Texas Public POLICY FOUNDATION

STUDENT-ATHLETES ARE NOT EMPLOYEES

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INTRODUCTION

College athletics is approaching a crossroads. After years of rapid, sweeping change in student-athlete compensation practices that have left a patchwork of state regulation in its wake, some in Congress now propose to reclassify collegiate student-athletes across the country as employees of their universities. While we sympathize with the desire to provide certainty and uniformity to student-athletes and universities, and although we see the need for some revenue-sharing framework, workplace regulation simply does not provide a viable template for college sports. Such a change would substantially increase student-athletes' tax burden—for *all* student-athletes deemed to be employees, including those who play less lucrative women's or Olympic sports. It would upend the student-athlete framework that has long defined intercollegiate sports and would replace it with a thicket of federal and state mandates—on safety and health, wage and hour, labor relations, and other issues—that were never designed for the unique world of athletics in higher education. This experiment would be costly, with predictably negative second-order effects: fewer teams, fewer scholarships, narrower pipelines for non-revenue sports, and an erosion of the educational character that distinguishes college athletics.

This Texas Public Policy Foundation white paper explains why Congress should not classify student-athletes as employees. Reclassification could convert scholarships and educational supports into taxable wages; federalize coaching and competition decisions; transform practices, travel, and training into time-clocked shifts; invite unionization and work stoppages that would destabilize seasons; reframe coaching judgments through the lens of Title VII and other employment discrimination statutes; magnify antitrust exposure; and expand state-law tort and workers' compensation liability. These changes would destroy the college sports model that Americans have long cherished.

This paper analyzes the effect of reclassifying student-athletes as employees in seven key areas: tax, workplace safety regulation under the Occupational Safety and Health Act, wage-and-hour obligations under the Fair Labor Standards Act, labor relations under the National Labor Relations Act (and parallel state labor regimes), anti-discrimination law under Title VII of the Civil Rights Act, restrictions on coor-

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dinated activity under the antitrust laws, and state-law tort and vicarious liability. (The test for employee status varies across these seven domains, and various legislative proposals may trigger employee status in some domains but not others; we consider all seven issue areas here for the sake of completeness. Federal legislation reclassifying student-athletes as employees would not require state laws to do the same, but we assume for present purposes that federal legislation would nudge state law toward reclassification.)

I. TAX

Employee status for federal tax purposes would trigger a comprehensive suite of federal withholding and reporting obligations for universities and significant tax exposure for student-athletes. Universities would need to onboard athletes as employees with Form W-4; run payroll to withhold income and FICA taxes; file quarterly Forms 941 and annual Forms W-2 and 940; provide Forms W-2 to each athlete employee annually; and reconcile wages with any non-cash benefits that count as taxable compensation (IRS, n.d.). For some universities, this would mean building and staffing payroll systems for hundreds of athletes across multiple sports, seasons, and eligibility windows, with constant roster turnover.

For student-athletes, among the most consequential changes would be the tax treatment of scholarships and other things of value they receive as a result of their athletic activities. The Internal Revenue Code excludes qualified scholarships from gross income only when the amounts received are not compensation for services (26 U.S.C. § 117; 26 CFR § 1.117-4). If student-athletes are employees, athletic scholarships could be recast as compensation for employee services, in which case their value becomes taxable wages subject to withholding. This same outcome could also extend to many non-cash benefits currently provided to student-athletes by universities. Housing stipends, meal plans, training-table nutrition, apparel and personal-use equipment, certain per diems, and portions of travel benefits may need to be valued and taxed unless a specific exclusion applies. If third parties provide non-cash items of value to the athletes in recognition of their athletic services (for example, local businesses that provide free meals, clothing, or other goods to student-athletes), those items could also be considered wages subject to tax withholding.

The adverse financial consequences to thousands of student-athletes could be staggering. These consequences would be felt not just by football and men's basketball stars—who often have high-dollar name-image-likeness deals now and lucrative careers ahead of them—but by *all* student-athletes who are reclassified as employees, including those who play women's or Olympic sports with very limited earning potential. Female student-athletes and those who play Olympic sports may even find themselves in the perverse position of taking out loans to pay the taxes on their athletic scholarships.

