



WKU[®]

Board of Regents

EXECUTIVE COMMITTEE

October 25, 2019

Cornelius A. Martin Regents Room

Jody Richards Hall

**APPROVAL OF ATHLETIC EMPLOYMENT CONTRACT
BETWEEN
WESTERN KENTUCKY UNIVERSITY AND BRENT CHUMBLEY**

REQUEST:

The President requests approval of an Athletic Employment Contract between Western Kentucky University and Brent Chumbley.

FACTS:

Brent Chumbley was hired as Head Coach of the Men's and Women's cross-country and track programs on August 16, 2019. Contingent upon approval by the Board, the University and Mr. Chumbley have negotiated an Athletic Employment Contract, which outlines the terms and conditions of his employment as Head Coach.

BUDGETARY IMPLICATIONS:

None. The position is a budgeted position within the Athletics Department.

RECOMMENDATION:

The President requests approval of an Athletic Employment Contract between Western Kentucky University and Brent Chumbley.

MOTION:

To approve the Athletic Employment Contract between Western Kentucky University and Brent Chumbley.

**WESTERN KENTUCKY UNIVERSITY
ATHLETIC EMPLOYMENT CONTRACT**

This Employment Contract is made this the 16 day of August, 2019, between **WESTERN KENTUCKY UNIVERSITY** (the "University") and **BRENT CHUMBLEY** ("Coach").

**ARTICLE I
PURPOSE**

The **University** and **Coach** have entered into this Employment Contract because the **University** desires **Coach** to serve as Head Coach of the **University's** men's and women's cross-country and track programs. The **University** and **Coach** agree that head coaches of intercollegiate athletic teams at Western Kentucky University conduct their professional activities under circumstances unique in the family of **University** employees, including evaluation and scrutiny of team performances by the public and the media and control by external rules and regulations. These circumstances justify job security and commitment by **Coach** longer than one year, but less than a continuous appointment. For these reasons, the **University** has agreed to employ and **Coach** has promised to be employed by the **University** upon the following terms and conditions.

Coach shall be a staff employee at the University, with the terms of his employment restricted solely to this Employment Contract. It is understood and agreed that **Coach's** sole grievance rights shall be as set forth in 5.06 herein; provided, however, that **Coach** shall be subject to all **University** policies and procedures applicable to university staff employees. Furthermore, **Coach** understands and acknowledges that his employment with the **University** is not a tenure-track position and will not lead to tenure.

**ARTICLE II
POSITION**

2.01 DESCRIPTION OF DUTIES AND RESPONSIBILITIES

A. RECOGNITION OF DUTIES

Coach agrees to be a loyal coach of the **University**. **Coach** agrees to devote his best efforts full time to the performance of his duties for the **University**, to give proper time and

attention to furthering his responsibilities to the **University**, and to comply with and publicly support all rules, regulations, policies, and decisions established or issued by the **University**.

Coach also agrees that, notwithstanding any other provisions of this agreement, during the term of this Employment Contract, he will not engage, directly or indirectly, in any business which would detract from his ability to apply his best efforts to the performance of duties hereunder.

Coach agrees that his comments, actions, and conduct, both in public and private forums, will at all times reflect positively upon the **University**, the **University's** athletic programs, and the **University's** administration.

Coach further agrees that the level of compensation and benefits provided to him in this Contract are dependent upon his performance as a Head Coach, including the quality of the student athletes he recruits and retains, the team's performance and/or success under his supervision, and the existence and extent of the marketability of the program and the fan base he develops and/or maintains as Head Coach.

B. **GENERAL DUTIES AND RESPONSIBILITIES**

During the period in which the **University** employs **Coach** as Head Coach, **Coach** agrees to undertake and perform all duties and responsibilities attendant to the position of head coach of the men's and women's cross-country and track programs as set forth herein.

