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LAW360, "WNBA UNION CONTRACT IS A GOOD START, DESPITE LIMITATIONS"

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In 2003, as a high school senior, I did not dream of being a lawyer — I wanted to play professional basketball, so, I signed a scholarship to play point guard for the University of Miami, ranked No. 17 in the country at the time. My belief was that the University of Miami would be a pipeline to my ultimate goal of playing in the Women's National Basketball Association. I dreamed of the countless hours of work it would take in the off-season, the unity of a team as my second family and the glory of it all coming together to win on the biggest stage. I quickly realized that my perception of the WNBA was a misperception. The reality of the WNBA until Jan. 14, involved salaries that required a second job, limited, if any, job security, and taking a physical pounding because players were forced to play year-round (which included playing overseas) to earn a sustainable living. Thankfully, I had a Plan B that has served me well. In 2011, I became a member of the Florida bar, and, proudly, it is in that capacity that I have the privilege of analyzing the new collective bargaining agreement the WNBA and the WNBA Players Association agreed to in January. The CBA represents how far we have come as a society, yet also how far we still must go to achieve equality in workplace, even if that workplace is not your traditional office structure.

Pre-CBA: The Old WNBA

The WNBA was founded in 1996 as the female counterpart to the National Basketball Association.[1] It is undeniable that the NBA has provided significant capital contribution that has allowed the WNBA to remain in existence for 24 years;[2] however, the monetary figures for the athletes simply did not match the time, effort and dedication required to be a WNBA player. For example, in 2019, (1) the minimum rookie salary in 2019 was $41,965; (2) the top three draft picks in the WNBA draft made $53,537; and (3) the top paid player made $127,500.[3] Comparatively, the minimum rookie salary in the NBA in 2019 was $582,180;[4] the top three draft picks in the NBA routinely sign contracts that guarantee millions of dollars; and the top paid NBA player during the 2019-2020 season, Stephen Curry, made over $40 million during that season.[5] What is important to understand about equality for WNBA players is that, in this instance, equality is synonymous with fairness. No reasonable person suggests that WNBA players and NBA players should be paid the same amount — but WNBA players should be compensated, with money and benefits, commensurate with the effort and skill level it takes to produce in their field. Accordingly, not only did the old CBA fail to monetarily compensate the WNBA players adequately, but it was virtually devoid of any benefits that are foundational for women in the workplace.

CBA: The Modern WNBA

Marianne Curtis The CBA did not just happen on Jan. 14. Issues surrounding equal pay for women, regardless of the profession, have been percolating for decades, and, more times than not, law and policy will dig their heels in until social pressure simply refuses to be silenced. The CBA is no different. We all know the incredible

impact of individual female pioneers in traditional professions, but what we did not know, or fully understand, was the power of a group of individual pioneers collectively bringing their voice together through one of the most pervasive mediums in America — sports. We all witnessed the United States Women's National Team capture the hearts of every American with a pulse this past summer, so much so that, it is fair to say that this deeply divided country actually forgot about its political divisiveness, even if for a brief moment, during the USWNT's Olympic journey. The USWNT was playing soccer for more than a gold medal; it was playing to bring awareness to the pay disparity that women everywhere face.[6]

There is no doubt the USWNT was a major catalyst for the execution of the CBA, but, perhaps, the final push came from the NBA's biggest stars who spoke out on behalf of female athletes and effectively advocated for equal pay.[7] The CBA is another reminder of the power in having strong and supportive male allies. The CBA is 350 pages long and comprised of 41 articles with topics that range from salary to conditions surrounding players' Olympic hiatus. Some key provisions are addressed below:[8]

Salary

Per the CBA, the figures below will be automatically adjusted to existing contracts in 2020.

