THE COLLEGE ATHLETE–EMPLOYEE:
FLSA and the End of Amateurism

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Abstract

As the legal and economic premises of National Collegiate Athletic Association (NCAA) amateurism collapse, Division I college athletics has reached an inflection point: At least some scholarship athletes—especially in revenue sports—may be deemed employees. This article uses the Fair Labor Standards Act (FLSA) as the clearest vehicle for assessing what that shift would mean in practice. Antitrust litigation, name, image, and likeness reforms, and the House v. NCAA *settlement have changed who can pay athletes and how; the unresolved question is whether and to what extent athletic participation will be treated as work under wage and hour laws—how to define compensable time (training, travel, "voluntary" activities), calculate overtime, and design lawful compensation structures.*

Drawing on the Third Circuit's decision in Johnson v. NCAA*, the article develops a workable framework for (1) determining employee status under the FLSA, (2) identifying the relevant employer(s) in the fragmented governance structure of college sports under joint-employment principles, and (3) operationalizing compliance inside athletic departments that have never been built to run timekeeping and payroll for athletes. It then identifies a major downstream consequence: classifying athletes as employees helps clarify Title IX treatment of direct institutional payments by situating those payments within Title IX's employment-compensation framework rather than the proportionality rules governing athletic financial aid.*

The article concludes that athlete–employee status under the FLSA is not only doctrinally plausible but increasingly difficult to avoid given the commercial realities of modern college sports. While the compliance burdens are substantial, the employment frame offers a more legally defensible—and administrable—structure for athlete compensation at the moment the "student-athlete" construct can no longer do the doctrinal work the industry demands.

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TABLE OF CONTENTS

INTRODUCTION

As the legal scaffolding of amateurism collapses, National Collegiate Athletic Association (NCAA) Division I college athletics appears to be rapidly moving toward an employment model for at least some of its athletes. This article takes that shift as a starting point and focuses narrowly on the Fair Labor Standards Act[1] (FLSA) to illustrate the legal and factual complications that arise if/when athletes are treated as employees.

Among the statutes that could shape the athlete–employment relationship, the FLSA offers the most direct vehicle for assessing what employee status would mean in practice. If athletes are covered, institutions would confront an array of compliance questions—whether minimum wage and overtime provisions apply, how to calculate compensable hours for practice, travel, and training, and whether athletics scholarships can be credited toward wage obligations.

This article proceeds in five parts. Part I traces the collapse of the amateurism model through case law and policy shifts. Part II examines the emerging legal framework for athlete–employment status under the FLSA. Part III analyzes the fragmented structure of college sports to identify potential employers under joint-employment principles. Part IV explores the practical challenges of FLSA compliance in the athletics space, if athletes are deemed employees. Part V considers one perhaps unintended consequence of recognizing athletes as FLSA employees: reframing (and in some respects simplifying) a recurring Title IX question regarding the treatment of direct payments to male and female athletes by schools using institutional dollars in the wake of the *House v. NCAA*[2] settlement agreement as well as touches on the interplay with other employment laws and future legislative initiatives.

I. THE COLLAPSE OF AMATEURISM

For most of the last century, the NCAA's model of "amateur" college athletics rested on a fundamental premise: Studentathletes are students first, not employees.[3] The very term "student-athlete" was coined in the 1950s as a deliberate legal defense against employee classification.[4] Walter Byers, the NCAA's first executive director, admitted the term was designed to "offset any tendencies for state agencies or other governmental departments to consider a grant-in-aid holder to be an employee."[5] For decades, courts and the public largely accepted the romantic idea that athletics

1 Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219 (2022).

2 House v. NCAA, No. 4:20-cv-03919-CW, 2025 WL 3751003 (N.D. Cal. June 27, 2025) (order granting final approval of settlement).

3 *See* Nat'l Collegiate Athletic Ass'n v. Alston, 594 U.S 69, 79-822021); NCAA Division I Manual § 12.01.2 (2020).

4 Walter Byers & Charles Hammer, Unsportsmanlike Conduct: Exploiting College Athletes 69–71 (1995).

5 *Id*.

scholarships and educational opportunity were ample compensation for a student-athlete's participation in intercollegiate athletics and that the "revered tradition of amateurism" justified strict prohibitions on athlete pay.[6]

However, as college sports morphed into a multibillion-dollar enterprise,[7] the claim of amateurism began to erode. In *NCAA v. Board of Regents*, the Supreme Court, in dicta, famously acknowledged amateurism as defining college sports' uniqueness.[8] Yet by 2015, Judge Claudia Wilken, sitting on the federal bench of the Northern District of California, observed in *O'Bannon v. NCAA* that the NCAA itself lacked any consistent definition of amateurism over time.[9] Rules had evolved to allow myriad forms of compensation to athletes (Olympic bonuses, stipends for cost-of-attendance, etc.), undermining the NCAA principle that college athletes must remain entirely uncompensated to be eligible to participate as amateurs. The reality, according to Judge Wilken, had become that amateurism is whatever the NCAA says it is at any given moment, often carved out when convenient to preserve the college sports machine.[10] *O'Bannon*, in turn, opened the door for further antitrust challenges of NCAA rules.

