



OPENING KICKOFF



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As we reach the fall of 2022, we seem to be approaching a return to normal, though it is undeniable that certain effects of the prior few years still linger. Crowds returned to events like March Madness, the Super Bowl and various other events. It was great to enjoy the thrill of live action sports once again and see so many of our clients at events like the Final Four in New Orleans and the Sports Lawyers Association Annual Conference in Atlanta.

I hope you enjoy this edition of our sports law newsletter. In this issue, our industry experts provide a comprehensive update on the effect of name, image and likeness rules on college sports and the growing impact of the transfer portal. This newsletter also includes a commentary on the landmark soccer contract for the USWNT, as well as the growth of NFTs in the sports industry. Please feel free to contact us with any questions.

Enjoy the fall!

Sincerely,
Chris

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What Have Our Sports Lawyers Been Up To?

- **ON MAY 12–14**, sponsored the Sports Lawyers Association Annual Conference in Atlanta.
- **ON APRIL 1–4**, team members attended the 2022 NABC Convention – Final Four in New Orleans. **Chris Conniff** and **Erica Han** gave a “NIL Update.”
- **ON SEPTEMBER 14**, sponsored NABC Foundation Court of Honor Gala.
- **ON OCTOBER 11**, hosting a Right of Publicity Roundtable in New York.



NCAA NIL Update: With a Semester of NIL Opportunities in the Books, Trends Emerge and Confusion Reigns

By Chris Conniff, Dennis Coleman, Erica Han, Evan Gourvitz, Chidi Oteb, Raymond Myer, Tatiana Becker

FOLLOWING THE NCAA'S interim name, image, and likeness (NIL) policy in July,¹ student-athletes for the first time had the opportunity to profit from their NIL rights. Throughout this inaugural season, there were some wins (lucrative endorsement deals), some disappointments (discrepancies in NIL earnings across sports and conferences), a lot of work (schools scrambled to get their own NIL policies in place) and, above all, confusion.

The NCAA interim policy removed the restriction on student-athletes receiving compensation for NIL, but did not enact uniform NIL policies or rules (other than to maintain existing restrictions on recruiting inducements and pay-for-play). Thus, with no federal legislation in place, no specific NCAA NIL rules and no precedent (yet) on NCAA enforcement under the interim policy, NIL activities and restrictions vary from state to state and school to school.

The NCAA in January voted to enact a new constitution, which notably did not include any substantive changes to the interim NIL policy.² Nevertheless, as collegiate institutions and student-athletes continue to await further word from the NCAA, there have been some notable developments. This alert analyzes student-athlete NIL state and federal legislative updates, litigation, trends from the first semester, and NIL policy best practices.

STATE LEGISLATIVE UPDATES

Prior to the interim NCAA policy, certain states enacted laws that would override the NCAA's prior restriction on compensation for NIL to provide more opportunities to student-athletes. Ironically, following the adoption of the interim policy in July, those states with no NIL laws have

turned out generally to be more permissive (and thus more attractive) for enterprising student-athletes.

To date, 28 states have adopted student-athlete NIL laws, including Kentucky, North Carolina and Ohio, which currently are governed by executive order. Eleven more states have proposed or pending legislation. Alabama, which has a somewhat more restrictive NIL law than comparable states with robust collegiate athletic programs, repealed its NIL statute in early February in order to harmonize with the more open-ended NCAA policy and to allow each institution within the state to enact its own NIL policy.³ Florida has introduced amendments to its current NIL legislation to provide more freedom to student-athletes, while allowing college and university athletics staff to be actively involved in crafting and negotiating agreements.

Differences between these many state laws have resulted in disparities between regions, divisions and conferences, and arguably have provided recruiting advantages to schools with more lenient NIL policies. New Mexico's law,⁴ for example, imposes relatively few restrictions on student-athlete NIL licensing, while Alabama's recently repealed law (i) prohibited student-athletes from exploiting their NIL in connection with certain activities, including alcohol, tobacco and gambling; (ii) prohibited booster organizations from compensating student-athletes for NIL; and (iii) gave the student-athlete's institution the right to force the rejection of an endorsement contract if the school concluded that there was a conflict with its own sponsorship deals.⁵

As some states with more restrictive NIL laws consider repealing or amending them to take advantage of the NCAA's more permissive interim policy, the NCAA continues to hold out hope that national legislation will override the current patchwork of state laws.

