



October 31, 2022

NIL Laws and Regulations Today

By: Alexander J. Burridge, Associate, Workplace Law Group

Over a year has passed since student-athletes gained the right to enter endorsement deals with businesses across the country. This name, image, and likeness (“NIL”) era, as it has been termed, has caused both excitement and confusion. We have previously detailed the [contract basics](#) and [key issues](#) in NIL deals. However, a common question we have recently received is what laws, regulations, and policies apply to these NIL deals? This guidance is intended to answer that question:

State Law Controls

Student-athletes’ right to monetize their NIL without losing NCAA eligibility is controlled by the state NIL law in which their university is located. However, student-athletes’ NIL rights are not necessarily the only legal issue contemplated by their NIL deals. Student-athletes may, for example, enter a NIL deal that requires him/her to perform endorsement activities away from his/her university’s home state. In such situations, the state law with the most significant relationship to the parties’ NIL deal may determine the extent of publicity rights and/or how vague contract language is interpreted. For this reason, careful drafting to address which state law governs the NIL deal is critical.

Comply with NCAA and University Policies

A majority of state laws provide in-state universities flexibility to set their own school-specific restrictions on the NIL deals their student-athletes enter. However, even in states without a NIL law, it is in student-athletes’ best interests to follow their universities’ NIL policy. Moreover, the NCAA’s interim policy permits student-athletes to engage in NIL activities when their university is in a state without a NIL law. In general, NIL deals with college or high school student-athletes should comply with NCAA policy prohibiting pay for NIL activities that are (1) contingent upon enrollment at a particular university; (2) for athletic participation or achievement (i.e., pay-for-play); or (3) for work not performed.

Keep An Eye Towards Federal Law

Several federal bills have attempted to provide uniformity to NIL rights on a national level. Although state NIL laws share many characteristics, they are different enough to create an uneven playing field among schools in different states. For example, states differ in how and whether they address university disclosure requirements, the use of logos and team colors, and prohibited recruiting tactics. Proponents of federal legislation have warned that the current landscape, in which some players have more financial opportunities based on their school's location, is unfair and will skew competition. Notwithstanding this concern, there still is no federal law in place, but NIL deals should still be flexibly drafted to accommodate future laws that may be enacted and/or amended.

Businesses and student-athletes interested in entering NIL deals that protect legal rights and NCAA eligibility should contact attorneys [Alexander J. Burridge](#), [Alexis A. Smith-Scott](#), [Mary E. Cebula](#), or [Joseph R. Morrison, Jr.](#) Our diverse team has a wide range of legal experience that can help your business engage with student-athletes for marketing opportunities. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.