

# Restrictive Covenants in College Coaches' Contracts



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# 1. Environment of College Coaching



- Coaching carousel
- Virtual free agency
- Annual right of passage—coaching hiring frenzy
- At-will contracts
- Jumping—movement
- Long-term deals cut short by payment of liquidated damages
- Highest paid state employee
- CEO in Headphones
- Highly valuable and protectable asset to the university

## 2. USA TODAY NOVEMBER 2013 FOOTBALL COACHES DATABASE

RANK	SCHOOL	CONF	HEAD COACH	SCHOOL PAY	OTHER PAY	TOTAL PAY	MAX BONUS	STAFF PAY TOTAL
1	Alabama	SEC	Nick Saban	\$5,395,852	\$150,000	\$5,545,852	\$700,000	\$4,462,700
2	Texas	Big 12	Mack Brown	\$5,392,500	\$61,250	\$5,453,750	\$850,000	\$4,111,000
3	Arkansas	SEC	Bret Bielema	\$5,158,863	--	\$5,158,863	\$700,000	\$3,233,000
4	Tennessee	SEC	Butch Jones	\$4,860,000	\$0	\$4,860,000	\$1,000,000	\$3,170,000
5	Oklahoma	Big 12	Bob Stoops	\$4,741,667	\$31,500	\$4,773,167	\$819,500	\$3,436,200
6	Ohio State	Big Ten	Urban Meyer	\$4,608,000	\$0	\$4,608,000	\$550,000	\$3,474,504
7	LSU	SEC	Les Miles	\$4,300,000	\$159,363	\$4,459,363	\$700,000	\$4,565,803
8	Michigan	Big Ten	Brady Hoke	\$4,154,000	\$0	\$4,154,000	\$550,000	\$3,072,000
9	Iowa	Big Ten	Kirk Ferentz	\$3,985,000	\$0	\$3,985,000	\$1,750,000	\$2,367,500
10	Louisville	AAC	Charlie Strong	\$3,700,000	\$38,500	\$3,738,500	\$808,333	\$2,703,900
11	Oklahoma State	Big 12	Mike Gundy	\$3,450,000	--	\$3,450,000	\$550,000	\$2,884,000
12	South Carolina	SEC	Steve Spurrier	\$3,300,000	\$22,500	\$3,322,500	\$1,550,000	\$2,744,600
13	Georgia	SEC	Mark Richt	\$3,200,000	\$114,000	\$3,314,000	\$1,000,000	\$3,294,000
14	Penn State	Big Ten	Bill O'Brien	\$3,282,779	--	\$3,282,779	\$200,000	--
15	Cincinnati	AAC	Tommy Tuberville	\$3,143,000	\$0	\$3,143,000	\$465,000	\$1,920,000
16	Texas Christian	Big 12	Gary Patterson	\$3,120,760	--	\$3,120,760	--	--
17	Texas A&M	SEC	Kevin Sumlin	\$3,100,000	\$300	\$3,100,300	\$750,000	\$3,392,250
18	Nebraska	Big Ten	Bo Pelini	\$2,975,000	--	\$2,975,000	\$1,000,000	\$2,648,500
19	Kansas State	Big 12	Bill Snyder	\$2,800,000	\$3,000	\$2,803,000	\$580,000	\$2,594,750
20	Missouri	SEC	Gary Pinkel	\$2,800,000	\$200	\$2,800,200	\$850,000	\$2,642,500
21	Florida State	ACC	Jimbo Fisher	\$2,750,000	\$0	\$2,750,000	\$675,000	\$2,874,450
22	Florida	SEC	Will Muschamp	\$2,724,500	\$10,000	\$2,734,500	\$454,000	\$3,211,400
23	Mississippi State	SEC	Dan Mullen	\$2,700,000	\$0	\$2,700,000	\$650,000	\$2,167,775
24	West Virginia	Big 12	Dana Holgorsen	\$2,630,000	\$0	\$2,630,000	\$600,000	\$2,733,000
25	Southern California	PAC-12	Lane Kiffin	\$2,594,091	--	\$2,594,091	--	--
26	Washington	PAC-12	Steve Sarkisian	\$2,575,000	\$0	\$2,575,000	\$1,525,000	\$2,805,024