¹ [NCAA NIL Interim Policy: A Win for Student-Athletes, but Challenges Remain Ahead](#), Ropes & Gray LLP (July 2, 2021).

² Corbin McGuire, [NCAA members approve new constitution](#), NCAA (Jan. 20, 2022).

³ Brian Lyman, [Alabama House approves repeal of state's NIL law for student-athletes](#), *Montgomery Advertiser* (Jan. 19, 2022). See also H.B. 76, 2022 Leg., Reg. Sess. (Ala. 2022) (enacted).

⁴ S.B. 94, 55th Leg., Reg. Sess. (N.M. 2021) (enacted).

⁵ H.B. 404, 2021 Leg., Reg. Sess. (Ala. 2021) (repealed).



FEDERAL LEGISLATIVE UPDATES

In contrast to state legislatures, there has been little movement at the federal level since July 2021. In September, the House Subcommittee on Consumer Protection and Commerce held a hearing on NIL where many prominent stakeholder groups provided testimony.⁶ However, the subcommittee has not introduced any new legislation, and all seven previously introduced bills have stalled in committee. Some school athletic directors have publicly pushed the NCAA to take a more active role in lobbying the federal government.⁷ However, the NCAA appears to remain hesitant to move forward on creating its own national policy, possibly due to antitrust concerns stemming from the May 2021 Supreme Court decision in *NCAA v. Alston*.⁸ Thus, federal legislation may be the only path for resolving the current confusion and competitive imbalance among states.⁹

Although federal legislation could bring welcome uniformity and predictability to NIL rules, it also could raise a host of new issues. For example, federal NIL legislation could open the door to broader government oversight over collegiate sports, or to granting student-athletes the right to unionize.¹⁰ There are also concerns that federal intervention could lead to closer scrutiny and potential loss of non-profit status for some institutions.¹¹

LITIGATION UPDATES

In the current environment of uncertainty and confusion, the number of lawsuits relating to NIL is likely to increase. The most notable current action is *In re College Athlete NIL Litigation*.¹² This California class-action suit seeks to strike down NCAA rules prohibiting student-athletes from being paid for their NIL, including restrictions on pay-for-play and recruiting inducement (both of which are prohibited under the NCAA's current interim policy). The plaintiffs argue that even though the NCAA policy was enacted on an interim basis, it is ineffective in serving both student-athletes and institutions.¹³ The suit also seeks damages for NIL deals student-athletes were prohibited from entering over the past four years.

A group of high school students filed suit in Florida state court in early January, claiming that the rules set for their sports have violated state antitrust law by restricting them from

licensing their NIL.¹⁴ As of January 2022, only the governing organizations in California, New York, Alaska, Nebraska and New Jersey permit high school athletes to profit off of their NIL, but more state athletic associations are beginning to amend their policies.

TRENDS FROM THE FIRST SEMESTER

While schools scramble to implement NIL policies and understand their relevant state laws, this past semester, several student-athletes took advantage of the opportunity to profit from their NIL. For example, University of Connecticut Women's Basketball star Paige Bueckers became the first college athlete to strike a deal with Gatorade¹⁵ and also signed a multiyear deal with e-commerce platform StockX.¹⁶ Gatorade also reached a sponsorship agreement with Jackson State University quarterback Shedeur Sanders, making him college football's first student-athlete to sign a deal with the company. Sanders has also reportedly inked deals with Beats by Dre and Tom Brady's new apparel line.¹⁷

But despite these headline deals, the current data shows that most student-athletes are making much less. Opendorse, an

⁶ Maria Carrasco, [Congress Weighs In on College Athletes Leveraging Their Brand](#), *Inside Higher Ed* (Oct. 1, 2021).

⁷ Eric Kolenich, [Name, image, likeness law for college athletes is taking shape in Virginia Senate](#), *Fredericksburg.com* (Jan. 25, 2022).