The student FICA exception would provide little relief. That exception shields certain wages earned by student employees from Social Security and Medicare taxes when the educational aspects of the relationship predominate and the student is not a full-time employee (26 CFR § 31.3121(b)-1). In season, however, many athletes exceed 40 hours of team-related activity per week, and the service component plainly predominates. Further, even for periods in which the athlete is scheduled to work less than 40 hours per week (during the off-season, for example), the student FICA exemption may be unavailable due to athletic-related time constraints. The result is full FICA taxation for both the athlete and the institution.

Reclassification also would ripple through employee-benefit rules. Many universities sponsor Section 403(b) retirement plans that, as a tax-qualification matter, generally must be available to all employees for elective deferrals (26 CFR § 1.403(b)-5). Adding large cohorts of short-tenure student-athletes would increase administrative complexity, invite nondiscrimination-testing issues, and expand fiduciary obligations (26 C.F.R. § 1.403(b)-5). Under the Affordable Care Act, applicable large

employers must offer affordable, minimum-value health coverage to full-time employees—generally those averaging 30 hours per week—or pay substantial penalties. During the season, many athletes may meet that threshold, forcing either enrollment in plans built for faculty and staff, development and administration of new student-athlete health plans, or payment by the university of employer-shared-responsibility penalties.

Furthermore, the law requires tax-exempt institutions to pay a 21% excise tax on compensation above $1 million paid to covered employees. If a handful of star athletes cross that compensation threshold, universities could owe excise taxes and would need to report compensation on publicly available Form 990 filings. That disclosure and expense would further professionalize the environment and spark controversies that distract from the academic mission. Public universities may face additional complexities in interactions between state law and federal excise-tax rules, thereby compounding uncertainty and administrative burden.

II. WORKPLACE SAFETY

Declaring student-athletes to be employees could place intercollegiate sports within the ambit of the Occupational Safety and Health Act's general duty clause for private institutions and within some state-plan equivalents for public universities and/or private institutions. The federal statute obligates employers to furnish a place of employment free from recognized hazards likely to cause death or serious physical harm and to comply with applicable standards. In a college-sports context, that mandate could sweep in practice fields, arenas, weight rooms, training tables, locker rooms, and team travel. The playing field would become an OSHA-regulated workplace, and student-athletes would become the regulated workforce.

OSHA has not historically promulgated sport-specific rules, in part because amateur and professional leagues manage risk through their own governance. Reclassification could scramble those lines. Once sporting activity is work performed by employees, the logic of hazard abatement points toward rules of play and practice becoming subjects of federal or state occupational regulation. The operations of a football training camp provide a noteworthy example. Heat-acclimatization protocols, contact limitations, the duration of two-a-days, and the sequencing of high-exertion drills are today set by a mixture of conference guidance, medical consensus, and institutional policy. Under an OSHA framework, each becomes subject to potential government-imposed compliance obligations, enforceable through inspections and citations. The same is true for lacrosse stick checks, wrestling weight-cut practices, hockey's tolerance for fighting, or the use of certain gymnastics routines. Over time, regulators could attempt to identify feasible and effective abatement measures for recognized hazards in these sports.

Compliance obligations would be heavy. Universities might need to implement written exposure-control plans for relevant hazards (29 C.F.R. § 1910.1030), maintain injury and illness logs (29 C.F.R. § 1904.4), develop incident-investigation protocols (29 C.F.R. § 1910.119(m)), and comply with protective-equipment regulations (29 C.F.R. § 1910.132). Medical surveillance obligations could extend to baseline and post-injury neurocognitive testing, heat-stress monitoring regimes, and exposure records for indoor air quality in natatoriums or arenas (29 C.F.R. § 1910.151). Even if regulators proceed cautiously, the prospect of willful-violation penalties (29 U.S.C. § 666(a)) following even minor injuries would drive unnecessarily risk-averse behavior—consequently altering practice content, curtailing certain higher-risk events, and increasing the cost and administrative weight of fielding a team in the first place.

Because public employers and some private employers are subject to regulation by state OSHA plans rather than federal OSHA (29 U.S.C. § 667), the regulatory landscape for college sports would fragment. A practice method deemed sufficiently safe in one state might be restricted in another; equipment standards could diverge; and return-to-play

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decisional authority could be allocated differently across jurisdictions. This patchwork would frustrate teams as they travel. A kickoff formation allowed at home might be disallowed on the road; a strength-and-conditioning session designed for one state's rules might need to be rewritten in another. That is not a recipe for clarity or fairness, particularly when the advent of conference play presupposes a national framework of competition.