27	North Carolina State	ACC	Dave Doeren	\$2,550,000	\$5,000	\$2,555,000	\$1,000,000	\$2,635,800
28	Clemson	ACC	Dabo Swinney	\$2,540,024	\$10,000	\$2,550,024	\$775,000	\$4,212,150
29	Virginia Tech	ACC	Frank Beamer	\$2,491,616	\$50,000	\$2,541,616	\$382,500	\$2,219,820
30	Georgia Tech	ACC	Paul Johnson	\$2,513,000	\$2,500	\$2,515,500	\$1,025,000	\$2,189,250
31	Kansas	Big 12	Charlie Weis	\$2,500,000	\$3,727	\$2,503,727	\$615,000	\$2,126,000
32	Auburn	SEC	Gus Malzahn	\$2,440,000	--	\$2,440,000	\$1,250,000	\$3,495,000
33	Utah	PAC-12	Kyle Whittingham	\$2,427,100	--	\$2,427,100	\$740,000	\$2,160,000
34	Baylor	Big 12	Art Briles	\$2,426,360	--	\$2,426,360	--	\$483,994
35	Colorado	PAC-12	Mike MacIntyre	\$2,403,500	--	\$2,403,500	\$1,500,000	\$2,552,500
36	California	PAC-12	Sonny Dykes	\$2,394,000	--	\$2,394,000	\$304,000	\$2,400,000
37	Arizona State	PAC-12	Todd Graham	\$2,300,000	\$3,020	\$2,303,020	\$3,159,000	\$2,315,980
38	UCLA	PAC-12	Jim Mora	\$2,300,000	\$0	\$2,300,000	\$750,000	\$2,779,000
39	Wake Forest	ACC	Jim Grobe	\$2,251,635	--	\$2,251,635	--	--
40	Washington State	PAC-12	Mike Leach	\$2,250,000	\$0	\$2,250,000	\$625,000	\$1,845,500
41	Northwestern	Big Ten	Pat Fitzgerald	\$2,221,153	--	\$2,221,153	--	--
42	Virginia	ACC	Mike London	\$2,173,200	\$16,503	\$2,189,703	\$715,000	\$2,771,800
43	Purdue	Big Ten	Darrell Hazell	\$2,160,833	--	\$2,160,833	\$1,095,000	\$2,010,000
44	Boise State	Mt. West	Chris Petersen	\$2,148,000	\$3,500	\$2,151,500	\$290,000	\$2,436,390
45	Arizona	PAC-12	Rich Rodriguez	\$1,850,000	\$300,000	\$2,150,000	\$610,000	\$2,249,300
46	Miami	ACC	Al Golden	\$2,148,107	--	\$2,148,107	--	--
47	Wisconsin	Big Ten	Gary Andersen	\$2,035,823	\$85,000	\$2,120,823	\$440,000	\$2,495,000
48	Maryland	ACC	Randy Edsall	\$2,021,440	\$4,000	\$2,025,440	\$950,000	\$2,307,514
49	Mississippi	SEC	Hugh Freeze	\$2,000,000	\$5,500	\$2,005,500	\$1,575,000	\$2,429,092
50	Kentucky	SEC	Mark Stoops	\$2,001,250	--	\$2,001,250	\$1,475,000	\$2,425,000

### 3. Financial Engineering—CEO In Headphones



- 1. Signing bonuses
- 2. Retention, continuation, longevity bonuses
- 3. Up-step life insurance provisions
- 4. Deferred compensation
- 5. Buyout of previous employer
- 6. Post-coaching employment

# Financial Engineering Continued

- 7. Interest-free or forgivable loans
- 8. Retirement plans
- 9. Annuity
- 10. Expense account
- 11. Relocation payment
- 12. Disability payment
- 13. Entrepreneurial sharing





## 4. Protectable University Interests



- Contractual fulfillment
- Prevent movement to same or similar position during term of contract, especially within same Conference
- Prevent use of trade secrets or confidential information obtained during coaching tenure
- Prevent solicitation of enrolled student-athletes or recruits
- Replacement cost

## 5. Means to Restrict Movement in College Coaching Contracts



- **1. Covenant Not to Compete:** a contractual covenant that prohibits an employee from competing in the same or similar business, or holding the same or similar title either during a contractual period, or post completion of a contractual period, for a limited time within a reasonable geographic scope.



# Means to Restrict Movement in College Coaching Contracts Continued



- **2. Prohibition Against Disclosure of Trade Secrets or Confidential Information:** a prohibition and covenant not to disclose non-public information that provides a competitive advantage which has an independent economic value to a university's competitors; to retain such information on a confidential basis; and not to misappropriate, use, share, or disclose such information to competitors.