⁸ *NCAA v. Alston*, 141 S. Ct. 2141 (2021).

⁹ Chris Low, [Nick Saban, Kirby Smart both call for increased NIL regulation in college football: 'You're going to have the haves and have nots'](#), *ESPN* (Jan. 9, 2022).

¹⁰ Zachary Zagger, [NCAA Members Vote To Adopt New Streamlined Constitution](#), *Law360* (Jan. 20, 2022).

¹¹ Dennis Dodd, [With the NCAA backed into a corner, the age of paying college athletes is officially upon us](#), *CBS* (Jan. 20, 2022).

¹² *In Re College Athlete Nil Litigation*, U.S. District Court Docket 4:20cv3919 (D.N. Cal.).

¹³ Zachary Zagger, [NCAA Athletes Say Name, Image 'Experiment' Proves Case](#), *Law360* (July 27, 2021).

¹⁴ Nathan Hale, [Fla. Student-Athletes Challenge Bar On Pay For Their Images](#), *Law360* (Jan. 13, 2022).

¹⁵ Kim Bhasin, [Gatorade Signs Paige Bueckers as First College Athlete Endorser](#), *Bloomberg* (Nov. 29, 2021).

¹⁶ Kristi Dosh, [Paige Bueckers Signs First Major NIL Brand Deal With StockX](#), *Forbes* (Nov. 10, 2021).

¹⁷ Tom Vanhaaren, [Jackson State's Shedeur Sanders is first college football player to sign NIL deal with Gatorade](#), *The Undeclared* (Jan. 27, 2022).



athlete marketing and NIL platform, reported that from July 1, 2021 through December 31, 2021, deals that passed through its platform earned an average (not median) of \$1,036.¹⁸ Similarly, INFLCR, another marketing and NIL platform, reported an average of \$1,306, but a median of just \$51.¹⁹ In terms of total compensation, Opendorse reported that football players accounted for 64% of NIL compensation, followed by men's basketball and then women's volleyball. According to Opendorse, most of the NIL endorsement money is going to student-athletes in the biggest conferences, with the Big Ten, Big 12, ACC and SEC leading the way.

Many of these NIL deals are coming from school boosters rather than established companies and brands. While such payments would have been impermissible prior to the NCAA's interim policy, several states now allow such deals. A current trend is the formation of booster "collectives"—businesses that facilitate and provide NIL opportunities to student-athletes.

Activities of collectives and other booster activities may create a risk of concerns about crossing the line into pay-for-play, which still is prohibited, and may also raise Title IX concerns (e.g., concerns that male student-athletes effectively have more scholarships than their female counterparts). The NCAA has reportedly inquired about NIL deals at Brigham Young University, the University of Oregon and the University of Miami.²⁰ It remains unclear just how aggressively the NCAA will enforce NIL in the context of pay-for-play or recruiting inducement violations, and where lines will be drawn. Similarly, schools and individual states face difficult questions (and PR implications) as to whether and (if so) how hard to enforce new laws and policies against individual student-athletes.

While prohibited in some states (including Florida and formerly Alabama), some schools have begun to take matters into their own hands and are facilitating NIL deals for their student-athletes. For example, the University of North Carolina (UNC) launched a group licensing program shortly after the NCAA's interim policy went into effect, which licenses both school trademarks and logos and student-athletes' NIL to third parties.²¹ Less than two months after announcing the program, UNC signed a group licensing arrangement with The Brandr Group, which included deals with more than 10

companies, including Nike and Hanes. In mid-January of this year, Ohio State University followed UNC's lead and launched its own NIL advisory group to help student-athletes connect to NIL opportunities.²²

The differences among state and school NIL policies, coupled with the new "one-time transfer rule" allowing student-athletes to transfer one time without being required to sit out for a year, have many coaches and school administrators concerned about the recruiting advantages NIL may create.²³ Indeed, many student-athletes appear to be following the money—i.e., looking to land at schools where they can maximize their endorsement deal potential. Where there were clear lines prohibiting student-athletes receiving any compensation to attend a school, those lines are now less clear due to the permissible stream of money flowing from NIL.²⁴

SURVIVING IN THE WILD WEST

Although federal legislation on NIL is likely the best hope for creating a consistent and transparent framework for all stakeholders, there are various issues that schools, coaches and sponsors should keep in mind until such legislation is in place.

