

# COUNSEL'S CORNER

## Know the five key provisions of your contract

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Most coaches view their contract as the Holy Grail of their employment security. As my prior columns suggest, your employment security extends far beyond the four corners of this document (communication, player satisfaction, on-the-field performance, etc.).

However, your contract does memorialize the terms of your employment and serves as the legal basis for most decisions affecting your job. Contracts can be oral and do not have to be in writing – that is day one of Contracts Class in law school (with a few exceptions not applicable here). We put contracts in writing to promote clarity and a better understanding of the terms and to lessen the chance of disagreement later. To paraphrase a contemporary credit card commercial, “What’s in your contract?”

In a somewhat simplified approach to contracts, I see five key provisions in an employment agreement of which you should be aware.

### Compensation

This term most often describes the base salary. Any information you can ascertain regarding the market rate for softball coaches in your division, your conference or your region can be helpful. Some athletic directors consider salaries within a department, but I have found that many view head coaches of different sports as, well, different, and therefore not comparable on the salary front.

Remember, Title IX does not require

dollar-for-dollar equality, though other laws prohibit gender discrimination in employment, but I digress...

Other questions to consider with regards to your salary: 1. How will your base salary increase each year? Is it a cost of living adjustment (“COLA” runs typically two to five percent of your base salary)? 2. Are you eligible for merit/performance-based increases or bonuses?

These could include winning percentage, conference tournament success, NCAA tournament appearance/success, team academic achievement, player honors, coach honors and others. How these incentives are structured can make a big difference in how much more you can earn.

Compensation can also be viewed as a broader term that describes benefits such as health insurance, life insurance and a retirement plan that includes an employer match. Other fringe benefits that could fall under “compensation” range from the use of a car, a car stipend, a phone stipend, a computer, athletic ticket packages and golf/country club memberships to housing and tuition remission. A combination of these benefits can add much creativity and comfort to your overall compensation package.

### Term

Not used in its generic sense, the word “term” in a contract refers to the length of time for which the agreement lasts. Multi-year contracts — typically, three, five or even seven years — on their face guarantee longer employment security. This means that both parties

are making a commitment that you will be employed and compensated as a coach at this school for the specified amount of time.

One phrase contradicts a length-of-time term: “at will.” If your employment is described as “at will,” that means either party can walk away at any time, for any reason or no reason at all. There is virtually no employment security in an “at will” employment situation.

Also be aware of language describing a “renewal.” I have seen multi-year contracts with an “annual renewal” clause, which, at the very least, raises the question “If the contract is renewed each year, then can it not be renewed each year?” Or does it mean that your multi-year deal gets extended or rolled over each year?

Remember, the point of having this agreement in writing is clarity. The interpretation of a renewal clause needs to be clearly defined and understood.

And while standard judicial interpretation of contract ambiguities favors the non-drafting party (you) — meaning if there is confusion over what a provision or phrase means, a judge gives the nod to the person who didn’t write the contract — it is advisable to avoid having any ambiguities in the first place.

### Termination without cause

This provision details what happens when the employer wants to end the employment agreement due to no fault of the employee.

What is very important to note in this section is any length of time mentioned for which the school will pay you — there may be a stated term, like 30 days, 60 days or six months — which means not the remainder of your contract. This goes to the heart of the concept of employment security. How much will you be paid if you did nothing wrong and yet your employer still wants to make a change?

### Termination with cause

In reality, when an employer wants to



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Ekstrand received her Juris Doctor from Duke Law School, and received a master’s in history from Duke University, where she worked as a staff editor for the Duke Law Journal and served as a volunteer assistant coach for seven years with the Duke women’s lacrosse team. She is also a former high school teacher.

make a coaching change, they usually try to do so claiming that “cause” exists. In the legal world, cause means a failure to act, a deficiency in the completion of one’s job responsibilities, or an act of wrongdoing. In most cases, termination for cause occurs when a serious rule or policy violation happens; a felony conviction or an act of moral turpitude (think really not good judgment).

I have seen a concerning trend recently where “cause” has included low player satisfaction as determined by end-of-season surveys and/or senior exit interviews. Know what your employer defines as “cause.” This translates into how you can be fired.

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### HAVE A LEGAL QUESTION OR A TOPIC YOU WANT ADDRESSED?

Email your legal questions and topics to NFCA Legal Counsel Samantha Ekstrand via [nfca@nfca.org](mailto:nfca@nfca.org). Selected questions and topics will be addressed in future editions of Counsel’s Corner in Fastpitch Delivery.



## KNOW THE KEY PROVISIONS OF YOUR CONTRACT

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Conversely, know also what your job duties and job expectations are. It is helpful when these are listed in your contract.

What are you responsible for? How will you be evaluated? Failure to comply with your job description can be grounds for termination with cause.

Thus, you should have a clear sense of the expectations of your administration. What is important? Winning? A positive student-athlete experience? Academic achievement and graduation rates? All of it?

Then, you need to know the *order* of priorities at your institution. At the very least, if it's not in writing in your contract, you should have a direct discussion with your athletic director about what is important because you want to do your job to the best of your ability. And then send a follow-

up thank you email, reviewing the key points of your talk.

### Restrictions & buyouts

I joke with coaches that you know you are "big time" if you have a liquidated damages provision in your contract. This means that you will have to pay to leave your job before the end of your contract.

The theory behind this approach is that you bring special services to this position. If you leave early, the school suffers injury. This provision states an agreed-upon amount of money that you will pay to compensate the school for the loss of your services.

It is important to know that a liquidated damages provision is not enforceable as a penalty to leaving early and the amount must be reasonable in light of the anticipated harm. Typically, I have seen this amount defined as a number less than the remaining term of the contract.

It is possible that the school that is seeking to hire you would pay or negotiate the liquidated damages amount, but you still need to understand

that it exists and what it means.

Likewise, there may be a restriction in your contract that governs what job offer you can accept next. This is called a "covenant not to compete." They are not as common and can be difficult to enforce, however, if you have one, you should know about it.

This restriction means you may not be able to end your contract early and accept a position as a softball coach at another school until a certain amount of time has passed. Covenants not to compete are usually evaluated based on their scope, time and territory.

They can't be any job, anywhere, forever. But they could prohibit accepting a Division I head coach softball position for six months. This is a more advanced provision that you should seek legal advice in interpreting.

### Negotiating

One question that I often hear: Should I negotiate my contract? My novice softball response: Should you swing at a pitch right down the middle? Yes. On both counts.

You should also read your entire

contract, understand what each of the provisions mean, and, yes, there are probably at least a few details worth negotiating.

While this topic of contract negotiations could fill its own Counsel's Corner, I will point out three moments when you have the most leverage to negotiate your contract:

- When you are first offered the job. They want you!
- When you win. The bigger the better. If you win the Women's College World Series, the first stop is not Disney World, but your athletic director's office. Then you go to Disney.
- When you have a job offer at another school and they don't want to lose you.

As an NFCA member benefit, I am available to review and discuss your contract with you, as well as negotiating strategies. It's one of my favorite parts of my job.

Even though the employer has a good deal of power in setting the terms of a contract, I see great value in employee knowledge and negotiation efforts.