin	Florida Atlantic University	12/12/2016	No
Michael Gundy	Oklahoma State University	1/1/2017	Yes
John Fisher, Jr.	Texas A&M University	12/4/2017	No
Nick Saban	University of Alabama	3/1/2018	Yes
Kyle Whittingham	University of Utah	1/1/2019	Yes
Ryan Day	Ohio State University	1/2/2019	Yes
Michael Norvell	Florida State University	12/7/2019	Yes
Sam Pittman	University of Arkansas	12/8/2019	Yes
Lane Kiffin	University of Mississippi	12/9/2019	No
Bret Bielema	University of Illinois	12/19/2020	Yes
Joshua Heupel	University of Tennessee	1/27/2021	Yes
Mel Tucker	Michigan State University	11/24/21	Yes
Brent Venables	University of Oklahoma	12/5/2021	Yes
Billy Napier	University of Florida	12/5/2021	No
Dan Lanning	University of Oregon	12/12/2021	Yes
William Swinney	Clemson University	1/1/2022	No
Brian Kelly	Louisiana State University	4/8/2022	No
Hugh Freeze	Auburn University	11/28/2022	No

List of the 10 biggest buyouts

1. Jimbo Fisher, Texas A&M, 2023, \$76.0M
2. Gus Malzahn, Auburn, 2020, \$21.5M
3. Charlie Weis, Notre Dame, 2009, \$19.0M
4. Willie Taggart, Florida State, 2019, \$18.0M
5. Ed Orgeron, Louisiana State, 2021, \$16.9M
6. Tom Herman, Texas, 2020, \$15.4M
7. Art Briles, Baylor, 2015, \$15.1M
8. Scott Frost, Nebraska, 2022, \$15.0M
9. Bobby Petrino, Louisville, 2018, \$14.0M
10. Will Muschamp, South Carolina, 2020, \$12.9M

“Jumping” - Termination by Coach

Coach's Employment Agreement, Texas A&M University and Michael Elko dated November 27, 2023

5.4 Termination by Coach. Coach recognizes that his promise to work for the University for the entire Term of this Agreement is important to the University. Coach also recognizes that the University is making a valuable investment in his continued employment by entering into this Agreement and that its investment would be lost if Coach resigns or otherwise terminates his employment with University prior to the expiration of this Agreement. While recognizing the commitments set forth in this Agreement, the parties agree that Coach may nevertheless terminate this Agreement prior to its expiration. In such event, Coach's employment will terminate immediately upon receipt of Coach's written notice to the Director, unless the Director, in his sole discretion, approves a request by the Coach for a different date of termination of Coach's employment.

(a) If Coach terminates this Agreement without cause prior to its expiration, or a) any extension thereof, Coach shall pay to University, and University agrees to accept as liquidated damages the amounts set described below:

- i. \$6,500,000 to University in Contract Year 1 of the contract Term;
- ii. \$5,500,000 to University in Contract Year 2 of the contract Term;
- iii. \$4,000,000 to University in Contract Year 3 of the contract Term;
- iv. \$2,500,000 to University in Contract Year 4 of the contract Term;
- v. \$1,000,000 to University in Contract Year 5 of the contract Term; and
- vi. no liquidated damages to University in Contract Year 6 of the contract Term.

Damages due under (a) shall be paid by Coach to the University within thirty (30) days of the effective date of Coach's termination of this Agreement.

5.5 Liquidated Damages. The parties have bargained for and agreed to, and consequently are bound by, the liquidated damages provisions in Section 5.4 above. The parties agree and acknowledge the unique, specialized and competitive environment of collegiate coaching. The parties recognize and acknowledge the valuable coaching and recruiting knowledge and relationships that Coach will develop with student -athletes, prospective student -athletes, high schools, junior colleges, staff, coaches, alumni, and donors while employed by the University and the difficulty the University will have in replacing that knowledge and those relationships. Coach understands and acknowledges that upon his departure, he will have unique and specialized knowledge of the University. The parties understand and acknowledge the need for continuity in the Program. The parties agree that University is making a substantial monetary investment in Coach. The parties further understand and recognize the cost, difficulty, and uncertainty with replacing Coach. The parties agree and understand that ticket sales, media contracts, and apparel contracts are in part tied to the success of the Program and thereby the Coach. The parties agree that payment of such liquidated damages shall constitute adequate and reasonable compensation for damages suffered because of termination without cause by Coach and shall not be construed as a penalty.