No Pay-for-Play

While the lines around what will and won't be enforced under the NCAA's interim policy remain unsettled, at a minimum, legitimate NIL deals should (i) require *quid pro quo* (e.g., payments in exchange for the student-athlete's autograph

¹⁸ [NIL Industry Insights](#), Opendorse (Dec. 31, 2021).

¹⁹ Alan Blinder, [The Smaller, Everyday Deals for College Athletes Under New Rules](#), *The New York Times* (Dec. 9, 2021).

²⁰ Ralph D. Russo, [Lack of detailed NIL rules challenges NCAA enforcement](#), *ABC News/Associated Press* (Jan. 28, 2022).

²¹ Zachary Zagger, [UNC Launches First College Athlete Group Licensing Program](#), *Law360* (July 20, 2021).

²² Griffin Strom, [Ohio State Updates NIL Guidelines, Creates NIL Edge Team to Coordinate Opportunities for Student-Athletes](#), *Eleven Warriors* (Jan. 24, 2022).

²³ Dennis Dodd, [Coaches worry tampering, inducements, 24/7 free agency have turned transfer portal into Wild West](#), *CBS* (Feb. 1, 2022).

²⁴ Sean Keeler, [Transfer portal, NIL legislation creating "chaos" in college football, CU Buffs AD Rick George says](#), *Denver Post* (Jan. 6, 2022).



signings, personal appearances, social media posts, etc.); (ii) ensure payments and incentives are not tied to individual or team performance (e.g., no bonus for winning a championship or scoring a certain number of points); and (iii) involve payments commensurate with the fair market value of the services the student-athlete actually provides. Although fair market value for personal services can vary greatly depending on the endorser's popularity, NIL deals cannot be used as a shell to disguise otherwise illegal payments to student-athletes. If a school's compliance program identifies a student-athlete's NIL deal that appears on its face to be a clear violation of one of the foregoing principles, further investigation (and documentation showing such investigation occurred) would be warranted.

Tread Cautiously if School Is Directly Involved

Some state NIL laws prohibit schools from facilitating NIL deals for their student-athletes. Even in states that don't have such restrictions, any deal in which a coach or other school representative is directly involved is likely to be subject to further scrutiny as a potential violation of current NCAA policy. Schools that facilitate NIL deals should, to the extent permitted by state law, designate specific personnel to assist with such activities. For example, Ohio State University's new advisory group designates certain operations directors across its varsity sports to focus on NIL issues and educate potential sponsors about the school's NIL policies.²⁵ As a general rule of thumb, the greater the level of institutional involvement in the NIL activity, the greater the likelihood such activity could be considered pay-for-play or improper inducement.

Clarity on Use of School's Intellectual Property

As schools continue to develop and amend their own NIL policies, they should clarify (consistent with applicable state law) their position on potential conflicts concerning the school's own intellectual property and its own licensing and sponsorship deals. For example, some schools allow student-athletes to use school trademarks and logos in their individual NIL deals (e.g., sponsored social media posts depicting the student-athlete in the school uniform), while others prohibit such use. Certain state laws permit schools to reject individual

student-athlete endorsement deals to the extent they conflict with schoolwide or teamwide sponsorship deals.²⁶ Sponsors signing student-athlete endorsement deals should consider whether they need separate agreements with schools in order to avoid intellectual property infringement or "ambush marketing" claims.

Allow Flexibility

Because NCAA policy, state laws, litigation and enforcement precedents are all in a state of flux, it is important for schools, student-athletes and sponsors to maintain flexibility as circumstances change. For example, NIL deals should include a mechanism for amendment in the event that applicable laws or policies change so that the student-athlete is not required to violate those laws or policies while the sponsor still receives a reasonable substitute for the rights that were paid for. Further, school NIL policies and compliance protocols should continue to be revisited, refined and updated as they accumulate more real-life experience operating in a world of NIL compensation.