A watershed moment came with *NCAA v. Alston*.[11] In *Alston*, the Supreme Court unanimously affirmed lower court decisions enjoining certain NCAA rules limiting education-related benefits on antitrust grounds.[12] Writing for the majority, Justice Gorsuch noted that the NCAA's reliance on the offhand comment in *Board of Regents* as a full-throated endorsement of its unfettered authority to place restrictions on athlete compensation was misplaced. In noting that NCAA amateurism rules do not enjoy any special immunity from the law, Justice Gorsuch observed that college sports are "a massive business" fueled by lucrative multimedia contracts and with coaches, colleges, and conferences reaping enormous profits.[13] In a blistering concurrence, Justice Kavanaugh went further: "Nowhere else in America can businesses get away with agreeing not to pay their workers a fair market rate on the theory that their product is defined by not paying their workers

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6 *See Alston*, 594 U.S. at 92 (quoting *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 120 (1984); *O'Bannon v. NCAA*, 7 F. Supp. 3d 955, 973 (N.D. Cal. 2014), *aff'd in part, vacated in part*, 802 F.3d 1049 (9th Cir. 2015).

7 Christopher Palmieri, *The Billion Dollar Industry That Has Never Paid Its Money-Makers: The NCAA's Attempt at Compensation Through Names, Images and Likeness*, 37 Touro L. Rev. 2391 (2021).

8 *See Bd. of Regents*, 468 U.S. at 102 ("In order to preserve the character and quality of the 'product,' athletes must not be paid, must be required to attend class, and the like.").

9 *See O'Bannon*, 7 F. Supp. 3d at 1000 (N.D. Cal. 2014) ("[T]he NCAA does not consistently adhere to a single definition of amateurism.").

10 *Id.*; *See also* Taylor Branch, The Cartel: Inside the Rise and Imminent Fall of the NCAA (2011).

11 594 U.S. 69 (2021).

12 *Id.* at 107. The athletes also challenged the NCAA's restrictions on pay-for-play compensation in the courts below where the courts determined that those rules continued to have a pro-competitive justification and were not barred under anti-trust law. The athletes did not appeal this adverse ruling to the Supreme Court.

13 *Id*. at 79-80.

a fair market rate. The NCAA is not above the law."[14] This pronouncement—"the NCAA is not above the law"—became a rallying cry, for those seeking to challenge NCAA rules, including those restricting athlete compensation. Many interpreted Justice Kavanaugh's concurrence to be an invitation to sue the NCAA.

Almost immediately, the *Alston* decision unleashed new challenges and reforms. In July 2021, under pressure from the looming application of newly enacted state laws designed to allow athletes to profit from their name, image, and likeness (NIL) and still reeling from the unanimity of the *Alston* Court's refusal to give deference to its rules, the NCAA abandoned its long-standing prohibition on athletes monetizing their NIL in deals involving third parties operating separately from the schools.[15] The NIL era rapidly expanded athletes' economic rights in the free market: College players could suddenly sign third-party endorsement deals, earn appearance fees, and otherwise profit from their fame—freedoms utterly incompatible with old amateurism ideals—provided schools were not issuing the payments. Shortly after Alston, in 2022, numerous college athletes were reported to hold NIL deals topping one million dollars.[16] Lucrative NIL deals were not limited to male athletes. Gymnasts Livvy Dunne and Suni Lee were both reported to have an NIL valuation in excess of one million dollars in 2022.[17] NIL was also reported to influence student-athlete transfer decisions.[18] Top college athletes today function much like professional free agents in a commercial market, making the label "amateur" ring even more hollow.

Challenges to long-held views of employment law soon followed the success of antitrust in challenging the NCAA's position. In *Johnson v. NCAA*,[19] a groundbreaking case, the Third Circuit held that college athletes could be determined to be employees of their institutions for purposes of the FLSA. The court devised a fact-specific test (discussed below) and pointedly rejected the NCAA's position that the "tradition" of unpaid play should automatically exempt athletes from coverage under employment laws.[20] The Third Circuit noted that the NCAA's once-"revered" tradition of amateurism was by now "frayed" and insufficient to categorically bar athlete–employee status.[21] This finding seemingly rebuked earlier decisions like the Seventh Circuit's 2016 *Berger* case, in which the court had affirmed the district court's reliance inter alia on NCAA amateurism as a reason

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14 *Id.* at 112 (Kavanaugh, J., concurring).

15 NCAA, *Interim Name, Image and Likeness Policy* (June 30, 2021), https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx.