Checklist for Negotiating and Drafting of Coaches' Employment Agreements

1. MOU-LOI Compliance
2. Whereas Clauses
3. Employment Term
 - a. Fixed term
 - b. Definition of contract year
 - c. Rollover - automatic-consensual
 - d. Tenure rules apply
 - e. Contract extension based on
 - i. Games won
 - ii. Attaining NCAA APR sufficient to avoid eligibility for sanctions
 - iii. No serious misconduct
 - iv. Wins, conference or tournament championship
 - v. Receives invitation to NCAA Tournament
 - f. Renegotiation - Reopener

Checklist, continued

4. Duties and Authority
 - a. Select personnel - staffing
 - b. Supervise football personnel, including promoting an atmosphere of compliance and program management
 - c. Weekly radio and television show
 - d. Public appearances
 - e. Comply and abide by all governing athletic rules - compliance
 - f. Respect reporting regulations and organizational structure
 - g. Recommendations re rescheduling
 - h. Meeting academic requirements by student athletes.
 - i. Fundraising
 - j. Public relations - participation in marketing and promotional activities
 - k. Budget proposal and management
 - l. Coaching – teaching - training
 - m. Scheduling assistance
 - n. Loyalty and best efforts
 - o. Accountability
 - p. Reporting
 - q. Media interfacing - interviews
 - r. Student athlete discipline
 - s. Annual staff evaluations
 - t. System to monitor academic progress
 - u. Attending conference and NCAA meetings
 - v. Operating summer camps
 - w. Recruiting – prospect evaluation
 - x. Outreach – University Athletic Foundation
 - y. Duties as they may be assigned by the athletic director

Checklist, continued

5. Standard of Conduct
6. Exclusivity of Services
7. Signing Bonus
8. Salary increases
 - a. Merit
 - b. Annual percentage increases
 - c. payment – university payroll practices
 - d. re-opener
9. Benefits
 - a. Major Medical coverage
 - b. Life Insurance - Disability Insurance
 - c. University contributions to TIAA-CREF
 - d. Other university approved retirement programs
 - e. Sick leave – paid leave – carryover
 - f. Tuition reductions – scholarship opportunities
 - g. Vacation with pay
 - h. Housing benefits
10. Talent Fee – supplemental annual compensation - outside marketing and promotional income

Checklist, continued

11. Outside Income
 - a. Endorsements
 - b. Speaking engagements
 - c. Books - publications
 - d. Media programs – internet
 - e. Consulting
12. Restrictions on Outside Income
 - a. University obligations are primary
 - b. University is not liable
 - c. Prior approval
 - d. Non-competition with university
 - e. Disclosure
 - f. No conflict with university policy
 - g. Not detrimental to the university
 - h. Non-violative of conference/university/NCAA rules and regulations
13. Reporting of Athletically Related Income
 - a. Speaking engagements
 - b. Salary supplements
 - c. Endorsement/consultant contracts for athletic apparel or equipment
 - d. Television appearances or commercials
 - e. Radio appearance
 - f. Income from corporations in exchange for charitable work
 - g. Annuities
 - h. Housing benefits
 - i. Country club/gym memberships
 - j. Sports camps and clinics
 - k. Complimentary ticket sales
 - l. Use of Automobile

Checklist, continued

14. Retention or Longevity Bonuses – Annual Stay Benefit
15. Perquisites
 - a. Automobiles or stipulated payment (stipend)
 - b. Tickets and parking passes
 - c. Country club, heath or social club memberships
 - d. Summer camp – clinics – attach Sports Camp Agreement
 - e. Travel allowance - spousal travel
 - f. Dependent travel
 - g. Expense account
 - h. Relocation expense
 - i. Moving expenses
 - j. Airplane use – private jet
 - k. Skyboxes - suites
 - l. Summer camps - most favored nation
 - m. Discretionary fund
 - n. Cellular phone or technology allowance
 - o. Conferences - conventions
16. Up Step Life and Disability Insurance Plans
17. Deferred Compensation - Annuity Arrangements
18. Post Retirement University Employment - Tickets
19. Payment of Liquidated Damages to Previous Employer (Buyouts)
 - a. Income tax effect-tax responsibility
20. Entrepreneurial Sharing
 - a. Attendance
 - b. Gross Revenues – Ticket revenues
 - c. Contributions