WHAT LIES AHEAD

Although lucrative (for some) and confusing and frustrating (for many), the first semester following the NCAA's interim policy also gave rise to several creative solutions and initiatives from multiple stakeholders. There is clearly great interest in this topic from both a regulatory and marketing standpoint, and there are many groups working to effect changes. No doubt Spring 2022 will bring its share of surprises, challenges and—hopefully—further clarity as schools, students-athletes and businesses adapt to the new NIL paradigm.

²⁵ Griffin Strom, [Ohio State Updates NIL Guidelines, Creates NIL Edge Team to Coordinate Opportunities for Student-Athletes](#), *Eleven Warriors* (Jan. 24, 2022).

²⁶ Dan Whateley, [How college athletes are getting paid from brand sponsorships as NIL marketing takes off](#), *Insider* (Dec. 30, 2021).



Student Athletes, NIL and NFTs – Opportunities and Legal Risks

By Matthew Rizzolo and Kelley Chandler

NON-FUNGIBLE TOKENS (NFTS) have recently exploded in popularity across nearly all industries. NFTs are a form of digital asset that, unlike Bitcoin and other fungible tokens, are not interchangeable by design. Rather, NFTs are unique, one-of-a-kind assets that function as a form of “digital receipt,” representing ownership of a virtual or physical item, such as a collectible. Typically, NFTs are “minted” (i.e., created) on a blockchain, and their ownership is recorded on that blockchain. Purchase and ownership of an NFT does not inherently guarantee rights to the underlying intellectual property (IP) associated with the NFT, but the NFT seller and purchaser may agree that such terms will be implemented through smart contracts (i.e., automated, self-executing contracts verified on a blockchain), which allow for the transfer of a variety of legal rights and obligations. Recent developments and relaxed regulation pertaining to name, image and likeness (NIL) in college athletics have resulted in universities and their student athletes exploring many different avenues for additional compensation. NIL rights, which are grouped under rights of publicity in the United States, protect against others using the *recognizable features* of a natural person (name, image, likeness, signature, voice, etc.) in commerce. Such rights are protected under state law and give an individual the ability to exclusively license their identity for the purpose of commercial promotion.

Unsurprisingly, many tech-savvy universities and student athletes have sought to exploit the intersection of NFTs and NIL rights. But while the opportunities may appear great, the legal risks can present traps for the unwary and unprepared.

NFTs and sports have gone hand-in-glove for some time. One of the most popular and well-known NFT projects is the National Basketball Association’s (NBA) collectible Top Shot “Moments,” comprising short NBA game video highlights.



These moments are created by Dapper Labs and traded on the “Top Shot” platform. They function quite like rare trading cards, but exist only digitally.

Some student athletes have used NFTs to cash in on their NIL rights, taking advantage of recent NCAA interim policies suspending the longstanding rule that college athletes could not be compensated for their NIL.²⁷ The first college athlete to mint and sell an NFT using NIL was former University of Iowa men’s basketball player Luka Garza, who was named best player in men’s college basketball for the 2021 season. Garza’s NFT sold on the OpenSea marketplace for approximately \$41,000 and features images of him from his playing career, along with access to multiple perks, such as a dinner and meditation session with him and the ability to play a game of H.O.R.S.E. against him.²⁸

²⁷ <https://www.ropesgray.com/en/newsroom/alerts/2022/March/NCAA-NIL-Update-With-a-Semester-of-NIL-Opportunities-in-the-Books-Trends-Emerge-and-Confusion-Reigns>

²⁸ <https://www.cnn.com/2021/04/06/college-basketball-star-luka-garza-is-latest-athlete-to-sell-an-nft.html>

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But in the higher education context, as elsewhere, NFTs are not just associated with sports. A lecturer at the Massachusetts Institute of Technology (MIT), for example, recently auctioned an NFT associated with his book on productivity, which included a 3D image of the cover, a new preface, his digital signature, a free consultation with him and a seat in his class.²⁹ Other universities, such as the University of California, Berkeley and Miami have sought to mint and sell NFTs based on cutting-edge research and inventions.

As the NFT trend shows little signs of slowing, those seeking to use NFTs as a monetization tool—including universities and student athletes—must be aware of the many potential legal issues that can arise.