16 Oliver Hodgkinson, *Top 10 NIL Deals in 2022: Ohio State and Alabama Players at the Forefront of CFB's Financial Revolution*, Coll. Sports Network(Dec. 21, 2022), https://collegefootballnetwork.com/top-10-nil-deals-in-2022/.

17 SI.com, *The Biggest NIL Earners in Women's Sports from 2022*(Dec. 22, 2022), https://www.si.com/college/2022/12/22/biggest-nil-deals-womens-sports-cavinder-twins-bueckers-dunne.

18 Hodgkinson, *supra* note 16.

19 108 F.4th 163 (3d Cir. 2024).

20 *Id.* at 174–75.

21 *Id* at 175.

to dismiss athletes' wage claims under the FLSA.[22] In so ruling, the court looked beyond the U.S. Department of Labor's prior interpretation that interscholastic athletics, primarily for the benefit of participants, are extracurricular activities generally excluded from the FLSA.[23] Instead, the *Johnson* court indicated there is need "for an economic realities framework that distinguishes college athletes who 'play' their sports for predominately recreational or noncommercial reasons from those whose play crosses the line into work protected by the FLSA."[24] In short, *Johnson* blew past the old dogma and treated the question of athlete pay as one of economic reality grounded in common-law agency principles, not labels.[25] For the first time, a federal appellate court opened the door for players to claim minimum wage and overtime protections under the FLSA.

The implications of *Johnson* are significant. It reflects a growing divergence in how courts analyze whether—and when—college athletes may qualify as "employees" under the FLSA. Earlier decisions in the Seventh and Ninth Circuits[26] dismissed similar wage-and-hour claims at the pleading stage, relying heavily on the educational context of intercollegiate athletics, the NCAA's traditional amateurism framework, and related administrative guidance. *Johnson*, by contrast, rejected categorical treatment and directed a fact-specific economic-realities inquiry into whether particular athletes' activities constitute compensable work.

This divergence increases the likelihood of further appellate development—and potentially Supreme Court review—of the circumstances under which college athletes can be treated as employees under the FLSA. Even without a definitive ruling from the Court, *Johnson* shifts leverage in practice: It makes it more plausible that wage-and-hour claims will survive dismissal, proceed to discovery, and create meaningful exposure and settlement pressure for the NCAA, conferences, and member institutions. The legal scaffolding supporting the traditional amateurism model is crumbling on multiple fronts.

Most recently, the *coup de grâce* for the old model arrived via a pair of class-action antitrust settlements, including *House v. NCAA*. In June 2025, Judge Wilken (of *O'Bannon* and *Alston* fame) approved a $2.8 billion settlement resolving claims that the NCAA and major conferences had illegally suppressed athlete compensation, including revenue sharing and the use of athlete NIL.[27] For NCAA Division I institutions who opted into the settlement, not only will thousands of athletes receive payments for past damages, but moving forward schools are now permitted to pay their athletes directly up to an amount capped in the aggregate at the same amount for all NCAA Division I schools covered by the Agreement.

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22 Berger v. NCAA, 843 F.3d 285, 291–92 (7th Cir. 2016).

23 U.S. Dep't of Labor, Field Operations Handbook § 10b03(e), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch10.pdf (last visited Jan. 13, 2026).

24 *Johnson*, 108 F.4th at 182 (citing the concurring opinion of J. Hamilton in *Berger*, 843 F. 3d at 294.

25 *Id.* at 167.

26 *Id*; Dawson v. NCAA, 932 F.3d 905, 910–11 (9th Cir. 2019).

27 House v. NCAA, No. 4:20-cv-03919-CW, 2025 WL 3751003 (N.D. Cal. June 27, 2025) (order granting final approval of settlement).

Put directly, the NCAA has formally abandoned its ban on direct pay from schools to athletes for a class of athletes. As of July 1, 2025, big-time college programs can write checks to players (beyond scholarships) for the use of their NIL or brand endorsement without fear of NCAA sanctions. This marks a historic pivot. What was once verboten—paying college athletes without regard to cost of attendance or related limitations—is now not only allowed but effectively compelled by competition: Schools that can afford it will rush to pay the maximum to attract talent. While pay for play is still purportedly prohibited, and third-party payments through associated entities must go through the College Sports Commission and show fair market value, the *House* settlement thus cements what *Alston* and NIL began: the collapse of the amateurism model as both a legal doctrine and a cultural ethos.

Collectively, these developments have dismantled the legal foundations of the traditional amateurism model and placed Division I athletics at a critical regulatory inflection point, particularly for institutions that have opted into the *House* settlement. For those institutions, it is increasingly difficult to maintain that athletes participate solely for educational or recreational purposes; the law now treats their athletic labor as economically significant within a commercial enterprise. As a result, universities that long characterized their athletes as students rather than workers must now confront the possibility that participation in intercollegiate athletics may trigger obligations under federal employment statutes.