C. **SPECIFIC DUTIES AND RESPONSIBILITIES WHILE EMPLOYED AS COACH**

As of the beginning of this Employment Contract, the duties and responsibilities assigned to the **Coach** in connection with the position as head coach are as set forth below. The list of specific duties and responsibilities supplement, and is not exclusive of, the other general duties and responsibilities provided for elsewhere in this Employment Contract.

1. Provide the **University** with his most dedicated and conscientious service in carrying out the duties and responsibilities as set forth herein or as may be assigned by the Athletics Director and perform his duties and responsibilities in a manner consistent with state and **University** rules, regulations, and policies.
2. Be primarily responsible for all aspects of the men's and women's cross-country and track programs, including the budget, scheduling, recruiting, training, supervision, evaluation, and performance of student athletes, coaching staff, and men's and women's cross-country and track office clerical staff, subject to the approval of the Athletics Director.
3. Abide by and comply with the constitution, bylaws, and interpretations of the National Collegiate Athletic Association (NCAA) and the Conference USA, or any other men's and women's cross-country and track conference the **University** may choose to enter, as well as all **University** rules and regulations relating to the conduct and administration of the men's and women's and cross-country and track programs. In the event that **Coach** becomes aware, or has a reasonable cause to believe, that violations of such constitution, bylaws, interpretations, rules, or regulations may have taken place, he shall report the same promptly to the Athletics Director of the **University**.
4. Use his best efforts to ensure that all academic standards, requirements, and policies of the **University** are observed by him and by members of his coaching staff at all times, including those in connection with the recruiting and eligibility of prospective and current student athletes for the men's and women's cross-country and track programs, and ensure that said standards, requirements, and policies are not compromised or violated at any time.

5. Use his best efforts, in conjunction with the **University**, to ensure that all student athletes recruited for his men's and women's cross-country and track programs are provided proper academic counseling and are encouraged to and given every opportunity to meet the degree requirements necessary to graduate from the **University**.
6. Recruit, coach, and train student athletes to compete successfully against major Division I-A college competition in quality men's and women's cross-country and track programs.
7. Use his best efforts to ensure that his student athletes conduct themselves in a manner that will reflect a positive image for the **University** both on and off campus.
8. Use his best efforts to preserve the **University's** reputation and dignity and shall keep his public and private statements and written communications complementary to the athletics program and to the **University** and its administration. **Coach** agrees that as a recognized and notable spokesperson about intercollegiate athletics and education, he shall support the **University's** administration mission, policies, and decisions in all his dealings and activities with the public.
9. Use his best efforts to establish and maintain frequent, systematic, and personal communication concerning the University's academic mission and the Athletics Department's mission to the University's student body, faculty, and staff.

2.02 **DISCIPLINARY ACTIONS FOR VIOLATIONS OF NCAA OR CONFERENCE RULES AND REGULATIONS OR UNIVERSITY POLICY**

If **Coach** is found to be in violation of NCAA or Conference rules and regulations, or in violation of any **University** policy or procedure, **Coach** shall be subject to disciplinary and/or corrective actions by the **University**.

2.03 **REPORTING RELATIONSHIPS**

The parties (without delineating the particular terms and conditions) acknowledge that each party will use its best efforts and will cooperate with the other to provide the following support for the **University's** men's and women's cross-country and track programs.

- A. **Coach's** immediate supervisor for purposes of implementing the Contract shall be the Athletics Director of the **University**; all matters pertaining to the operation of the **University's** men's and women's cross-country and track programs shall be subject to the direction and control of the Athletics Director. The Athletics Director shall support **Coach** in the performance of his duties as set out in this Contract.
- B. The overall policy of the entire athletics program shall remain the exclusive prerogative of the **University**. **Coach** shall administer the daily routine and organization of the program as he deems necessary to effectuate its success, provided such administration shall be in accordance with the policies established by the Athletics Director.
- C. **Coach** shall have primary responsibility for decisions relating to choice and scheduling of men's and women's cross-country and track opponents, means of travel to be employed, hotel, food accommodations, size and content of the travel squad and party, and all other matters pertaining to the operation of similar phases of the men's and women's cross-country and track programs, but final decisions in such matters shall be with the Athletics Director. It is specifically agreed and understood that travel arrangements shall be made in conformance with any contractual agreements between the **University** and any travel agency.
- D. **Coach** shall have the right to release, hire, and retain assistant men's and women's cross-country and track coaches subject to the **University's** employment policies and procedures and subject to the approval of the Athletics Director, the President of the **University**, and the **University's** Board of Regents.