What rights are owned by the NFT creator? A common legal issue involves which IP rights the NFT creator(s) can use and convey through the sale or license of an NFT. If a student-athlete, acting alone, is selling or licensing an NFT using only their NIL, it's likely that the athlete wouldn't need to secure any permissions from the university. Where the sale of NIL-related NFTs by student-athletes incorporates university logos, however, those NFTs potentially implicate federal or state IP laws. Particularly where university trademarks are concerned, universities should be mindful of creating policies

and procedures around licensing and use of those trademarks by student-athletes seeking to create NIL-related NFTs. Absent a university's permission or a license to the student-athlete to display the university's trademark, players may need to monetize something about themselves that is distinct and exclusive from the university's IP.

University of Michigan running back Blake Corum, for example, created an NIL NFT collection of himself playing football that did not feature Michigan's logo, which was blocked out in blue on his helmet and jersey.³⁰ Because they did not use the university's logo or name, Corum and the NFT platform he used did not obtain official permission from the university to use its brand in connection with the NFT—which would otherwise be required by the university's official policies. Instead, Corum mainly relied on the popularity associated with his NIL to create value in his NFT. To date, the University of Michigan hasn't indicated any approval or disapproval of how Corum structured his NFT sales. As universities are contemplating and actively pursuing future partnerships to create and sell NFTs, some may not take issue with NIL-related NFTs created by their student-athletes in the interim.

Indeed, such partnerships may be mutually beneficial, giving student athletes the ability to benefit from their NIL and universities the ability to gain a portion of the profits from an NFT sale. The arrangement could involve student-athletes working with their respective universities on an ad-hoc basis, or the university could create its own NFT marketplace specifically for its student-athletes. The university could also facilitate a partnership with a broader NFT platform on behalf of student-athletes—an arrangement that universities such as West Virginia University and Gonzaga have entered into.

But even if a university and its student athletes work together to set up NFTs, all parties will have to consider how these programs may be affected by broader university policies, contractual relationships with partners to which the university has licensed its IP, and other independent IP rights held by third parties in the subject matter of any NFTs.

²⁹ <https://mitsloan.mit.edu/press/mit-sloan-senior-lecturer-to-auction-business-schools-first-literary-nft>

³⁰ <https://news.yahoo.com/college-sports-nil-rules-and-laws-143623459.html>



For example, the university may have existing trademark license agreements in place and may have to navigate provisions providing for exclusivity or other limitations. Additionally, broadcasting entities or photographers may possess copyrights to certain highlights or photographs of student-athletes in action. If an NFT is minted with a soundtrack, musicians' or songwriters' copyrights would need to be considered. Some universities may already be protected to the extent that pre-existing contracts cover these rights, but given the novelty of NFTs, in many cases they may not be.

What rights are being conveyed to the NFT purchaser? Are those rights being clearly communicated? The examples of NFT purchasers misunderstanding what they have in fact purchased are legion. An NFT alone essentially constitutes a digital receipt and, in most instances, does not convey to the buyer any rights to an underlying piece of content—a picture, a song, a video or an athlete's NIL rights.

Universities and student-athletes should be mindful about the contractual terms and rights that accompany the sale of their NFTs and clearly communicate those terms and rights to NFT purchasers. Failure to do so may lead to a variety of legal claims and disputes, including fraud, unjust enrichment, false advertising and state consumer protection actions. Even if these claims lack merit, the legal costs and headache can be substantial. Providing clarity to NFT purchasers also reduces the likelihood that the university or student-athlete will need to bring an action against the purchaser for infringement of the IP associated with the NFT. For instance, provisions accompanying the NFT could provide for a limited, non-exclusive license to display the related media or trademarks for personal purposes only. Such terms would avoid the purchaser using the NFT (and its underlying IP rights) in connection with commercial activities.