The sections that follow examine those questions in detail, focusing on how the FLSA would apply if certain college athletes are deemed employees, which entities may qualify as their employer or joint employers, and the practical challenges of complying with wage-and-hour requirements in the collegiate athletics context.

II. Employee Status Under the FLSA

When analyzing whether college athletes are "employees," different bodies of law have used slightly different tests. Here, we focus exclusively on the test under the FLSA. The FLSA is the New Deal–era federal law guaranteeing minimum wage and overtime pay to covered workers. It defines "employee" in sweeping terms as "any individual employed by an employer" and defines "employ" as "to suffer or permit to work."[28] Courts have noted that this is "the broadest definition [of employee] that has ever been included in any one act."[29] In evaluating employee status for FLSA purposes, courts look to the "economic realities" of the relationship—examining the totality of circumstances to discern whether, as a matter of economic reality, the worker is dependent on, and working for the benefit of, the putative employer.[30]

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28 29 U.S.C. § 203(e)(1) (defining "employee" as "any individual employed by an employer"); 29 U.S.C. § 203(g) (defining "employ" as "to suffer or permit to work").

29 United States v. Rosenwasser, 323 U.S. 360, 363 n.3 (1945)

30 Tony & Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290, 301 (1985); Goldberg v. Whitaker House Coop., Inc., 366 U.S. 28, 33 (1961).

In the context of unpaid internships or trainees, courts have developed multifactor tests (like the Second Circuit's *Glatt* test[31]) to distinguish an employee from someone primarily receiving education or training. The *Glatt* test balances a list of nonexhaustive factors, including, for example, compensation expectations, training akin to an educational environment, ties to a formal education program and academic credit, duration, and displacement of other employees, to determine whether it is the intern or the employer who is the primary beneficiary of the relationship.[32]

In *Johnson v. NCAA*, however, the Third Circuit found those traditional intern/trainee tests "not sufficiently analogous" to college sports.[33] Judge Restrepo, writing for the court, crafted a bespoke test tailored to the "sui generis" nature of NCAA athletics.[34] In this way, *Johnson* is similar to prior decisions in *Berger* and *Dawson*, where the courts declined to apply *Glatt*'s multifactor test due to the unique nature of student-athlete status.[35]

Under *Johnson*, "college athletes may be employees under the FLSA when they: (a) perform services for another party, (b) 'necessarily and primarily for the [other party's] benefit,' (c) under that party's control or right of control, and (d) in return for express or implied compensation or in-kind benefits."[36] Each prong reflects a core aspect of an employment relationship. Notably, the test explicitly acknowledges that compensation may be "in-kind"—a direct nod to athletic scholarships (tuition, room, board) as a form of payment. In applying this test, the court emphasized looking past the NCAA's traditional rhetoric: the fact that the NCAA long insisted unpaid status is "the defining feature" of college sports was deemed a circular assertion, not a legal barrier.[37] Economic reality, not the label of "amateur," would control.[38]

Under *Johnson's* framework, the strongest employee-status case is likely to involve Division I football and men's basketball players at Power 4 institutions.[39]

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31 Glatt v. Fox Searchlight Pictures, Inc., 811 F.3d 528, 536–37 (2d Cir. 2016) (establishing the "primary beneficiary" test for determining whether unpaid interns are employees under the FLSA).

32 *Id.*

33 Johnson v. NCAA, 108 F.4th 163, 180 (3d Cir. 2024).

34 *Id*. at 177.

35 Berger v. NCAA, 843 F.3d 285, 291 (7th Cir. 2016); Dawson v. NCAA, 932 F.3d 905, 911 (9th Cir. 2019).

36 *Johnson*, 108 F.4th at 180.

37 *Id.*

38 *Id*. at 180–81.

39 Notably, in his concurring opinion in *Berger,* Judge Hamilton wrote, "I am less confident, however, that our reasoning should extend to students who receive athletic scholarships to participate in so-called revenue sports like Division I men's basketball and FBS football. In those sports, economic reality and the tradition of amateurism may not point in the same direction. Those sports involve billions of dollars of revenue for colleges and universities. Athletic scholarships are limited to the cost of attending school. With economic reality as our guide, as I believe it should be, there may be room for further debate, perhaps with a developed factual record rather than bare pleadings, for cases addressing employment status for a variety of purposes." 843 F.3d at 294.