- E. Subject to the approval of the Athletics Director, **Coach** shall have primary responsibility for developing the budget annually for the men's and women's cross-country and track programs and, upon his request, will be assisted by the Athletic Business Manager.
- F. Further, if the University at any time decides to change its competitive status under the NCAA rules, regulations, and/or constitution regarding competition, (e.g., the University's men's and women's cross-country and track programs becomes Division II cross-country and track) to any status lower than Division I, or if the entire athletics program of the University is placed on probation by the NCAA due wholly to reasons unrelated to the men's and women's cross-country and track programs, **Coach** shall have the right to terminate this agreement immediately and all payment provisions or obligations of either party herein shall be null and void.

ARTICLE III TERM OF EMPLOYMENT

The initial term of this Employment Contract shall be for a period beginning on the day this document is fully executed by all parties and expiring on the 30th day of June 2023.

ARTICLE IV COMPENSATION / BENEFITS

In consideration for the promises he has made in entering into this Employment Contract, **Coach** shall be entitled to the following forms of compensation: base salary payments, benefits, and bonuses.

4.01 SALARY AND BENEFITS

- A. Effective August 1, 2019 and upon execution of this Contract, the base salary paid by the **University** to **Coach** for services and satisfactory performance of the terms and conditions of this Employment Contract shall be \$70,000. **Coach's** base salary shall be payable in equal monthly installments during the period of this Contract and paid in conformity with the payroll procedure of the **University**.

- B. **Coach** will be reviewed for his performance on an annual basis and, assuming satisfactory performance and that funds are available, he will be given an annual salary increase of his base salary as provided in paragraph 4.01(A) deemed appropriate by the Athletics Director and in accordance with the **University's** performance evaluation and compensation policies.
- C. **Coach** shall be eligible to participate in a group insurance, retirement, and voluntary payroll deduction program on the same basis and with the same **University** contributions that apply to the **University's** non-academic administrative staff.
- D. The **University** shall furnish to **Coach**, for his use on a loan basis during the term of his Employment Agreement, one (1) automobile and shall pay for automobile liability and comprehensive insurance and taxes, if applicable, upon said vehicle. **Coach** shall be solely responsible for all upkeep, maintenance, and/or repair of vehicle. If an automobile is not available, the **University** shall provide the **Coach** with an annual cash stipend of \$4,000 per year (\$330 per month).

4.02

COACH'S BONUS

- A. In consideration of the base salary noted herein, the **Coach** shall be entitled only to the following bonuses from this date forward:
1. CUSA Coach of the Year (Men)-\$2,500 (Cross Country, Indoor, Outdoor) per season award
 2. CUSA Coach of the Year (Women)-\$2,500 (Cross Country, Indoor, Outdoor) per season award
 3. NCAA Cross Country Participant or (Regional Top 50)-\$750 per participant
 4. NCAA First Round Participant (Indoor, Outdoor)-\$250 per event participant
 5. NCAA All-American (Cross Country, Indoor, Outdoor)-\$2,000 per individual or \$4,000 for relay event designee
 6. NCAA National Champion (Cross Country, Indoor, Outdoor)-\$3,000 per event participant

7. USTFCCCA National Coach of the Year - \$3,000
8. USTFCCCA Regional Coach of the Year - \$1,500
9. Male or Female cross country/track student athlete two, three, or four-year participant who have been on full or partial athletic aid who graduate - \$150 per student athlete.

