The Seventh Circuit Speaks: Student Athletes are Not Employees

BY ANTHONY J. DRAGGA • JANUARY 27, 2017

On December 5, 2016, the U.S. Court of Appeals for the Seventh Circuit upheld a lower court ruling that student athletes at NCAA member schools are not employees of those schools, and are therefore not entitled to a minimum wage under the Fair Labor Standards Act.

In Berger, et al v. National Collegiate Athletic Association, et al, two women track and field athletes who ran at the University of Pennsylvania sued their University, the NCAA, and more than 120 other member schools claiming that they were employees entitled to a minimum wage for all hours spent in track and field activities.

The Court first affirmed the dismissal of the Plaintiffs' claims against the NCAA and the 120+ schools that the Plaintiffs did not attend, on the basis that the Plaintiffs' relationship with these institutions was "far too tenuous to be considered an employment relationship."

Next, the Court ruled that the Plaintiffs were not employees of Penn because student-athletes are not employees under the FLSA as a matter of law. The court rejected the application of the multi-factor tests recently developed regarding intern vs. employee, or longer-standing independent contractor vs. employee tests, and held that the very nature of the relationship precluded employee status. The Court stated their feeling on this issue in no uncertain terms, holding that. "[s]imply put, student-athlete 'play' is not 'work,' at least as the term is used in the FLSA."

Client Tip: *This case does not completely settle the question as to whether some student athletes may be included in an expansive definition of "employee" under the FLSA. In a suit that emphasizes the economic value derived from revenue generating college athletic programs, a former University of Southern California football player has recently filed suit against the Pac-12 Conference and the NCAA for minimum wage and overtime violations. Stay tuned for developments in this evolving area of the law.*

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