These athletes plainly perform services—they train, practice, and compete for the institution, providing entertainment content that attracts spectators and lucrative media contracts. Their services are "primarily for the benefit" of their universities (and of the NCAA and conferences): Big-time programs generate tens of millions in revenue and immeasurable publicity for their institutions.[40] Schools capitalize on athlete performance to fill stadiums, secure conference affiliation, sign billion-dollar broadcast deals, and even bolster nonathlete enrollment and alumni engagement.[41] The control element is also manifest: Coaches and athletic departments exercise strong influence over athletes' schedules, training, and even personal lives (dictating practice regimes, game plans, curfews, social media policies, etc.).[42] And finally, athletes do receive compensation or benefits—athletic scholarships worth tens of thousands of dollars, plus additional stipends, academic support, gear, meals, and now direct payments. Indeed, *Johnson* recognized that an athletic scholarship can count as an "implied compensation" under the FLSA's test.[43] In sum, the top-tier scholarship athlete in a revenue sport looks very much like an employee under the FLSA's broad lens: providing a service under supervision for the enterprise's benefit, in exchange for remuneration (albeit in noncash form to date).

It bears noting that prior to *Johnson*, other courts had reached the opposite result—but largely without grappling with these facts. The Seventh Circuit in *Berger*[44] and the Ninth Circuit in *Dawson*[45] dismissed FLSA claims by college athletes, essentially treating the NCAA's concept of amateur status as dispositive. The Seventh Circuit leaned on the notion that any compensation is antithetical to the "revered tradition of amateurism," invoking the Supreme Court's language in *Board of Regents*.[46] The Ninth Circuit affirmed the dismissal of claims that student-athletes were employees of the PAC-12 and NCAA, noting that "the revenue generated by college sports does not unilaterally convert the relationship between student-athlete and the NCAA into an employment relationship."[47]

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40 NCAA, *2023 NCAA Division I Revenue Report*, https://ncaaorg.s3.amazonaws.com/research/Finances/2023RES_DI-RevExpReport_FINAL.pdf (last visited Feb. 28, 2026). (showing that many Division I football and men's basketball programs generate annual revenues in the tens of millions of dollars, along with significant media exposure and institutional branding benefits).

41 Daniel C. Hickman & Andrew G. Meyer, *Does Athletic Success influence Persistence at Higher Education Institutions? New Evidence Using Panel Data*, 35 CONTEMP. ECON. POL'Y 658 (2017), https://doi.org/10.1111/coep.12208; Grace E. Meadows, Thesis, *Athletic Success and Its Influence on Freshman Enrollment* (2020), https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1333&context=senior_theses.

42 NCAA, *GOALS Study of the Student-Athlete Experience* 18–20 (2020) https://ncaaorg.s3.amazonaws.com/research/goals/2020AWRES_GOALS2020con.pdf (finding that coaches and athletic staff strongly influence student-athletes' daily schedules, practice and training commitments, and social media activity).

43 *Johnson*, 108 F.4th at 180.

44 Berger v. NCAA, 843 F.3d 285 (7th Cir. 2016

45 Dawson v. NCAA, 932 F.3d 905 (9th Cir. 2019).

46 *Berger*, 843 F.3d at 293–94 (relying on the "revered tradition of amateurism" and quoting *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 120 (1984)).

47 *Dawson*, 932 F.3d at 910.

Again, *Johnson* expressly rejected these approaches, calling the NCAA's amateurism defense a "frayed tradition" that cannot preempt the economic-reality inquiry. The Third Circuit's divergence from its sister circuits sets the stage for potential Supreme Court intervention to harmonize the law. If that happens, the broad statutory text of the FLSA, the unmistakably commercialized reality of college sports, and the new direct-compensation regime suggest that *Johnson*'s reasoning could prevail over the older, formalistic view.

In sum, the legal landscape has shifted. Evolving practices and recent case law now indicate that the question may no longer be *if* certain college athletes could be considered employees, but rather which athletes, for whom, and under what conditions. Division I scholarship athletes—particularly in the major revenue sports—have the strongest claim to employee status because their on-field labor is the core product universities market and monetize, driving media-rights, ticketing, and sponsorship revenue primarily for the institutions' benefit. They are also subject to pervasive coach- and department-directed control, and both expect and receive participation-linked remuneration (full grants-in-aid, cost-of-attendance stipends, academic awards, meals/gear, and newly permitted revenue sharing), squarely aligning with the FLSA's economic-reality markers of benefit, control, and compensation.

In *Johnson*, the court acknowledged that playing intercollegiate sports will not always equate to work.[48] Student-athletes who participate in nonrevenue sports and/or outside of NCAA Division I athletics may have more difficulty establishing their services are necessarily and primarily for the institution's benefit due to the disparity in monetization of those sports and programs. These student-athletes may also be more likely to choose to participate in intercollegiate athletics for recreational or noncommercial purposes, including as a vehicle to fund their education. Nonetheless, it may be more difficult to differentiate the performance of services, level of control exercised by the institution, and in-kind or implied compensation received by these student-athletes. Fact-specific inquiries may lead to varying results; however, it is likely at least some student-athletes will be found to be employees. This variability matters operationally because it creates a foreseeable "mixed-status" regime—where some athletes are treated as employees and others are not—raising difficult compliance, governance, and equity questions.