Checklist, continued

- 21. Interest Free or Forgivable Loans
- 22. In Kind Apparel, Athletic Equipment, and Service Allowance
- 23. Bonuses
 - a. Conference championship
 - b. Tournament championship
 - c. National NCAA championship or Playoff, Semi-Final, BCS Appearance
 - d. Academic progress
 - e. Graduation rate – Collective grade point
 - f. Conference coach of the year
 - g. National coach of the year
 - h. Attendance achievement
 - i. Team performance
 - j. Final Rankings
 - k. Season ticket sales – ticket revenue
 - l. No NCAA violations
 - m. Wins-Record
 - n. Top recruiting class
 - o. Student conduct bonus
 - p. Home residency
 - q. Cumulative vs. non-cumulative
- 24. Reporting Relationship – Insubordination
- 25. University Authorized Use of Coach's Name and Likeness – Right of Publicity
- 26. Coach's Authorized Use of University Trademarks
- 27. Annual Evaluation
- 28. Termination - Mutual Agreement

Checklist, continued

29. Termination for Cause and basis for termination for cause.
- a. Neglect or inattention or refusal or inability to perform duties.
 - b. Breach of contract terms
 - c. Violation of University rules, or laws of the state or United States
 - d. Fraud or dishonesty in performance of duties and responsibilities
 - e. Fraud or dishonesty in preparing, falsifying, submitting, or altering documents
 - f. Failure by coach to manage team
 - g. Coach's instruction to any coach, student, or other person to respond inaccurately to an inquiry
 - h. Failure by coach to manage team
 - i. Soliciting, placing, or accepting a bet - illegal betting or gambling
 - j. Use or consumption of drugs or alcoholic beverages
 - k. Sale, use, or possession of narcotics, drugs, or controlled substances
 - l. Failure to promptly report violations that the head coach knows or should have known about
 - m. Failure to obtain prior approval for outside income activities
 - n. Engaging in activities that bring University into public disrepute, scandal, ridicule, or violate University mission
 - o. Win-loss record
 - p. Repetitive or a pattern of conduct which constitutes violations of University or NCAA Rules
 - q. Violation of criminal statutes, whether prosecuted or not
 - r. Prolonged absences
 - s. A cause not previously enumerated that is adequate to sustain the termination of any other employee of the University
 - t. Failure to maintain an environment of NCAA Rules compliance
 - u. Breach of coach's representations and warranties as an inducement to the contract
 - v. Failure to cooperate fully with athletic director, compliance officer, or university officials
 - w. Engaging in moral turpitude
 - x. Non-compliance with NCAA 11.1.2.1.
 - y. Coach's conduct or omissions constitute a Level 1 or Level 2 violation
 - z. Engaging in any conduct that constitutes a conflict of interest
 - aa. Team APR which causes the program to be ineligible for bowl games or tournament games
 - bb. Any other cause adequate to sustain the termination of an athletic administrator or other professional employee of the university

Checklist, continued

- 30. University's Obligations re Termination for Cause – Limited Liability – Collateral Benefits
- 31. Procedural and Substantive Due Process
 - a. Due process for termination for cause
 - b. Pre-Termination Meeting
 - c. Hearing
 - d. Right to counsel
 - e. Written notice
 - f. Due process hearing
 - g. State mandated procedure
 - h. Arbitration
 - i. Right to commence lawsuit
- 32. Other Disciplinary Actions
 - a. Suspension
- 33. Resignation
- 34. Termination as a Result of Death
- 35. Termination as a Result of Disability – Inability to Perform
- 36. Termination for Cause by Coach
 - a. Failure to make any payment under employment agreement
 - b. Changes of status as a member of a particular conference
 - c. Changes in divisional status
 - d. NCAA violations that reduce the number of scholarships and imposes post-season bowl bans for which coach had no responsibility
 - e. Change in position of Athletic Director or President