Don't forget about compliance. Finally, as in many areas, regulatory compliance is critical. Universities and student-athletes need to ensure that their NFTs comply with applicable state right of publicity and NIL laws or the NCAA's NIL rules, particularly because the NCAA's new interim rules provide student-athletes with the ability to

monetize their NIL consistent with the law of the state where their school is located, or to engage in NIL activities without violating the NCAA rules if their school is in a state without an NIL law.³¹

Further, if a university or student-athlete decides to mint and sell an NFT with associated perks (as University of Iowa's Luka Garza did), the creator(s) will need to consider whether the perks provided violate broader university policies, especially if the NIL-related NFT contains a university logo or other trademark.

Lastly, tax laws will likely be implicated, whether the sale of the NFT involves a one-time payment or ongoing royalties to a university or a student athlete. Each party receiving payment associated with an NFT sale or license should ensure that revenues are appropriately tracked and reported.



U.S. Women's Soccer Reaches Historic Agreement to Guarantee Equal Pay

By *Chris Conniff and Cassandra Lagana*

AFTER MORE THAN TWO YEARS OF LITIGATION, the U.S. Women's National Soccer Team (WNT) has reached agreements with the U.S. Soccer Federation (USSF) on a new collective bargaining agreement guaranteeing equal pay. Ratified on May 18, 2022, the agreement will take effect on June 1, 2022, and run through 2028.³² The agreement is a historic feat for the women's team and mirrors the pay structure of the U.S. Men's National Soccer Team (MNT) team while guaranteeing injury protection, childcare and parental leave.³³ This article discusses the litigation that ultimately led to this new deal, as well as the details of the deal itself.

³¹ <https://www.ncaa.org/sports/2021/2/8/about-taking-action.aspx>

³² Jeff Carlisle, [USWNT, USMNT get equal split of World Cup bonuses in new CBAs](#), *ESPN* (May 18, 2022).

³³ Jeff Carlisle, [USWNT, USMNT get equal split of World Cup bonuses in new CBAs](#), *ESPN* (May 18, 2022).



EQUAL PAY LITIGATION

In March 2019, members of the WNT filed a \$67 million gender discrimination suit against the USSF stemming from the team's previous collective bargaining agreement.³⁴ Backed by the U.S. Women's National Team Players Association, the 28 players who filed the complaint were granted class certification under both Title VII of the Civil Rights Act and the Fair Labor Standards Act.³⁵ The WNT accused the USSF of paying them less than the MNT and subjecting them to unequal playing, training and travel conditions.³⁶ The WNT quickly gained public support as they won their fourth FIFA World Cup in July 2019—the crowd could be heard chanting “equal pay” during their victory celebration.³⁷

The Central District of California, however, disagreed with public opinion. The WNT's equal pay claims, and some of their discrimination claims based on playing surfaces, were initially dismissed in May 2020.³⁸ The court's decision was based on its interpretation of the WNT's collective bargaining agreement, where the women agreed to a different payment



model than the men that included annual salaries, maternity and childcare benefits, and severance pay.³⁹

After announcing their intent to appeal to the Ninth Circuit, the WNT received political support when then-presidential candidate Joe Biden tweeted his support and promised as president to cut funding unless the USSF remedied the claims.⁴⁰ Further support came in the form of the Equal Employment Opportunity Commission seeking to join the WNT's appeal.⁴¹ The MNT was also supportive of the USSF's decision to guarantee an equal split of FIFA payments and backed the WNT as amici in their litigation.⁴² Ultimately, the women reached a \$24 million settlement with the USSF contingent on the parties ratifying a collective bargaining agreement that guaranteed equal pay moving forward.⁴³

THE CBA

The WNT's new collective bargaining agreement is a landmark deal that truly guarantees equal pay. Perhaps most notably, the WNT and the MNT are now required to share FIFA World Cup prize money.⁴⁴ Additionally, the WNT's pay structure now matches the MNT non-salary model. For friendly and official

³⁴ Caitlin Murray, [USWNT, USMNT pay gap explained: Comparing their U.S. Soccer contracts as both sides negotiate new CBAs](#), *ESPN* (Feb. 10, 2022).

³⁵ Order Re: Plaintiffs' Motion for Class Certification, *Alex Morgan et al. v. United States Soccer Federation Inc.*, 2:19-cv-0717 (C.D. Cal. Nov. 8, 2019).

³⁶ Complaint, *Alex Morgan et al. v. United States Soccer Federation Inc.*, 2:19-cv-0717 (C.D. Cal. Mar. 3, 2019).