This sets the stage for the next inquiry: Given that some college athletes will be deemed employees, who exactly is their employer in the labyrinthine structure of modern college athletics?

III. WHO IS THE EMPLOYER? THE FRAGMENTED STRUCTURE OF COLLEGE SPORTS

Whether a university, an athletic conference, the NCAA, or even a broadcast network qualifies as an "employer" turns on the FLSA's expansive conception of joint employment and the fact-intensive economic-realities inquiry courts apply in wage-and-hour cases. Although courts articulate this inquiry through various

48 *Johnson*, 108 F.4th at 177.

factor formulations, the statute defines an "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee,"[49] and courts therefore look beyond formal labels to examine the degree to which each putative employer meaningfully participates—directly or indirectly—in directing the work performed and in structuring the compensation or benefits tied to that work, and whether the entity derives more than an incidental benefit from it.[50] This analysis is familiar rather than novel; courts routinely apply it in franchise relationships, staffing arrangements, and platform-based work.[51] When applied to college athletics, the framework reveals differing degrees of control and benefit across institutional actors: Universities and affiliated athletic entities are the strongest candidates to satisfy the standard; conferences frequently present a colorable case for joint employment; and the NCAA and media partners occupy more attenuated—but not categorically excluded—positions.

Recent structural innovations complicate this "who is the employer" inquiry by introducing additional, sometimes for-profit intermediaries that may receive revenues, execute NIL contracts, or otherwise sit between athletes and the traditional university athletic department. For example, the University of Utah has announced the creation of a new for-profit entity—Utah Brands & Entertainment—structured to manage and monetize key athletics-related revenue streams in partnership with private equity (Otro Capital), raising the prospect that a nonuniversity affiliate could become a beneficiary of, and participant in, the athlete labor market.[52]

Likewise, other institutions have pursued corporate restructuring designed to increase flexibility and isolate business risk—such as the University of Kentucky's conversion of its athletics operation into a limited-liability company (Champions Blue LLC).[53] To the extent these affiliated or restructured entities participate in setting compensation terms, conditioning payments on athletic performance or availability, managing NIL or revenue-sharing flows, or otherwise influencing how and when athletic services are performed, they become directly relevant to the FLSA's economic-realities and joint-employment analysis rather than merely incidental corporate arrangements.

At the same time, the post-*House* compliance architecture is formalizing a parallel ecosystem of compensation and review—through the College Sports Commission's revenue-sharing framework and evolving guidance on NIL deals involving collectives—so that "associated entities" and other third-party payors

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49 29 U.S.C. § 203(d).

50 *See*, *e.g.*, Falk v. Brennan, 414 U.S. 190, 195 (1973); Zheng v. Liberty Apparel Co., 355 F.3d 61, 71–72 (2d Cir. 2003).

51 *See*, *e.g.*, Antenor v. D&S Farms, 88 F.3d 925, 932–33 (11th Cir. 1996); Salinas v. Commercial Interiors, Inc., 848 F.3d 125, 139–41 (4th Cir. 2017).

52 Dan Wetzel, *Beware, College Sports, Private Equity Has Arrived*, ESPN (Dec. 11, 2025), https://www.espn.com/college-sports/story/_/id/47267088/utah-private-equity-college-sports-otro-capital.

53 Univ. of Ky. Bd. of Trs., *PR 6: Creation of Champions Blue, LLC as an Affiliated Corporation of the University of Kentucky* (Apr. 25, 2025), https://www.uky.edu/trustees/sites/www.uky.edu.trustees/files/PR%206%20Creation%20of%20Champions%20Blue%2C%20LLC%20.pdf.

may increasingly exercise practical leverage over athlete compensation and (indirectly) athlete behavior through contract terms and market discipline.[54]

These arrangements may be motivated in part by governance, finance, and liability-management objectives, but under the FLSA's economic-realities and joint-employment principles, courts are likely to look past formal separations and ask whether the new entities (and the university) codetermine key terms of the athletes' work or compensation and jointly benefit from that work. Put differently, inserting a payor, affiliate, or "collective" between athletes and the institution may not eliminate employer status; it may instead expand the list of plausible joint employers.

Even in these emerging models, the university typically remains the anchor employer because it recruits, enrolls, and directs athletes' day-to-day athletic services; the more realistic question is whether affiliated entities, collectives, conferences, or other counterparties have accumulated enough control and benefit to be treated as additional joint employers alongside the school.