Checklist, continued

- 37. Termination Without Cause
 - a. Liquidated damages
 - b. Obligation to mitigate
 - c. No obligation to mitigate
 - d. Good faith efforts
 - e. Comparable employment
 - f. Release agreement
 - g. Stretch provisions
- 38. Termination by Coach - Cut short
 - a. Liquidated damages
 - b. Recipient university responsibility
 - c. Assignment and assumption agreement by recipient university
- 39. Termination by Mutual of Agreement
- 40. Unique Services
- 41. Employment Opportunities
 - a. Prior notification to athletic director - consent
 - b. Timing
- 42. Non-solicitation of Recruits and Student Athletes
- 43. Covenant Not to Disclose Trade Secrets
- 44. Covenant Not to Compete

Checklist, continued

- 45. University Records and Materials
- 46. Clawback Clause – NCAA Violations – Covenant Violations
- 47. Indemnification - Hold Harmless
- 48. Representations and Warranties
 - a. No conviction of misdemeanor or felony
 - b. No discipline, reprimand, or sanction by NCAA or athletic conference
 - c. Never provide improper benefit to student athlete
 - d. While serving as coordinator or assistant coach did not violate any rules or regulations of the NCAA
 - e. Representations in Coach's bio are current and accurate
 - f. Coach has never engaged in any other actions or conduct that reflect adversely on the good name and reputation of the university
- 49. Internet - Website
- 50. Nepotism
- 51. Offset
- 52. Authorization to Investigate Background – Resume Accuracy
- 53. Reassignment

Checklist, continued

- 54. IRS Section 409(a)
- 55. Coach Will Not Incur University Indebtedness
- 56. Coach Will Not Make Statements Inconsistent with University Objectives
- 57. Payroll Deductions – Withholdings - Taxes
- 58. University Signature and Approval – Board of Regents Approval
- 59. Assignment to Legal Entity
- 60. Support of Program
 - a. Academic counselors/tutoring and educational services and APR Oversight
 - b. Maintenance and Improvement of physical facilities
 - c. Budget – Salary Pool sufficient to hire and retain maximum number of assistant coaches
 - d. Budget necessary to cover expenses associated with first class recruiting
 - e. Awarding of maximum number of scholarships to athletes permissible by NCAA rules
- 61. Sovereign Immunity
- 62. Legislative Funding
- 63. No Secret Agreements
- 64. Athletic Association or Third-Party Guarantee
- 65. No waiver – The agreement shall not be construed to constitute as waiver by the university to claim such exemptions, privileges, or immunities as may be permitted by law.

Checklist, continued

- 66. Miscellaneous
 - a. Severability
 - b. Amendments
 - c. Force majeure
 - d. Governing laws – forum selection
 - e. Assignment
 - f. Notices
 - g. State agency
 - h. Merger
 - i. Confidentiality – Non-confidentiality
 - j. Open records
 - k. Attorney review – Advice of Counsel
 - l. Relationship between the parties
 - m. Interpretation
 - n. Entire agreement
 - o. Counterparts
 - p. Time is of the essence
 - q. Independent judgment
 - r. Survival
 - s. Mutual draft rule
 - t. No third party beneficiaries

- A coach had better get a lawyer.
- All compensation must be in writing, no oral deals nor handshake deals. Promises of fulfillment by the president or athletic director are a thing of the past.
- The days of a long-term contract are gone.
- Coaches' contracts are nothing more than a bilateral contracts that have termination clauses for both coach and university.
- Jumping has become a habit in college coaching.
- Do not trust anyone – contract negotiations are a business deal, and ultimately a business deal that involves a written agreement.
- Because NCAA rules may mean an end to a coach's career, utilize a diary to document all activities business. Keep a close eye on your associates. Limit your liability with respect to the acts of others especially student-athletes and assistant coaches.
- College athletics are a big business, and universities should not be limiting the outside income or income opportunities of coaches.
- You get hired to get fired. All coaches need to plan for termination.



CONCLUSION