B. Bonus for Academic Progress Rate

The Athletics Department calculates and confirms a multi-year Academic Progress Rate (APR) for its athletic sports in the fall of each year, and released in February of the following year. The parties agree that any salary adjustments, bonuses, incentives or supplements which the **Coach** may be entitled to and which are earned in a particular fiscal year are based on the following:

1. \$1,000 if the APR meets or exceeds 965 (Women's Indoor, Outdoor, Cross Country); per team per year
2. \$1,000 if the APR meets or exceeds 965 (Men's Indoor, Outdoor, Cross Country); per team per year
3. Multi Year APR:
 - a) \$1500 if the Multi-Year APR meets or exceeds 985 (Women's Indoor, Outdoor, Cross Country); per team per multi-year
 - b) \$1500 if the Multi-Year APR meets or exceeds 985 (Men's Indoor, Outdoor, Cross Country); per team per multi-year
 - c) If a single team in men's (Cross Country, Indoor, Outdoor) under **coach's** direction fails to meet the 930 standard in a single year or multi-year calculation, coach will forfeit any and all bonuses under the APR category for men's sports.
 - d) If a single team in women's (Cross Country, Indoor, Outdoor) under **coach's** direction fails to meet the 930 standard in a single year or multi-year calculation, coach will forfeit any and all bonuses under the APR category for women's sports.
4. Flexible bonuses: The following bonus provisions will be awarded to the **Coach** if achieved and also may be assigned to (i.e. paid to) other full time assistant coaches

in the track & field program at the discretion of the Coach and with approval from the Athletics Director:

- a) Conference Team Championship (Men)-\$5,000 (cross country, indoor, outdoor) per team championship
 - b) Conference Team Championship (Women)-\$5,000 (Cross Country, Indoor, Outdoor) per team championship
 - c) NCAA Championship meet top 25 team finish (Men's & Women Cross Country, Indoor, Outdoor) - \$5,000.
5. Longevity Bonus: As an additional incentive for a long term commitment on the part of the Coach, if the Coach is employed as of June 1, 2021, and has received a "satisfactory" or better performance evaluation as of that date, the parties agree that the Coach shall be paid the sum of five thousand dollars (\$5,000.00). It is agreed and understood that the bonus will be awarded / paid first from revenues available in the in the track budget with any remaining funds to be drawn from the Athletics administrative budget.

It is agreed and understood that all bonuses will be awarded/paid first from revenues available in the men's and women's cross-country and track budget with any remaining funds to be drawn from the Athletics administrative budget. No other bonuses or supplemental payments shall accrue to the Coach.

4.03 OPPORTUNITIES TO EARN OUTSIDE INCOME

While Coach is representing the University as head men's and women's cross-country and track coach, he shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

General provisions concerning outside income. The following general terms and conditions shall apply to each case in which Coach seeks to or makes arrangements to earn outside income as a result of his being head men's and women's cross-country and track coach:

- A. University obligations are primary. Such outside activities shall not interfere with the full and complete performance by Coach of his duties and obligations as a University coach,

- C. Intentional serious violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the **University**, the Conference USA, or the NCAA by a member of the men's and women's cross-country and track coaching staff or any other person under **Coach's** supervision and direction, including student athletes in the men's and women's cross-country and track programs for which **Coach** had prior actual knowledge.
- D. Any statement or behavior on the part of Coach which serves to bring disrepute upon or causes embarrassment to the **University**, the Athletics Department, its administration, or the men's and women's cross-country and track programs.
- E. Failure to faithfully and conscientiously devote diligent efforts to perform the duties stated herein within the budget allocated to the men's and women's cross-country and track programs in each particular fiscal year, and according to the policies and procedures established by the University.
- F. Deliberate violations of any duties or responsibilities outlined in this Employment Agreement or refusal or unwillingness to perform such duties or responsibilities in good faith and failure to cure such violations upon thirty (30) days written notice from the Athletics Director. With regard to the provisions of paragraph 5.01(D) herein, the University agrees that Coach will be given the opportunity to correct violations of this provision; provided, however, that Coach agrees that the University shall have absolute discretion to approve, control, and direct all aspects of the nature of the "correction" (i.e., timing, content, audience, forum, etc.), and Coach agrees that he shall immediately comply with the University's directives in this regard in accordance with the provisions of 5.01(F) and (G).