- The minimum salary for players with zero to two years of experience is now $57,000[9] — an approximate 30% increase from the previous agreement;
- The minimum salary for players with three or more years is $68,000; and
- The maximum salary for veteran players is $215,000 — an approximate 80% increase from the previous agreement.
- Benefits

The proverbial elephant in the room for women in any workplace is how their employer is going to address pregnancy. This is even more concerning for female athletes who rely on their bodies to make a living. The old agreement was embarrassingly arcane and offered little security for players seeking to pursue their careers as professional basketball players while also trying to plan a parallel personal life.

For many players, the previous agreement was such that they were forced to choose between their career and having children because the prime of their career directly intersected with the time for having children. The CBA makes quantum leaps forward in that it guarantees players 100% of their base salary if they are unable to play due to pregnancy[10] — compared to 50% in the old agreement.

Further, the CBA provides players childcare expenses up to $750 per month for players who are single moms or do not have a partner who is able to assist during practice, games and travel. The most forward-thinking provision of the CBA is that the WNBA will pay up to $20,000 for things such as adoption, surrogacy and fertility/infertility treatments. Companies across the U.S. are offering this option which allow female employees to delay pregnancy in favor of pursuing their careers without having to take a sabbatical during the critical early years of building their reputation and skillset. Now, the WNBA is following suit.

Educational Opportunities

The old agreement offered at least $75,000 to graduate school tuition, apprenticeship programs and financial education programs. The CBA expands this opportunity to include vocational/trade schools and undergraduate programs for players that entered the WNBA before graduating from college.[11]

Lodging and Travel

The CBA ensures that a player with a child under the age of 13 shall have a two-bedroom unit.[12] The mechanics of this provision call for each team to receive a stipend for the requisite number of players fitting this

category. For context, the New York Liberty has the highest stipend — $2,340/month. Additionally, while small in theory, when traveling, each player will have her own hotel room and premium economy on flights.

Use of Microphones

In Article 5, Section 18 of the CBA, as part of a standard contract, a player “upon reasonable request " shall wear a wireless microphone during things such as warm-ups, practices and games.[13] The idea is to introduce a more intimate relationship between the WNBA fans and players by providing more access to what occurs behind the scenes and in real-time.

At first, this seems a bit invasive; however, the important caveat addressed in the CBA is that a player cannot be disciplined by things that are recorded pursuant to this contractual requirement. That seems like an adequate safeguard in theory, but it does not account for the heated moments and passionate outbursts that inevitably happen in competitive sports that, now, players have to be wary of because, while they cannot be disciplined, their reputation can be tainted and they are not protected under state and federal law. As with social media platforms, sometimes too much exposure can be a bad thing.

Marketing and Promotion

Progress will not occur without a complete financial commitment from the WNBA and its investors. To attract the attention and fanfare, the WNBA must financially invest in its players through marketing and media outlets. In response, the CBA assures a pledge from the WNBA to spend an aggregate of at least $1,000,000 on marketing and promotional agreements to generate national exposure.[14]

There is a caveat, however. In return, players who take advantage of the marketing opportunities will be restricted from playing in additional leagues overseas. Players struggled with this concept because, while noncompete agreements are routine practice in the corporate world, most players compete overseas in addition to, rather than in lieu of, the WNBA.

Further, even the additional protection in the CBA does not come close to the compensation and notoriety offered by teams overseas. Accordingly, players are forced to choose between the established leagues overseas (which, generally, do not require exclusivity) and the potential rise of the WNBA through promises memorialized in the CBA.

Beyond the CBA

While the CBA represents great strides, not just for WNBA players, but women everywhere, there is still so much left to be accomplished.

By the time the next former-collegiate-athlete-turned-lawyer is dissecting the sequel to the CBA, I hope that pregnancy is no longer referred to as a condition, players are promoted without any restrictions because the fans’ demand exceeds the institutional hold, and a revenue share exists that is actually the 50/50 split initially reported by the WNBA — without the conditional language only a lawyer would understand when reading the fine print.

Through the CBA, the WNBA athletes pushed the door open on issues that needed to be addressed; now, the players have walked through that door — the next objective is to break the ceiling. I look forward to that day.

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