# Means to Restrict Movement in College Coaching Contracts Continued



- **3. Consent to Interview:** a covenant not to communicate, whether directly or through an agent, with any prospective employer regarding any coaching position without first receiving the written permission from the athletic director. Such permission shall not be unreasonably withheld, and the violation of which shall constitute a breach of the employment agreement and a basis for termination for cause.

# Means to Restrict Movement in College Coaching Contracts Continued



- **4. Non-Solicitation Prohibition:** a covenant by a coach that he will not communicate with, or otherwise attempt to recruit, any enrolled student-athletes or any high school athletes with whom he had previously communicated or recruited while employed at the university post job termination.

# Means to Restrict Movement in College Coaching Contracts Continued



- **5. Liquidated Damage Provisions:** a provision that permits the coach to terminate his employment agreement early without cause. Coach then shall not be entitled to receive any further compensation or benefits following the effective date of termination, and shall be liable to the university for an amount specified in the contract which shall be denominated and agreed to as liquidated damages. The subject provision is a deterrent for the coach to leaving early and oftentimes the liquidated damages are paid for by the recipient university.

## 6. Survey and Conclusions

To determine whether college coaches contracts have:

- (1) covenants not to compete;
- (2) prohibitions against disclosure of trade secrets and confidential information;
- (3) requiring the obtaining of prior consent to interview for another job during the term of the contract;
- (4) a prohibition against solicitation of student-athletes or recruits; and
- (5) a liquidated damage provision in the event the coach terminates early.







# Methodology

1. Review USA Today 2013 database— highest paid NCAA college coaches.

2. Review selected contracts of the highest paid coaches in NCAA to determine whether the covenants hereinbefore enumerated are contained in those contracts.



# Survey Conclusions



		CNC	Trade	Recruitment	Consent to	Liquidated
School	Coach	Yes/No	Secrets - C.I.		Interview	Damages
Alabama	Nick Saban	NO	YES	NO	YES	YES
Arizona	Rich Rodriguez	NO	YES	NO	NO	YES
Arizona State	Todd Graham	YES	YES	NO	NO	YES
Arkansas	Bret Bielema	YES	NO	NO	NO	YES
Auburn	Gus Malzahn	NO	YES	NO	YES	YES
Boise State	Bryan Harsin	NO	YES	NO	YES	YES
California	Sonny Dykes	NO	YES	NO	NO	YES
Central Florida	George O'Leary	NO	NO	NO	NO	YES
Cincinnati	Tommy Tuberville	NO	NO	NO	NO	YES
Clemson	Dabo Swinney	NO	NO	NO	YES	NO
Colorado	Mike MacIntyre	NO	NO	NO	YES	YES
Connecticut	Paul Pasqualoni	NO	NO	NO	NO	YES
Florida	Will Muschamp	NO	YES	YES	NO	YES
Florida State	Jimbo Fisher	NO	YES	NO	NO	YES
Georgia	Mark Richt	NO	NO	NO	YES	YES
Georgia Tech	Paul Johnson	NO	NO	NO	NO	NO
Iowa	Kirk Ferentz	NO	YES	NO	NO	NO
Kansas	Charlie Weis	NO	NO	NO	NO	YES
Kansas State	Bill Snyder	NO	YES	NO	YES	NO
Kentucky	Mark Stoops	NO	NO	NO	YES	YES
Louisville	Charlie Strong	NO	NO	NO	YES	YES
LSU	Les Miles	NO	YES	NO	NO	YES
Maryland	Randy Edsall	NO	NO	NO	YES	NO
Michigan	Brady Hoke	NO	NO	NO	YES	YES
Minnesota	Richard Pitino	NO	NO	NO	YES	YES

# Survey Conclusions Continued



School	Coach	CNC Yes/No	Trade Secrets - C.I.	Recruitment	Consent to Interview	Liquidated Damages
Mississippi	Hugh Freeze	NO	NO	NO	NO	NO
Mississippi State	Dan Mullen	NO	NO	NO	NO	NO
Missouri	Gary Pinkel	NO	NO	NO	YES	YES
Nebraska	Bo Pelini	NO	YES	NO	YES	YES
North Carolina State	Larry Fedora	NO	YES	NO	NO	YES
Ohio State	Urban Meyer	NO	YES	YES	YES	YES
Oklahoma	Bob Stoops	NO	NO	NO	YES	YES
Oklahoma State	Mike Gundy	NO	NO	NO	NO	YES
Purdue	Darrell Hazell	NO	YES	NO	NO	YES
South Carolina	Steve Spurrier	NO	YES	NO	NO	YES
Texas	Mack Brown	NO	NO	NO	NO	NO
Texas A&M	Kevin Sumlin	NO	NO	NO	NO	YES
Texas Tech	Kliff Kingsbury	NO	NO	NO	NO	YES
UCLA	Jim Mora	NO	YES	NO	NO	YES
Utah	Kyle Whittingham	NO	NO	NO	NO	YES
Virginia	Mike London	NO	NO	NO	YES	YES
Virginia Tech	Frank Beamer	NO	NO	NO	NO	NO
Washington State	Mike Leach	NO	NO	NO	YES	YES
West Virginia	Dana Holgorsen	NO	YES	NO	NO	YES
Wisconsin	Gary Andersen	NO	YES	NO	YES	YES