G. It is agreed and understood that the thirty (30) day notice provisions provided for in 5.01 (F) shall not apply to repeat violations (repeated similar conduct), and in such instances, Coach shall be obligated to immediately correct and/or cure the violation. Failure to immediately correct and/or cure the conduct and throughout the remainder of the contract will constitute a breach of this Agreement and "just cause" for termination of the Agreement.

5.02 UNIVERSITY'S OBLIGATIONS UPON TERMINATION FOR CAUSE

Should the University determine that Coach has violated the provisions of Section 5.01, herein, notice of same and notice of the termination for cause shall be delivered to Coach by the Athletics Director, in writing, to the addresses provided in Section 6.07. In the event this Employment Agreement is terminated for cause in accordance with the provisions of Section 5.01 hereof, and at the time of such termination if there is more than one (1) month of unexpired term of this Contract, the "severance fee" shall be computed and paid as if the unexpired term of this Contract was only one (1) month. The "severance fee" will be calculated solely on the base salary shown in Section 4.01. Coach shall not be required or obligated to perform any further service or duties for the University to be entitled to the "severance fee." In any meeting between University official(s) and Coach, relating to termination for cause, both the University and Coach have the right to have representation by legal counsel present.

5.03 TERMINATION BY UNIVERSITY WITHOUT CAUSE

The University shall have the right to terminate this Employment Contract prior to its normal expiration date without cause. Termination "without cause" shall mean termination of this Contract on any basis other than those set forth in Section 5.01. Termination by the University without cause shall be effectuated by delivering to Coach written notice of the University's intent to terminate this Contract without cause on or before January 31 of the year of termination.

5.04 LIQUIDATED DAMAGES UPON TERMINATION BY EITHER COACH OR UNIVERSITY WITHOUT CAUSE

If either party terminates this Contract without cause prior to its expiration date in accordance with the provisions of Section 5.03 or 5.05 of the Athletic Employment Contract, the party terminating shall pay to the other party, as liquidated damages, the sum of:

| | |
|-----------------------------------------------------|----------|
| -If termination without cause prior to July 1, 2020 | \$50,000 |
| -If termination without cause prior to July 1, 2021 | \$40,000 |
| -If termination without cause prior to July 1, 2022 | \$30,000 |
| -If termination without cause prior to July 1, 2023 | \$20,000 |

The amount is payable within twelve months of the effective date of the contract termination. Failure to timely pay such liquidated damages shall constitute a breach of this Contract and such sum shall be recoverable together with reasonable attorney fees, in any court of competent jurisdiction. In no case shall the University be liable for the loss of any collateral business opportunities or any other benefits, perquisites, or income resulting from activities such as, but not limited to, camps, clinics, media appearance, apparel or shoe contracts, consulting relationships, or from any other sources that may ensue as a result of the University's termination of this Contract without cause, unless such termination is found to be in violation of any terms or provisions of this Contract. Should Coach decide to retire from collegiate men's and women's cross-country and track and thereafter does not accept employment as either a head cross-country and track coach for at least one full year following the date of his retirement, these provisions shall not apply.

5.05 **UNIVERSITY APPROVAL REQUIRED PRIOR TO NEGOTIATION WITH OTHER SCHOOLS OR EMPLOYERS**

The parties agree that should another coaching or sports-related employment opportunity be presented to **Coach** or should **Coach** be interested in another coaching position during the term of his Employment Agreement, **Coach** must notify the **University's** Athletics Director of such opportunity or interest, and obtain permission from the Athletics Director before any discussions can be held by **Coach** with anticipated coaching position principles, which permission shall not be unreasonably withheld.

