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ANALYSIS

As NCAA Athletes Seek to Profit From New Endorsement Rules, Am Law 200 Firms Are Ready to Help

Student-athletes can now use lawyers to navigate deals for their name, image and likeness, giving Am Law 200 sports and entertainment practices a new revenue stream.

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[Entertainment and Sports Law](#)

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- With the September memo from the NLRB saying athletes should be treated as employees of the schools, many attorneys expect an increase in NIL work.
- Social media is emerging as a primary avenue for athletes to profit off their name, image and likeness as brands begin to recognize the reach of their audiences.
- Bill Lawrence at Burr & Forman believes we are still at the infancy phase of NIL work as colleges and universities continue to learn how to navigate these new rules.

Since the NCAA's June decision to allow student-athletes to profit off their name, image and likeness, law firms have found themselves with a new avenue for work as colleges, universities and student-athletes themselves are turning to lawyers for guidance on the new paradigm.

For firms with sports and entertainment practices equipped to meet those demands, work has slowly begun to roll in over the past few months, with the promise of more to come.

“Given the fact that it’s so new and everyone is getting their footing, the work is slowly coming in the door,” said Ron Gaither, a partner in the Atlanta office of Baker & Hostetler and vice chairman of the firm’s sports and entertainment practice.

The firm has tasked Gaither with building a “name, image and likeness,” or NIL, practice. He and four other attorneys are now handling NIL-related work, while also receiving assistance from attorneys in the firm’s labor and employment practice.

In the short time since the changes took effect, top student-athletes have already begun to cash in. University of Alabama quarterback Bryce Young has reportedly netted more than \$800,000 in endorsement deals. Ohio State University quarterback Quinn Ewers struck a \$1.4 million deal with GT Sports Marketing. And University of Kentucky guard TyTy Washington signed a deal with a local Porsche dealership that has netted him a luxury car.

Over the past few years, as it became increasingly inevitable that the NCAA would be forced to adopt NIL rules, several state legislatures introduced bills addressing the issue. Bill Lawrence, a counsel at Burr & Forman who leads the firm's NIL work, said those bills were primarily focused on protecting college and universities from recruiting disadvantages.

But when the U.S. Supreme Court unanimously ruled June 21 against the NCAA in a landmark antitrust case challenging its ability to limit payments to student-athletes, the NCAA quickly had to adopt NIL policies.

“Instead of passing substantive regulations that permitted NIL, the NCAA essentially just punted and adopted four or five very basic policies that addressed the NIL deals,” Lawrence said.

With the new rules, student-athletes can use professional service advisers, such as agents and lawyers, to navigate NIL deals, while colleges and universities can also serve as resources for NIL questions student-athletes may have.

And so law firms have started fielding requests for their services. In September, Burr & Forman [set up a website](#) to serve as a resource for student-athletes, with 13 of its attorneys included.

So far, NIL-related clients have needed help with “traditional endorsement work,” Baker & Hostetler's Gaither said. His firm has been representing student-athletes, as well as an institutional client engaged with a student-athlete to represent its brand. The firm is also advising the Southeastern Conference, one of the NCAA's most powerful leagues, as well as the athletic department at universities.

“This is new stuff,” Gaither said. “There's not a whole lot of these deals that are actually happening, but we are very, very fortunate in that we're on the front line of new matters coming in.”

In the past few months, Gaither has seen social media emerge as a primary avenue for student-athletes to profit off NIL, with numerous companies looking to advertise their products through an athlete's social media presence.

“Some of these guys have 75,000, 100,000, 300,000 followers, and so clients are saying that they didn't have the appreciation for the strength of social media and social media marketing,” Gaither said. “It's a win-win for these clients, and it's not the traditional means of TV, ads, radio spots or anything like that. A lot of it is truly social media-driven.”

Fisher & Phillips has also been working with university clients to provide guidance on the new rules, as well as helping student-athletes ensure no compliance rules are violated.

“If there's a contract between an athlete and a third party, the university should want to take a look at it and make sure no lines are crossed, make sure it complies with state NIL rules, with the Federal Trade Commission rules and maybe other applicable rules that are out there,” Adam Sloustcher, co-chairman of the firm's sports and entertainment practice, said.

Sloustcher, a former Division I soccer player at the University of North Carolina-Chapel Hill and later Loyola Marymount University, is leading the firm's NIL work alongside co-chairman Todd Scherwin, a former Division II baseball player at the University of California, San Diego.

Fisher & Phillips has more than 35 former collegiate athletes within its sports and entertainment group, with a handful focused on keeping clients up to date on NIL laws being passed in various states.

The prevailing thought at these law firms and others across the country is that work in the NIL field will gain steam as student-athletes and their college and universities become more comfortable with NIL agreements and learn more about their potential.

"We all expect it to continue to tick up, especially as more and more states pass these laws," Sloustcher said.

Lawrence believes law firms are just in the infancy of their involvement with the NIL and the possibilities it presents.

"It's only going to grow as the companies who are engaging student-athletes learn more about the benefits of NIL deals and how to best structure them," he said.

The next couple of years will be crucial for law firms as they work to navigate the NIL landscape, Gaither said, especially after a [September memo](#) from National Labor Relations Board General Counsel Jennifer Abruzzo said that certain athletes should be treated as employees of their institutions.

"That's huge," Gaither said. "That literally changes the model."

The NLRB stance would give student-athletes protections under the National Labor Relations Act, and could lead them to seek benefits as employees, Gaither said. In a short period of time, a potentially significant law firm practice has begun to take shape.

"I suspect over the next two to three years as this plays out, you're going to start seeing student-athletes truly appreciate their power and leverage," Gaither said.
