

THE NCAA'S NEW HEAD COACH STRICT LIABILITY STANDARD & COACH EMPLOYMENT CONTRACTS

Josh Lens
PNALSB Annual Conference
2023



Presentation

- Introduction
- Evolution of the NCAA head coach responsibilities rule
- Coach employment contracts & the rule
- Considerations for potential changes to coach contracts
 - Head coaches
 - Asst. coaches
- Example

Outrageous Severance/Buyouts

College Sports Paid Over \$500M in 'Dead Money' to Fired Coaches Over Last Decade

BY NATALIE COLAROSSO ON 11/8/21 AT 2:55 PM EST

HERM EDWARDS TO TAKE 50% BUYOUT OF REMAINING SALARY, PLUS BENEFITS AND ACADEMIC BONUS

After four full seasons and three games as ASU football's head coach, Edwards will keep his academic performance bonus, benefits and about \$4.4 million of his remaining salary



Former football head coach Herm Edwards walks across the field at Sun Devil Stadium at the ASU vs. Eastern Michigan football game on Saturday, Sept. 17, 2022. ASU lost 30-21. Reece Andrews

By Piper Hansen | October 14, 2022 | 5:33pm MST



Scott Frost receives full buyout as Nebraska severance bill tops \$50 million since 2005

EVAN BLAND Omaha World-Herald Sep 11, 2022 Updated Sep 12, 2022 11

Big Bucks, Big Buyouts: Big Ten schools spent nearly \$150 million to buy out coaches

Nic Napier and Nadia Scharf Arnolt Center for Investigative Journalism

Published 5:58 a.m. ET Sept. 23, 2022 | Updated 7:11 a.m. ET Sept. 23, 2022

Student Fees May Be Subsidizing Football Coach Buyouts

Karen Weaver Contributor @

I cover the intersection of college sports and higher education

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Oct 4, 2022, 08:46pm EDT

NCAA Head Coach Responsibilities Rule Evolution

- 2005
 - Requirement to monitor & promote compliance
 - Presumed knowledgeable (rebuttable)
- 2012: Presumed responsible (rebuttable)
 - COI
- 2023: Strict liability

11.1.1.1 Responsibility of Head Coach. An institution's head coach shall be held responsible for the head coach's actions and the actions of all institutional staff members who report, directly or indirectly, to the head coach. In order to assist the NCAA Division I Committee on Infractions in penalty deliberations, the enforcement staff will gather information regarding whether the head coach promoted an atmosphere of compliance within the program and monitored the activities of all institutional staff members. *(Adopted: 4/28/05, Revised: 10/30/12, 7/16/14, 8/31/22 effective 1/1/23)*

UNIVERSITY OF ARKANSAS HEAD BASKETBALL COACH
EMPLOYMENT AGREEMENT

10. Dismissal for Cause. Coach agrees that UA has the right to dismiss Coach and terminate this Agreement for cause under this section at any time prior to the expiration of the Agreement. For purposes of this section, “for cause” shall include any one or more of the following as determined in the reasonable and good faith judgment of UA:

(e) Failure to comply with NCAA Bylaw 11.1.1.1. as amended and/or conduct or omission(s) by Coach which constitute a Level I or II violation under the NCAA’s enforcement structure, or one or more of the Governing Athletic Rules or UA’s interpretation thereof, including, but not limited to, multiple violations of the Governing Athletic Rules considered collectively to be a Level I or II violation, whether the conduct occurred during Coach’s employment with UA or another NCAA-member institution.

**DEPARTMENT OF INTERCOLLEGIATE ATHLETICS
UNIVERSITY OF WASHINGTON
EMPLOYMENT CONTRACT**

This Employment Contract (this "Agreement"), effective as of **March 19, 2017**, is entered into by and between **Michael Hopkins** (the "Employee") and the University of Washington (the "University"). The Employee and the University may hereinafter be referred to individually as a "Party" and collectively as the "Parties". Upon commencement, this Agreement cancels and replaces any and all prior employment agreements or memorandums of understanding, whether written or oral, between the Parties.

8. Termination by University With Cause. University shall have the right to terminate this Agreement for just cause prior to its normal expiration. The term "just cause" shall include any of the following:

- d. Any significant or repetitive violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Pac-12 or the NCAA, which violation may, in the sole good faith judgment of the University, reflect adversely upon the University or its athletic program, including any violation which may result in the University being placed on probation by the Pac-12 or the NCAA and including any violation which may have occurred during prior employment of Employee at another NCAA member institution;
- e. Any significant or repetitive violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Pac-12 or the NCAA by a member of the basketball coaching staff or any other person under Employee's supervision and direction, including student-athletes in the basketball program, which violation may, in the sole good faith judgment of the University, reflect adversely upon the University or its athletic program, including any violation which may result in the University being placed on probation by the Pac-12 or the NCAA, but only if Employee was aware of, or reasonably should have been aware of, such violation and failed to promptly report it to the Director. This provision does not include criminal violations that Employee did not sanction; and

C O N T R A C T O F E M P L O Y M E N T

**HEAD FOOTBALL COACH
DEPARTMENT OF INTERCOLLEGIATE ATHLETICS
UNIVERSITY OF NEBRASKA-LINCOLN**

THIS CONTRACT is made by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body corporate ("University"), for and on behalf of the Department of Intercollegiate Athletics of the University of Nebraska-Lincoln ("Athletics"), and Scott Frost ("Coach").

Section 4. Termination or Suspension for Cause.