³⁷ Matt Bonesteel, [A timeline of the U.S. women's soccer team's equal pay dispute with U.S. Soccer](#), *The Washington Post* (Feb. 22, 2022).

³⁸ Order Re: Plaintiffs' Motion for Partial Summary Judgment; Defendant's Motion for Summary Judgment, *Alex Morgan et al. v. United States Soccer Federation Inc.*, 2:19-cv-0717 (C.D. Cal. May 1, 2020).

³⁹ Matt Bonesteel, [A timeline of the U.S. women's soccer team's equal pay dispute with U.S. Soccer](#), *The Washington Post* (Feb. 22, 2022).

⁴⁰ [Biden backs women's soccer team after lawsuit setback](#), *Reuters* (May 2, 2020).

⁴¹ Associated Press, [EEOC asks to join USWNT in equal pay appeal](#), *ESPN* (Feb. 3, 2022).

⁴² Max Jaeger, [Not 'Fake Equal Pay': Soccer CBA Hailed As a Game-Changer](#), *Law360* (May 18, 2022).

⁴³ Rachel Scharf, [Women's Soccer CBA Talks To Continue After Missed Deadline](#), *Law360* (Mar. 30, 2022).

⁴⁴ Max Jaeger, [Not 'Fake Equal Pay': Soccer CBA Hailed As a Game-Changer](#), *Law360* (May 18, 2022).

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matches, including FIFA World Cup competitions, WNT and MNT players will be paid identical appearance fees and game bonuses.⁴⁵ Both teams will also participate in revenue sharing, receiving equal portions of commercial and ticket revenue.⁴⁶ The average annual pay for players is expected to be around \$450,000.⁴⁷

Besides guaranteeing pay equality, both the WNT and MNT are guaranteed childcare during training and matches.⁴⁸ Players will also be provided with a 401(k) plan, with the USSF matching up to 5% of their compensation.⁴⁹ The agreement guarantees equality of match venues, playing surfaces, travel accommodations and predictability of scheduling.⁵⁰

While the USSF is not the first to guarantee equal pay for men and women, many have hailed this collective bargaining agreement as the most comprehensive. In 2018, FIFA awarded \$400 million in prize money for the 32 teams at the 2018 Men's World Cup, while only \$30 million was awarded to the 24 teams at the subsequent Women's World Cup in 2019.⁵¹ Countries like Australia, Brazil and England may have guaranteed equal percentages of pay,⁵² but with such disparate amounts of prize money available, the outcomes were unequal. This is the first deal of its kind that mandates equal distribution of FIFA prize money, a true equalizer in terms of compensation and fairness in international soccer.

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⁴⁵ Sandra Herrera, [USWNT, USMNT unions agree to equal pay CBAs with USSF: All players to receive shares of pooled World Cup money](#), *CBS Sports* (May 18, 2022).

⁴⁶ Jeff Carlisle, [USWNT, USMNT get equal split of World Cup bonuses in new CBAs](#), *ESPN* (May 18, 2022).

⁴⁷ Andrew Das, [U.S. Soccer and Top Players Agree to Guarantee Equal Pay](#), *The New York Times* (May 18, 2022).

⁴⁸ Sandra Herrera, [USWNT, USMNT unions agree to equal pay CBAs with USSF: All players to receive shares of pooled World Cup money](#), *CBS Sports* (May 18, 2022).

⁴⁹ Sandra Herrera, [USWNT, USMNT unions agree to equal pay CBAs with USSF: All players to receive shares of pooled World Cup money](#), *CBS Sports* (May 18, 2022).

⁵⁰ Sandra Herrera, [USWNT, USMNT unions agree to equal pay CBAs with USSF: All players to receive shares of pooled World Cup money](#), *CBS Sports* (May 18, 2022).

⁵¹ [US Soccer equalises pay for women, men in milestone agreement](#), *Al Jazeera* (May 18, 2022).

⁵² Max Jaeger, [Not 'Fake Equal Pay': Soccer CBA Hailed As a Game-Changer](#), *Law360* (May 18, 2022).