# Survey Conclusions Continued



- 1. Covenants not to compete are rarely used in college coaching contracts.
- 2. Coaches contracts do contain prohibitions against the disclosure of trade secrets and confidential information.
- 3. Coaches contracts often require consent to interview for another job during the term of the contract.
- 4. Most, if not all, coaching contracts today contain liquidated damages upon early departure in breach of the contract.
- 5. The trend in college coaches contracts is not to make the coach stay, but to make him pay to go.

## 7. Examples of Amounts of Liquidated Damages in Coaches' Contracts For Early Termination



SCHOOL	COACH	AMOUNT
Florida	Will Muschamp	\$500,000.00
UCLA	Jim Mora	\$3,000,000.00
Oklahoma	Bob Stoops	\$3,000,000.00
West Virginia	Dana Halgorsen	\$2,000,000.00
Texas A&M	Kevin Sumlin	\$2,000,000.00
Missouri	Gary Pinkel	\$1,000,000.00
California, Berkeley	Daniel Dykes	\$3,000,000.00
Oklahoma State	Mike Gundy	\$3,000,000.00
Colorado	Mike Macintyre	\$2,300,000.00
Minnesota	Richard Pitino	\$1,500,000.00





## 8. Bielema – A New Contract Direction



# Bielema – A New Contract Direction Continued



WHEREAS, the Head Football Coach is an important leader, educator, and professional of the Razorback Football Program who pays a critical role in fulfilling the mission of the Athletic Department in assisting student-athletes achieve their full human potential academically and athletically and in becoming productive adults who make positive lifelong contributions to their communities and society.

19. 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 of time 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 this Agreement for convenience or if 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.

# Bielema – A New Contract Direction Continued



20. COVENANT NOT TO DISCLOSE TRADE SECRETS. By virtue of his position, Coach covenants and agrees that non-public information, which provides a competitive advantage to the Razorback Football Program, will be created, developed and entrusted to him during the course of his paid employment with the University. Coach covenants and agrees that such information includes, but is not limited to, the following: The Razorback Football Program's methods; processes; operations; recruiting programs; computer and video programs; future plans; prospective student-athlete contact lists; coaching contact lists; current student-athlete contact lists; playbooks; signals; recruiting techniques; player development programs (including, but not limited to, nutrition programs, strength-building, and position coaching); coaching and leadership philosophies and practices; practice drills; training techniques; offensive and defense schemes; game plans and game plan techniques; prospect and player evaluation systems; and pre-game, in-game, and post-game coaching practices and strategies; training sequences and methodologies; (collectively, "Trade Secrets"). Individually and collectively, Coach acknowledges and agrees that all such information constitutes Trade Secrets under Arkansas law and has an independent economic value to the University's competitors through the SEC. Coach agrees that he may create and learn of information constituting Trade Secrets while employed and paid as the Head Football Coach of the Razorback Football Program.

Coach further covenants and agrees that such information and Trade Secrets give the University's Razorback Football Program a competitive advantage over its competitors, and Coach, therefore, covenants and agrees to treat such information confidentially under this Agreement and to protect the University. Coach covenants and agrees not to misappropriate, use, share or disclose any such information and/or Trade Secrets to any other member institutions comprising the SEC or any of their respective personnel, including, but not limited to, any coaches, for the period of time comprising the Term (including any extensions) of this Employment Agreement (regardless of whether Coach remains employed for the length of the Term). Coach further agrees that, because Coach's services under this Agreement are of a special, unique, unusual, extraordinary and intellectual character which gives those services special value, the loss to the University of which cannot be reasonably or adequately compensated in damages in an action at law, and because disclosing any such confidential information or Trade Secrets would place the University at significant competitive disadvantage, the University shall have the right to obtain from any court such equitable, injunctive, or other relief as may be appropriate, including a decree enjoining Coach from sharing or disclosing any Trade Secrets with any Division I Football Bowl Subdivision college or university.