Proponents might answer that OSHA will simply defer to existing sports-governing bodies. That hope is not a policy design. Once athletes are statutory employees, OSHA and state-plan agencies acquire duties that they cannot outsource. Regulators will be pressed—by unions, plaintiffs' lawyers, and interest groups—to translate recognized risks into enforceable standards. The result may not be only increased costs but also a gradual transfer of rule-setting authority from coaches, conferences, and independent medical advisors to regulators whose core mission is risk minimization.

III. WAGE-AND-HOUR RULES

Reclassification also could pull student-athletes within the Fair Labor Standards Act's minimum-wage, overtime, and recordkeeping requirements for non-exempt employees. Unlike many campus jobs, the work of intercollegiate athletics does not map neatly onto traditional schedules. Hours are highly variable and peak during in-season periods. Under the FLSA, compensable time could include practice, competition, team meetings, strength and conditioning, required film study, coach-directed individual drills, training-room treatments, mandated nutrition, recovery, and mobility sessions, required promotional or community events, and significant portions of team travel (29 U.S.C. § 207; U.S. Department of Labor, 2008). Universities would need a robust time-tracking infrastructure capable of capturing and verifying hours across dozens of teams, varied travel itineraries, and constantly changing rosters. The importation of the FLSA framework would fundamentally reframe athletic participation into units of compensable time, enforced by a federal statute that permits private collective actions, liquidated damages, and attorneys' fees.

Nor do the statute's exemptions offer a practical outlet. The white-collar exemptions require salary-basis pay at levels disconnected from college sports and hinge on duties tests for executives, administrators, and learned professionals—categories that do not fit student-athletes (29 U.S.C. § 213). Universities, therefore, would face surges of overtime during the competitive parts of each season, with inevitable disputes over what activities count and how to treat downtime on the road.

Layered on top are state and local wage-and-hour rules that often go further than federal law, such as higher minimum wages, mandated meal and rest periods, and split shift premiums (U.S. Department of Labor, n.d.). Schools that operate in multiple states or whose teams travel widely would need to reconcile these overlapping commands. The compliance teams and audit processes required to avoid serial wage-and-hour litigation would look less like a collegiate athletic department and more like a large employer, diverting resources from educational support into payroll administration.

IV. LABOR RELATIONS

Classifying student-athletes as employees would open the door to unionization and collective bargaining at private universities under the National Labor Relations Act and, through parallel state laws,

at public institutions. Athletes could seek to organize by team, by sport, or across sports; the contours of appropriate bargaining units would themselves be contested. Once a union is certified, the university must bargain in good faith over wages, hours, and other terms and conditions of employment (National Labor Relations Board, n.d.). For athletics, that means negotiations over practice schedules, mandatory workout limits, travel standards, health and safety protocols, grievance and discipline procedures, drug-testing regimes, media obligations, and transfer windows.

None of this is costless or tidy. Universities would need labor-relations infrastructure and outside counsel to manage multiple bargaining relationships across men's and women's programs. Negotiations would collide with competitive seasons and recruiting calendars. The possibility of strikes or lockouts—alien to the collegiate model—would become real. Work stoppages could cancel games, undermine broadcast contracts, and erode fan support built on traditions of amateur competition. Smaller conferences and non-revenue sports have little cushion to absorb these shocks; the likely response is consolidation around fewer sports and fewer schools able to sustain professionalized labor relations.

V. ANTI-DISCRIMINATION LAW

Employee status could recast coaching decisions and team dynamics as employment actions governed by federal anti-discrimination statutes. Title VII prohibits discrimination based on race, color, religion, sex, national origin, and, according to the Supreme Court, extends to sexual orientation and transgender status (42 U.S.C. § 2000e-2(a)(1); *Bostock v. Clayton County*, 2020). Adverse employment actions need not cause significant harm to be actionable; even reassignments, schedule changes, and other modest shifts could trigger liability when they affect the terms or conditions of employment and cause even a modicum of harm (*Muldrow v. City of St. Louis*, 2024). Classifying athletes as employees could expose universities to Title VII discrimination claims related to playing-time decisions, position assignments, travel-squad selections, participation in NIL promotions coordinated by the school, and discipline for team-rule violations. Moreover, retaliation claims would multiply if athletes contend that whistleblowing about safety practices, NIL arrangements, or coaching style led to reduced roles or scholarship consequences. The cultural costs of these changes would be large. Coaching relies on candid feedback and role clarity; reframing those interactions as personnel actions would chill the mentorship that is central to the student-athlete experience.