A. The University's Role

The athlete's university[55] is the most obvious employer candidate. The school recruits and admits the athlete, provides the scholarship (the primary form of compensation), and dictates the athlete's day-to-day obligations through its athletic department. Coaches—who are university employees—determine athletes' training schedules, performance standards, and ongoing status on the team. The university sets the academic requirements that athletes must meet to remain enrolled and in good standing, and in combination with NCAA rules, those standards determine whether an athlete is eligible to compete. The university also provides tutoring, medical care, and nutrition—akin to an employer providing support to its workforce. These services are significant not as employee "benefits," but as indicia of institutional supervision and integration—mechanisms through which the university manages athlete availability, performance, and risk in a manner consistent with directing ongoing work. In essence, if an athlete is effectively "hired" when recruited and given a scholarship, it is the university that issues that financial aid and scholarship agreement (essentially an offer letter or one-year contract, renewable annually—much like an employment contract). The university also would be the entity paying any wages directly and the entity that benefits most directly from the athlete's endeavors (in the form of wins, revenue, and institutional prestige). Thus, under virtually any test, the university's athletic department "looks, acts, and benefits" like the primary employer of the athlete.[56]

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54 Brandon Marcello, *College Sports Commission Sends Participation Agreement as NIL Rules Take Shape*, CBS Sports (Nov. 19, 2025), https://www.cbssports.com/college-football/news/college-sports-commission-nil-rules-regulations.

55 Some universities operate their athletic enterprises through separately incorporated but university-controlled affiliates. For purposes of this article, these affiliates are treated the same as the universities themselves, as the close integration of management, control, and operations would likely render the two entities joint employers under prevailing standards.

56 Johnson v. NCAA, 108 F.4th 163, 180–81 (3d Cir. 2024) (emphasizing universities' control over

Indeed, in the *Johnson* litigation, the plaintiff athletes specifically named both their universities and the NCAA as defendants, alleging each was their employer for wage-and-hour purposes. The NCAA and schools, for their part, did not dispute that schools exercise a substantial degree of control; instead, they argued that no athletes are employees at all due to the principle of amateurism (an argument the Third Circuit rejected). Going forward, if courts declare that athletes are employees, every school will have to assume the full panoply of employer responsibilities for its player employees—tasks like tracking hours and paying wages, which we address in Part IV.

B. The Conference's Role

Less obvious, but highly significant, is the role of the athletic conference. Conferences are collections of universities that agree to follow common rules and compete in a league structure. They orchestrate competition by setting season schedules, organizing championship tournaments, negotiating television contracts for conference games, and imposing additional rules or standards on member schools.[57] A conference's influence on athletes' "working conditions" can be substantial. For example, a conference might schedule a football game on a Thursday night (per a TV agreement)—thereby dictating that athletes travel midweek, miss additional classes, and play with short rest. This scheduling control directly affects the time and strain on the athletes, much as an employer sets a work schedule for employees. Conferences may also enact rules on practice limits, medical protocols, or disciplinary policies that member schools must enforce, indirectly controlling how athletes train and behave. In some instances, a conference can sanction an athlete or school for rule violations (for example, suspending a player for a game due to a fight or declaring a player ineligible for academics). These powers resemble those of an employer exercising disciplinary authority.

In short, the concept of joint employment could encompass conferences. A conference does not hire individual athletes directly or set their pay, but it arguably controls some conditions (scheduling, eligibility rules) and is deeply involved in the enterprise that benefits from the athletes' labor. Notably, the conference shares in revenue generated by the games the athletes play (through TV deals, merchandising, etc.).[58] Under this joint-employer analysis, a conference could well be found to meaningfully participate—directly or indirectly—in setting how, when, and under what constraints athletes perform athletic services alongside the school.

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athletes, the services athletes perform for the universities' benefit, and the in-kind compensation athletes receive).

57 *See generally*, *John Eckert, Student-Athlete Contract Rights in the Aftermath of "Bloom v. NCAA"*, 59 Vanderbilt L. Rev. 1083, 1091 n. 37 (2006) (noting that "conferences negotiate their own television contracts for football and distribute these funds among member schools").

58 Knight Comm'n on Intercollegiate Athletics, Conference Revenue Distribution for FY 2022 (showing that conferences distribute hundreds of millions in shared revenue from television contracts, postseason games, and merchandising to member schools), https://www.knightcommission.org/wp-content/uploads/2023/09/cla_financial_projections_report_2023.pdf (last visited Feb. 17, 2026).

C. The NCAA's Role

The NCAA is a step further removed from the athletes, yet it has historically exercised the most sweeping control over players and institutions through its bylaws and enforcement power. The NCAA sets overarching rules that govern athlete eligibility, amateur status (until recently), recruiting, practice limits, transfer procedures, and more.[59] For decades, NCAA rules strictly prohibited any pay beyond scholarships, capped the value of scholarships, and dictated that athletes could not profit from their own NIL. The NCAA also enforces academic standards and can punish athletes or teams for violations. In effect, the NCAA has acted as a national governing human resources (HR) department—albeit one that (until now) set rules to ensure athletes were not treated or paid as traditional employees.