# Bielema – A New Contract Direction Continued



21. **PRIOR NOTIFICATION TO ATHLETIC DIRECTOR.** Without limiting any of the foregoing provision of the Employment Agreement, during the Term of this Employment Agreement, Coach and/or any individual or entity acting on Coach's behalf shall not communicate, whether directly or indirectly, with any prospective employee (or any person or entity acting, whether directly or indirectly, on behalf of any prospective employer (or any person or entity acting, whether directly or indirectly, on behalf of any prospective employer) regarding any coaching position without first receiving permission from the Athletic Director. Moreover, once Coach and/or any individual or entity acting on Coach's behalf receives permission to communicate, whether directly or indirectly, with any prospective employer (or any person or entity acting, whether directly or indirectly, with any prospective employer (or any person or entity acting, whether directly or indirectly, on behalf of any prospective employer) regarding any coaching position, the Coach (or anyone or any entity acting on his behalf, whether directly or indirectly) must wait at least 24 hours from the time he receives permission until the time of any such communications may begin. The failure to comply with this provision shall be a material breach of this Employment Agreement entitling the University to terminate Coach for cause.





# Bielema – A New Contract Direction Continued



## 16. LIQUIDATED DAMAGES

16(a). **TERMINATION BY COACH / TERMINATION WITHOUT CAUSE BY COACH - SALARY REPAYMENT.** Subject to the terms and conditions of this provision, Coach may terminate this Employment Agreement without cause by providing written notice to the Athletic Director one (1) day prior to the effective date of the termination. In its sole discretion, the University may waive or consent to shorter notice periods. In the event Coach terminates this Employment Agreement without cause, then Coach shall not be entitled to receive any compensation or benefits of any nature whatsoever under this Employment Agreement following the effective date of the termination, and Coach shall be obligated to repay the amounts herein set forth. Due to disruption and harm that would be caused to the football student-athletes, the Razorback Football Program, the Athletic Department and the University, Coach covenants and agrees that the right to terminate this Employment without cause shall not apply during the Razorback football team's regular season. For purposes of this provision, the term "regular season" shall mean the period of time beginning one month prior to the first game of the season and ending at the conclusion of the final regular season game each year during the life of this Employment Agreement. For clarity, any post-season competition, including, but not limited to, any bowl games, shall not be included within the meaning of the "regular season."

In the event Coach terminates this Agreement to accept a coaching or administrative position with a college, university or professional sports organization at any time prior to the final day of the Term of this Agreement on December 31, 208, other than due to Coach's death, disability or illness that prevents him from fulfilling his duties as Head Football Coach, then Coach: (i) shall not be entitled to receive any compensation or benefits of any nature whatsoever under this Employment Agreement following the effective date of the termination; and (ii) shall be liable to the University for the re-payment of the amounts specified in the following schedule:

<b>YEAR</b>	<b>AMOUNT</b>
First Contract Year (12/04/12-12/31/13)	<b>\$3,000,000.00</b>
Second Contract Year (01/01/04-12/31/14)	<b>\$2,500,000.00</b>
Third Contract Year (01/01/15-12/31/15)	<b>\$2,000,000.00</b>
Fourth Contract Year (01/01/16-12/31/16)	<b>\$1,500,000.00</b>
Fifth Contract Year (01/01/17-12/31/17)	<b>\$1,000,000.00</b>
Sixth Contract Year (01/01/18-12/31/18)	<b>\$500,000.00</b>





# Bielema – A New Contract Direction Continued



The foregoing amounts shall be paid on a non-cumulative basis beginning with the effective date of Coach's termination of this Agreement (the "Coach's Payment") and any partial years shall be prorated. The Coach's Payment amount shall be payable in full to the University within 90 days following the effective date of Coach's termination of this Agreement.

Coach covenants and agrees that the University will commit substantial financial resources to the success of the Razorback Football Program (including, but not limited to, hiring and paying offensive and defensive coordinators and other assistant football coaches) and that if Coach terminates this Employment Agreement, to accept other employment as set forth hereinabove, the University will suffer damages the amount, nature and extent of which is difficult to determine and which may include, but not be limited to, additional expenses to search for and employ another Head Football Coach, salary or other compensation to hire another Head football Coach, tangible and intangible detriment to the Razorback Football Program and the support of its fans and donors. Accordingly, the parties covenant and agree that the amount of salary repayment to the University hereunder is fair and reasonable. In consideration of payment of the foregoing amounts, the University will release Coach from any further obligations under this Agreement and will also release Coach's new employer, from any claims or actions that the University might have against such employer. Likewise, Coach will release the University, its employees, officers, trustees and any third-party guarantor from any obligations hereunder or under any guaranty agreement.



