

NAME, IMAGE, & LIKENESS (NIL) ARRANGEMENTS FOR INTERNATIONAL STUDENT ATHLETES

* Please note that the Department of Homeland Security has not released official guidance on how NIL arrangements can impact international student athletes in the U.S. The following is a short guide created in collaboration with Klasko Immigration Law Partners, LLP on best practices to protect international student athletes' ability to participate in NIL arrangements while maintaining their immigration status and not engaging in unauthorized employment. The materials contained in this flyer do not constitute legal advice and is for informational purposes only. We recommend that you consult your own attorney for additional guidance.

- **What is NIL?**
 - Name, image and/or likeness (“NIL”) are the three components of a person’s “right of publicity.” These are independent or collectively identifiable aspects of a person that make them unique. NIL arrangements are deals that are not based on athletic performance, not related to Temple University, and cannot be arranged by your coach.
- **What is considered employment for immigration purposes?**
 - Employment or work is performing services in exchange for compensation. Compensation can be monetary, but can take other forms such as clothing, shoes, jewelry, or more. Unpaid employment and self-employment also count as employment.
- **What is unauthorized employment for immigration purposes?**
 - For immigration purposes, employment authorization is required to engage in employment while on a visa in the U.S. Unauthorized employment occurs when a noncitizen engages in work that is not authorized or exceeds the terms of their visa. Engaging in unauthorized employment can lead to the termination of an international student athlete’s visa and impact future immigration options or benefits.
- **What does “active” mean in the context of an NIL arrangement?**
 - An active NIL arrangement is where an international student athlete is being asked to take some action to complete their part of the arrangement. Active can otherwise be defined as “producing or involving action or movement.” Examples of active NIL arrangement are provided below.
- **Can engaging in active NIL arrangements in the United States be considered unauthorized employment?**
 - Generally, yes. Since active NIL arrangements require action from the international student athlete it could be considered employment and require employment authorization for immigration purposes. Please note that any work performed in the United States, even for a foreign company, and even if paid to a foreign bank still counts as employment for immigration purposes.

ACTIVE NIL ARRANGEMENTS EXAMPLES

- ❖ U.S. companies agreeing to pay an international student athlete every time the athlete posts on social media to promote their company or brand.
- ❖ Foreign company inviting an international student athlete to make remote/virtual appearances over a video platform from the U.S. for a sports clinic abroad, with payment to the athlete’s foreign bank account.
- ❖ An international student athlete being paid by a company to play video games while in the United States with fans and receiving money for every game played.
- ❖ An apparel company offering an international student athlete a deal to sell t-shirts, where the international student athlete is charged with coordinating day-to-day operations, sales, and management decisions.
- ❖ Foreign company making a deal with an international student athlete for non-athletic performance in the U.S. while being paid in a foreign currency.
- ❖ A local company reaches out to an international student athlete for the athlete to film and star in a TV commercial, with filming occurring in the U.S. and broadcasted to a U.S. audience, and pays them for their appearance.
- ❖ An international student athlete sets up and leads a summer camp in the U.S. for individuals to pay a weekly fee to improve their athletic abilities in their respective sport.

- **What about engaging in active NIL arrangement outside the United States?**
 - Engaging in active NIL arrangements outside the U.S. are generally not a concern for U.S. immigration since the action(s) required from the international student athlete are not taking place on U.S. soil. It is important to save all documentation demonstrating active NIL arrangements were engaged in outside the U.S, including travel documents and records.
- **What does “passive” mean in the context of an NIL arrangement?**
 - A passive NIL arrangement is where an international student athlete is not being asked to perform an action for the completion of their part of the arrangement but may require the international student athlete’s acknowledgement or permission for a third-party to perform an action. Passive can otherwise be defined as “acted upon by an external agency.”
- **Can engaging in passive NIL arrangements in the United States be considered unauthorized employment?**
 - Generally, no. Since passive NIL arrangements do not require action from the international student athlete it is more likely not to be considered as employment or require employment authorization for immigration purposes. Please note that any work performed in the United States, even for a foreign company, and even if paid to a foreign bank still counts as employment for immigration purposes.

PASSIVE NIL ARRANGEMENTS EXAMPLES

- ❖ A local restaurant agrees to pay an international student athlete for use of their picture to promote their grand opening on social media where the athlete is not involved with the posting process.
 - ❖ An apparel company contacts an international student athlete for permission to use their name on a t-shirt and pays the student athlete from t-shirt sales, and the athlete does not engage in management of the company or sales process.
 - ❖ An agent or management company wishes to post on social media on behalf of the international student athlete for the athlete to receive compensation from a sports apparel company. The captions indicate the agent or company, and not the athlete, were responsible for the postings.
 - ❖ An illustration company asks permission from an international student athlete to draw and sell a caricature of the athlete and pay them from the profits.
- **What about engaging in passive NIL arrangement outside the United States?**
 - Engaging in passive NIL arrangements outside the United States are generally not a concern for U.S. immigration since there are no action(s) required from the international student athlete that take place on U.S. soil.
 - **Are there other visa options available that may allow an international student athlete to participate in NIL arrangements in the United States while still attending school?**
 - Yes. Depending on the athlete’s athletic ability, other nonimmigrant visa options such as the P-1A for Internationally Recognized Athletes or the O-1A for Individuals with Extraordinary Ability or Achievement in their respective sport may be an option after consultation with an immigration attorney. These visas allow for nonimmigrants to attend school incidental to their primary purpose for being in the United States. There is also the possibility to obtain a green card through the filing of an EB-1A petition depending on athletic ability and achievement.
 - **Can an international student athlete participate in an NIL arrangement using Curricular Practical Training (CPT) or Optional Practical Training (OPT)?**
 - Yes, depending on the athlete’s course of study and the NIL arrangement. For example, athletes studying kinesiology may be able use CPT/OPT to participate in NIL arrangements involving a sports camp or clinic, or athletes studying marketing may be able to use CPT/OPT to participate in NIL arrangements involving branding and product promotion.
 - **Who can I contact if I still have questions on a potential NIL arrangement?**
 - Klasko Immigration Law Partners, LLP offers free 15-minute consultations for currently enrolled full-time students, which can be requested at <https://www.klaskolaw.com/contact-us/schedule-a-consultation/>.