



## THE WINTHROP CLINIC: TERMINATION AGREEMENTS

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*The Winthrop Clinic* is a special AD-only series of publications to help administrators utilize Win AD's continually expanding data and updated features. Each edition provides ADs with turn-key, actionable content on employing innovative ideas and strategies in order to increase revenue and save time by harnessing the power of Win AD.

In this edition of *The Winthrop Clinic* we offer a look at termination agreements. While no two termination agreements are precisely the same, there are commonalities that each athletic department should carefully consider when executing such an agreement. We summarize important considerations for termination agreements and the need for clarity in language and terms such as Dates, Employment Chattel (accessories and equipment), Benefits, and Discounts to Market (including Post-Termination Employment, Insurance, and Opt-Out Provisions).

We examined 56 recent termination agreements from public schools, each specifying essential dates relevant to the employment contract and the termination. The heart of the differences between termination agreements typically lies with who initiated the separation: the institution or the coach. All information is from the Win AD Coaches database and is presented in the hopes of providing ADs with valuable insights for drafting termination agreements.



### DATES

At least one date will always be specified in the termination agreement: the termination date. The termination letter serves several purposes, but its main function is to formally specify a clear "end" date of employment. The dates that many schools identify in the termination letter are usually the notice of termination date, the actual termination date, and the contract expiration date.

#### INSTITUTION INITIATED TERMINATION:

Former Oregon State coach, *LaVonda Wagner*:

**Notice of Termination:** 6/1/10

**Termination Date:** 6/15/10

**Contract Expiration Date:** 6/30/13

Former South Alabama coach, *Rick Pietri*:

**Notice of Termination:** 3/15/13

**Date Prepared:** 3/25/13

**Effective Date:** 6/30/13

#### COACH INITIATED TERMINATION:

Former Youngstown coach, *Cindy Martin*

**Letter of Resignation:** 3/11/10

**Received:** 3/16/10

**Last day of work:** 4/11/10



### EMPLOYMENT CHATTEL

As a condition of employment, coaches and staff receive accessories and equipment from the institution. Many of the termination letters will give a non-exhaustive list of things that the coach or AD should return by a specified date (for example: loaned cars, university-paid cell phones, credit cards, computers, office keys, university ID card, and equipment). Usually the items that provide services—automobiles, country club memberships, and cell phones—will cease effective immediately.



### BENEFITS

As a full-time employee, terminated coaches are provided various health benefits from the institution. Even if pay ceases benefits occasionally continue. The extensions range from one month beyond the termination date to several years. Usually, when the termination is institution-initiated benefits end more quickly (effective immediately to about 6 months) than for coach-initiated terminations, which can vary depending on the coach's future plans regarding retirement, health concerns, or desire to seek employment at another university.

One example between benefit end dates after an institution-initiated termination and benefits after a coach-initiated termination can be found at Rutgers.

Former coach, Mike Rice, was terminated from his position and the termination letter offered him \$375,000 in lieu of all compensation, benefits, and other obligations.

Alternatively when former Rutgers coach Tim Perneti resigned, he was offered his full base salary of \$453,000, plus bonuses earned, health and pension benefits for the next two years following his termination date, in addition to an automobile stipend for a year following his termination.

#### WHERE DISCREPANCIES IN BENEFITS OCCUR:

- If the amount owed has not been explicitly broken down
- Post termination payments as lump sum or annuity
- Incentives that have not accrued yet (APR, Post-Season Tournaments, Camps...)
- Covenants Not to Compete clause
- Appeal rights

- Vague statements in the letter (the parties will not disparage one another...)
- If coach receives comparable employment while payments and/or benefits are being received past termination

## DISCOUNTS TO MARKET

By including specific provisions in an employment contract or the termination letter, Athletic Directors can bypass some of the substantial liquidated damages and other amounts owed. These innovative clauses as a part of employment contracts are allowing ADs to save money when the relationship comes to an end. Those discounts range from as low as \$512.50 to \$40,029.67 and sometimes even as high as \$975,000. In the termination letters, ADs have to use specific language in order to find applicable discounts.

Of the 56 termination letters examined, only about 27% accounted for discounts to market. Some of the phrases indicate that payment and benefits should halt once the coach has obtained other employment:

### ACCEPTING OTHER EMPLOYMENT POST-TERMINATION

- *"If accepts position with an athletic department at a post-secondary institution, no further obligation from [the University]."*
- *"In the event Coach accepts employment in a head coaching position at a college or university, or in a head or assistant coaching position within the NFL on or before [said date], the University's obligations under [payments in consideration for mutual releases] section shall be reduced by 50 percent."*
- *"University is obligated . . . to pay liquidated damages, provided you continue to make reasonable and diligent efforts to find other employment. [T]he University's obligation . . . will end on the date you begin other employment."*

Others clauses indicate that a coach may pay for insurance or opt out of certain provisions:

### PAYING FOR INSURANCE

- *"Coach may elect to continue insurance coverage at his or her own expense."*

### OPTING-OUT OF CERTAIN PROVISIONS

- *"Option to cancel voluntary payroll deductions."*

### SPECIFIC TERMINATION TERMS

MIKE RICE, RUTGERS UNIVERSITY	TIM PERNETTI, RUTGERS UNIVERSITY
<p>Termination Date: 4/18/13</p> <p>University will pay:</p> <ul style="list-style-type: none"> <li>• \$375,000 in lieu of all compensation, benefits, and other obligations</li> <li>• \$100,000 in lieu of all unpaid bonuses</li> </ul> <p>No fringe benefits</p> <p>For period of 2 years (from date of execution of agreement), he will not solicit any current employees of the University's athletic department to leave their employment for another position. Nothing in this agreement constitutes an admission that anyone violated any statute, regulation, ordinance, or other legal obligation.</p>	<p>Termination Date: 4/5/13</p> <p>Voluntary resignation: Termination without cause University will pay:</p> <ul style="list-style-type: none"> <li>• Full base contractual salary through to 6/30/14: \$453,000</li> <li>• Bonuses earned/to be earned</li> <li>• Health and pension benefits through to 10/31/15</li> <li>• Automobile stipend through to 6/30/14</li> <li>• Additional lump sum payment equivalent of a year + 6 months annualized at \$435,000</li> </ul> <p>Does NOT have to return the laptop, iPad, or PDA provided by the University</p>



## TAKE AWAYS

Of the most recent termination letters, those that provide the best language include all relevant dates, the amount the coach will be paid, what the amount coincides with, when the coach will be paid, when and what university property or equipment should be returned, and specifics regarding what occurs if the coach finds new employment. Finally, in situations where a coach is terminated without cause, it is necessary to clearly explain that there is no admission that any statutes, regulations, ordinances, or any other legal obligations were violated.

The Win AD database now includes termination agreements, showing the full scope of both parties' relationship. The addition of .pdf termination agreements (documents that are executed at the time of separation, rather than the full contract) allows you to access relevant provisions and the pricing of executed separation agreements to optimize drafting.

The termination agreements of coaches listed in this Report can be found in Win AD's Coaches database. Simply select the coach, and click on the "compensation" tab.

- Contact Kevin Barefoot (800-218-2280 or [Kevin@WinthropIntelligence.com](mailto:Kevin@WinthropIntelligence.com)) to schedule a demo and discover how Win AD is helping Division-I and Division-II programs of all sizes and budgets increase revenue and save money with the best data available anywhere.