# Bielema – A New Contract Direction Continued

37. RETURN OF UNIVERSITY PROPERTY. All property, materials, and information (whether in hard copy or electronic format), including, but not limited to, all personnel records, recruiting records, team information, films, videos, statistics, or any other items or data, provided to Coach by the University (including, but not limited to, the Razorback Football Program), for use as part of the Razorback Football Program or otherwise provided to Coach in connection with or relating to his University employment under this Agreement are at all times and shall remain the sole and confidential property of the University. Upon the expiration or earlier termination of this Agreement for any reason whatsoever, Coach shall return, within seven (7) calendar days, any such University-owned property described in this provision as well as all other University-owned equipment, including, but not limited to, keys, credit cards, cellular telephones, pagers, computers, computer tablets, pagers and any other property in Coach's possession, custody or control. Coach shall further be responsible to return any funds advanced to Coach for business travel. If Coach fails to comply with this provision, then the University shall have the right to offset the total value of any such property from any final payment owed to Coach or other sums held by the University.

It should be noted that the University of Arkansas Letter of Agreement between prior football coaches and the University also contained Covenants Not to Compete:

## **Bobby Petrino, December 11, 2007**

"Your employment agreement will contain a covenant not to compete against the University of Arkansas. Accordingly, this provision will include your promise and covenant not to accept employment in any coaching capacity with another SEC Western Division school prior to the expiration date of the initial term and any extensions of the term of your employment agreement with the University. In the event the University terminates you for its convenience, the covenant not to compete shall not apply."



## **John L. Smith, April, 2012**

"Your employment agreement will contain a covenant not to compete against the University of Arkansas. Accordingly, this provision will include your promise and covenant not to accept employment with any other SEC member institution. In the event the University terminates you for its convenience, the covenant not to compete shall not apply."

# 9. Legal Enforceability of Restrictive Covenants



## **Wisconsin Statute §103.465:**

Restrictive covenants in employment contracts. A covenant by an assistant, servant or agent not to compete with his or her employer or principal during the term of the employment or agency, or after the termination of that employment or agency, within a specified territory and during a specified time is lawful and enforceable only if the restrictions imposed are reasonably necessary for the protection of the employer or principal. Any covenant, described in this subsection, imposing an unreasonable restraint is illegal, void and unenforceable even as to any part of the covenant or performance that would be a reasonable restraint.

### ***Lakeside Oil v. Slutsky***

Soon after the enactment of Wisconsin Statute Section 103.465, the Wisconsin Supreme Court, in *Lakeside Oil Co. v. Slutsky*, 8 Wis. 2d 157, 98 N.W.2d 415 (1959) set forth a five-part test for the enforceability of a covenant not to compete in the employment context.

- 1) Is it necessary for the employer's protection?
- 2) Does it provide for a reasonable time period?
- 3) Does it cover a reasonable territory?
- 4) Is it unreasonable as to the employee?
- 5) Is it unreasonable as to the general public?

<http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=79&Issue=5&ArticleID=1153>

### ***Star Direct v. Dal Pra***

The Wisconsin Supreme Court also dealt with Wisconsin Statute Section 103.465 more recently in *Star Direct v. Dal Pra*, 319 Wis. 2d 274 (Wis. 2009). The Court set forth a five-part test for the enforceability of a covenant not to compete in the employment context. A restrictive covenant must:

- 1) Be necessary for the protection of the employer, that is, the employer must have a protectable interest justifying the restriction imposed on the activity of the employee;
- 2) Provide a reasonable territorial limit;
- 3) Not be contrary to public policy
- 4) Not be harsh or oppressive as to the employee; and
- 5) Provide a reasonable time limit

Along with this five-part test, it must be taken into consideration that a covenant should be questioned in terms unbiased to the employee. Restrictive covenants in employment contracts are to be construed in favor of the employee.

The enforceability of restrictive covenants in employment contracts is a matter of local law.

## 10. Conclusion



**Is a Bielema-Style Covenant Not to Compete  
Enforceable in Wisconsin?**



# Special Thank You



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