5.06 **ARBITRATION**

It is specifically agreed and understood that any controversy or claim arising out of or relating in any way to this Contract or the breach of this Contract shall be settled by arbitration, in accordance with the rules of the American Arbitration Association. The issue pertaining to the arbitration should not be changed until the arbitrator issues a final ruling to all parties.

5.07 **TERMINATION BY DISABILITY OR DEATH**

It is expressly understood and agreed that this Contract constitutes a personal service agreement between the **University** and **Coach**. In the event a disability prevents **Coach** from performing the duties and responsibilities specified in this Contract, as certified by two (2) physicians selected or approved by the **University**, or in the event of **Coach's** untimely demise, this Employment Contract shall terminate and neither party, including **Coach's** estate, shall have any further rights or obligations hereunder, provided, however, that in the event of a disability as set forth herein, **Coach** shall be entitled to apply for and, if eligible, participate in the Kentucky Teacher's Retirement System disability retirement program and the University's Long-Term Disability Insurance Program.

**ARTICLE VI
MISCELLANEOUS**

6.01 **AMENDMENTS TO AGREEMENT**

This Employment Agreement can only be altered or amended by written agreement between **Coach** and the **University's** designated representative.

6.02 **UNIVERSITY RETAINS ALL MATERIALS AND RECORDS**

All materials or articles of information, including, without limitations, personnel records, team information, films, tapes, statistics, office equipment, inventory, office or departmental decorations or furnishings, or any other material or data furnished to **Coach** by the **University** or developed by **Coach** on behalf of the **University** or at the **University's** direction or otherwise in connection with **Coach's** employment, if said items were purchased with state, **University**, donor, or private **University** enhancement funds, are and shall remain the sole and confidential property of the **University**. Within

thirty (30) days of the expiration of the term of this agreement or its earlier termination as provided herein, **Coach** shall immediately cause any such materials in his possession or control to be delivered to the **University**.

6.03 **TAX LIABILITIES**

Coach shall be responsible for any and all income tax liabilities, interest, and/or penalties related to any benefits received pursuant to this Agreement.

6.04 **LAWS OF THE COMMONWEALTH OF KENTUCKY**

This Agreement shall be interpreted under the Laws of the Commonwealth of Kentucky, and if any provision of the Agreement may be prohibited, this shall not invalidate the remaining provisions of the Agreement.

6.05 **ACKNOWLEDGMENT/ NO PRESUMPTIONS**

Coach acknowledges that he has read and understands the foregoing provisions of this Agreement, that he has been afforded and has exercised the opportunity to consult with personal legal counsel, that the provisions are reasonable and enforceable, and he agrees to abide by this Agreement and the terms and conditions set forth herein.

Furthermore, because each party acknowledges that they have reviewed and negotiated this Agreement with their individual legal counsel, both parties hereby agree that the rule of construction to the effect that any ambiguities are resolved against the drafting party will not be employed in the interpretation of this Agreement. Its terms and provisions shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Agreement.

6.06 **TIME IS OF THE ESSENCE**

Time is of the essence with respect to the obligations of the parties hereto.

6.07 NOTICES

All notices, requests, consents, and other communication under this Agreement shall be in writing and shall be mailed first class, registered or certified mail, postage prepaid to the following:

If to University:

Todd Stewart
Director of Athletics
Western Kentucky University
1906 College Heights Blvd. #11090
Bowling Green, KY 42101-1090

With a copy to:

Office of the General Counsel
Western Kentucky University
1906 College Heights Blvd. #11001
Bowling Green, KY 42101-1001


If to Coach:

Brent Chumbley
1254 WINTERCRESS
BOWLING GREEN KY 42104

Or to such other address of which the addressee shall have notified the sender in writing.

IN WITNESS WHEREOF, the parties hereto set forth their respective signatures on this Agreement as of the date set forth below.

~~WESTERN KENTUCKY UNIVERSITY~~

BY: 
Todd Stewart

DATE: 8-16-19

COACH

BY: 
Brent Chumbley

DATE: 16 AUG 2019