Title VII is only part of the story. The Americans with Disabilities Act would require reasonable accommodations that may conflict with competitive and safety imperatives—for example, scheduling adjustments that limit participation in mandatory practices, or modified conditioning protocols that affect readiness for competition (42 U.S.C. § 12112). Comparable state laws, often with broader coverage or different remedies, would overlay federal requirements. All of this would operate in addition to—rather than instead of—Title IX and education-focused civil-rights regimes.

VI. ANTITRUST

Reclassification also would reshape the antitrust landscape. For decades, courts evaluating NCAA rules have balanced pro-competitive justifications—most notably the preservation of a distinct product of amateur competition—against competitive restraints (*NCAA v. Alston*, 2021). As the system moves further from amateur status, that justification weakens. If student-athletes are employees, courts will be more likely to view compensation and eligibility rules as horizontal restraints on wages among competing employers rather than as eligibility rules within an amateur enterprise. That reframing invites treble-damages class actions challenging virtually any industry-wide coordination that is not shielded by a bona fide collective-bargaining relationship.

The potential consequences are predictable. To avoid liability, conferences and universities may eschew common rules that once protected competitive

balance, further accelerating a pay-for-play arms race that is already exposing cracks in college sports' foundation. Athletes will choose programs based primarily on cash compensation rather than fit, development, or education. Programs with the deepest pockets will consolidate top talent. Cross-subsidies from revenue sports to non-revenue sports will erode, shrinking opportunities for athletes in Olympic disciplines and women's sports that rely on institutional support. Meanwhile, in the absence of uniform rules, recruiting practices and transfer policies will become more volatile, undermining continuity in academic programs and team culture.

Some suggest that unionization will solve antitrust exposure by enabling the non-statutory labor exemption (*Brown v. Pro Football, Inc.*, 1996), but that is merely an argument for replicating professional-sports dynamics at the college level and destroying the distinctive product that college sports represent. Even where the exemption is successfully deployed, it may not shield agreements among schools in their entirety (*Clarett v. NFL*, 2004). The better course is to avoid reclassification and to preserve space for reasonable, education-anchored coordination that can survive antitrust scrutiny without importing the full machinery of labor law.

VII. STATE-LAW ISSUES: TORT AND VICARIOUS LIABILITY

Finally, treating student-athletes as employees carries additional significant state-law consequences. Under the doctrine of *respondeat superior*, employers can be liable for torts committed by employees acting within the scope of employment. Today, universities generally are not vicariously liable for the on-field conduct of student-athletes because those students are not employees (*Kavanagh v. Trustees of Boston University*, 2003). Reclassification could invite claims for intentional torts during competition (think of a retaliatory hit in football or even a fight in hockey) and for negligent acts during practices, team travel, or promotional events. Even where workers' compensation is available and exclusive, its applicability to athletic injuries would raise complex questions and new costs for institutions and state systems.

Public universities—and teams who play them—would face sovereign-immunity complexities and divergent state-law standards for public-employee claims, further balkanizing college sports. In some jurisdictions, damages caps or notice-of-claim statutes would apply (e.g., Md. Code § 11-108); in others, exceptions would swallow immunities. The variability would shape scheduling, travel choices, and risk management in ways that have nothing to do with education or competition. Smaller programs would be forced to reevaluate the feasibility of sponsoring certain sports in light of open-ended litigation exposure.

CONCLUSION

Congress should not declare student-athletes to be employees. Such a shift would impose punishing tax burdens on student-athletes, trigger sweeping federal and state regulatory regimes, invite labor conflict, intensify antitrust risk, and expand liability exposure. The cumulative effect would be fewer teams, fewer opportunities, and a less educational—and less American—model of college athletics. ■

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