(a) The University may terminate or suspend the employment of an athletic staff member for adequate cause. For the purpose of this policy the terms "adequate cause" and "cause" shall be synonymous and shall mean any one or more of the following:

(2) Material, significant or repetitive violation or breach of any governing athletic rule, any University regulation, or any state or federal law or regulation; or

(15) Subject to any right of administrative appeal within the NCAA or Conference, the making or rendition of a finding or determination by the NCAA, the Conference, or any commission, committee, council or tribunal of the same, (a) of one or more major, significant or repetitive violation of any governing athletic rule, or (b) of any such major, significant or repetitious violation by others which were permitted, encouraged or condoned by the athletic staff member, or about which violation the senior athletic staff member knew or reasonably should have known and failed to act reasonably to prevent, limit, or mitigate; or

NEGOTIATED RESOLUTION¹

University of Nebraska, Lincoln – Case No. 01264

May 2, 2022

I. CASE SYNOPSIS

The University of Nebraska, Lincoln; its head football coach; and NCAA enforcement staff agree with the violations and penalties detailed below. The parties also agree this case should be

2. [NCAA Division I Manual Bylaw 11.1.1.1 (2019-20 and 2020-21)] (Level II)

The institution, head football coach and enforcement staff agree that the head football coach is presumed responsible for the violations detailed in Agreed-Upon Finding of Fact No. 1 and that he did not rebut the presumption of responsibility. Specifically, the head coach failed to monitor the special teams analyst. He was present when some of the violations occurred and identified red flags; yet he did not consult with compliance when he noticed these red flags to ensure the special teams analyst complied with NCAA legislation.

3. Show-cause order: The head football coach violated head coach responsibility when he failed to demonstrate that he monitored the special teams analyst. Therefore, the head football coach shall be subject to a one-year show-cause order from May 2, 2022, through May 1, 2023. In accordance with Bylaw 19.9.5.4 and Committee on Infractions IOP 5-15-3, any employing member institution shall withhold the head coach from five consecutive days of coaching activity during the championship segment of the 2022 season.⁴ The institution, or any member

Nebraska & Frost

- Nebraska continued to employ & pay Frost his \$4 million annual salary
- Nebraska lost to Northwestern and Georgia Southern at start of '22 season
- Nebraska terminates Frost's employment without cause on 9.11.22, thus owing him \$15M severance/buyout under his contract, which would've reduced to \$7.5M had they waited until 10.1
 - Nebraska had paid the second highest amount of "dead money payouts" to coaches (>\$25M) over previous 11 years (espn.com)



**EMPLOYMENT AGREEMENT
ASSISTANT FOOTBALL COACH**

This Employment Agreement ("Agreement") is entered into by and between THE UNIVERSITY OF TENNESSEE ("University"), an instrumentality of the State of Tennessee, for and on behalf of the University of Tennessee, Knoxville ("UTK") and UTK's Athletics Department, and TIM BANKS ("Coach"). This Agreement cancels and supersedes all prior existing oral and written agreements and understandings between the University and Coach. This Agreement does not and is not intended to confer any rights or remedies upon any entity or person other than the University and Coach.

ARTICLE IV - DUTIES

- (e) Making his best efforts to assist the Head Football Coach, as contemplated by Governing Athletic Rules, in promoting and advancing institutional control over every aspect of the football program; promoting and maintaining an atmosphere of compliance with Governing Athletic Rules and University Rules within the football program; monitoring all employees who report directly or indirectly to Coach, and students on the football team under Coach's supervision, and taking other reasonable steps to ensure that such persons know and strictly comply with Governing Athletic Rules and University Rules including, but not limited to, requiring them to attend compliance education sessions, encouraging them to seek interpretations as necessary, taking compliance into account when evaluating their performance, and applying appropriate disciplinary measures in the event of a violation. The University agrees to cooperate in good faith with Coach in his efforts to fulfill his responsibilities under Governing Athletic Rules to promote an atmosphere of compliance and monitor the activities of his staff.

SECTION 5.2. NCAA COMMITTEE ON INFRACTIONS FINDING. Coach agrees that a finding by the NCAA Committee on Infractions (or, if appealed by the University, by the NCAA Infractions Appeals Committee), or an agreed-on finding approved by the NCAA Committee on Infractions in the course of a summary disposition or a negotiated resolution, or a finding through the Independent Accountability Resolution Process that Coach has engaged in or condoned a Level I or Level II violation of one or more Governing Athletic Rules, or is responsible for another person's Level I or Level II violation(s) of Governing Athletic Rules, shall constitute a material breach of this Agreement that is not capable of being cured, and the University, in its sole discretion, may elect to terminate Coach's employment, suspend Coach without pay for a period of up to (90) days, or suspend Coach's employment for a period of up to (90) days.

Considerations

- HC employment contracts
 - Updating language to reflect strict liability
 - Staff member level I/II violation ---> cause
 - “Best efforts” in employment decisions?
- AC employment contracts
 - Updating language to reflect strict liability
 - Violation resulting in penalties for HC ---> cause

P. Understanding and complying with NCAA Bylaw 11.1.1.1 (“Responsibility of Head Coach”), which provides: “An institution’s head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution’s head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach.”

ii. Commission of a material violation of Governing Athletics Regulations involving any aspect of the Program by any other person if either: (a) the violation occurs or continues to occur after COACH knew or should have known that it occurred, was about to occur or was occurring, or (b) COACH failed to establish and maintain reasonable policies and procedures, or to follow reasonable policies and procedures established in writing by the Athletic Department for the Program to prevent violations of Governing Athletics Regulations from occurring and to detect promptly any such violations which may occur;

Example Application: LSU & Coach O

- May 2021: LSU FB AC admits he committed significant recruiting violations
- June 2021: LSU & Coach O terminate AC’s employment with cause due to AC’s admission
- Oct. 2021: LSU terminates Coach O’s employment w/o cause, owes \$17M in severance
- Sept. 2022: COI concludes AC committed significant recruiting violations



THANK YOU

Questions?