With amateurism rules waning, the NCAA still imposes substantial conditions on the context of athletes' work. For example, the practice hour limits (the twenty-hour rule) come from NCAA bylaws.[60] The NCAA mandates that athletes take a minimum number of credit hours and make progress toward a degree to remain eligible, effectively tying their "employment" to an academic performance metric.[61]

The question is whether this rulemaking and oversight role makes the NCAA itself an "employer" for legal purposes or merely a regulatory body, as determined by the court in *Dawson*.[62] The NCAA does not issue scholarships—the schools do that. It does not handle day-to-day supervision—coaches do. It currently does not directly pay athletes (aside from small per diems or prize money during championships)—again, schools handle all financial aid. On the other hand, the NCAA indirectly benefits immensely from the athletes' labor: It controls lucrative championship events (for example, March Madness, which earns the NCAA nearly a billion dollars annually),[63] and it long profited from licensing athletes' NIL in video games and other products (as litigated in *O'Bannon*). It is also arguably the architect of the entire business model. Under the FLSA's broad definition, an entity that "acts directly or indirectly in the interest of an employer in relation to an employee" is also deemed an employer.[64] One could argue the NCAA acted "indirectly in the interest" of universities in maintaining a workforce of unpaid

59 Matthew J. Mitten et al., Sports Law and Regulation: Cases, Materials, and Problems 619–22 (5th ed. 2019) (describing the NCAA's comprehensive regulation of student-athletes' eligibility, recruitment, compensation, and playing seasons).

60 *See* NCAA, 2024–25 Division I Manual, §§ 17.1.7.1 (twenty-hour rule), 14.4.3.1 (progress-toward-degree requirements), https://web3.ncaa.org/lsdbi/reports/getReport/90008.

61 *Id.* (setting limits on countable athletically related activities and requiring athletes to make academic progress toward a degree).

62 Dawson v. NCAA, 932 F.3d 905, 11 (9th Cir. 2019).

63 Brian Roberts, *Indiana vs. Oregon and the NCAA March Madness Money-Making Machine*, Forbes (Mar. 13, 2025), https://www.forbes.com/sites/brianroberts/2025/03/13/indiana-vs-oregon-and-the-ncaa-march-madness-money-making-machine/ (noting that in fiscal year 2022-23 the NCAA generated about $1.28 billion in revenue, with approximately $1 billion coming from March Madness.

64 29 U.S.C. § 203(d) (defining "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee").

athletes by centrally enforcing the rules that kept them unpaid. Now that direct pay is allowed, if athletes are employees of their schools, the NCAA might still be seen as a co-employer to the extent it continues to set terms and conditions (practice limits, eligibility requirements, etc.) that govern the employment.

The counterargument is that the NCAA functions more like a regulator or trade association than an actual employer. It does not hire or fire individual athletes—apart from determining eligibility—and its rules are at least one step removed from the direct coach–player relationship. As one commentator has put it in a different context, extending joint-employer status to the NCAA "stretches traditional doctrine beyond its limits."[65]

Nonetheless, from the athletes' perspective, including the NCAA as a joint employer in litigation makes strategic sense. The NCAA has deep pockets and sets uniform rules affecting all athletes—obtaining a judgment or injunction against the NCAA can ensure industry-wide change, whereas suing one school at a time might yield only limited relief. In *Johnson*, the athletes did name the NCAA as a defendant, and the Third Circuit pointedly did not rule it out; it remanded for the lower court to apply the new test, implicitly leaving open the possibility that in some circumstances athletes might prove an employment relationship with the NCAA itself. In short, while the NCAA's employer status is debatable, it remains a prime target in athletes' efforts to enforce labor rights across the entire college sports landscape.

D. Media and Corporate Partners

Perhaps the most novel question is whether media companies (broadcast networks like ESPN, Fox, CBS) or major corporate sponsors could be deemed employers of college athletes. At first blush, this idea seems far-fetched—athletes have no contract with ESPN, and broadcasters do not directly manage players as an employer would. However, consider the influence broadcasters wield. Television networks pay conferences and the NCAA billions of dollars for the rights to broadcast games.[66] In doing so, they effectively purchase access to the athletes' labor output (the games) and often have a say in scheduling. For instance, TV networks dictate that a game kicks off at 8:00 p.m. for prime time, or that short-turnaround games occur on weeknights to fill TV slots.[67] These decisions impose working conditions on the players: A late-night game means players "work" (play) past midnight and travel home in the early morning, causing greater fatigue and missed classes. A network might also influence postseason expansions (more

65 See Matthew B. Tinley, *The NCAA as Joint Employer? Let's Be Real*, 18 DePaul J. Sports L. & Contemp. Probs. 115, 122–23 (2022) (arguing that extending joint employer status to the NCAA stretches traditional doctrine beyond its limits).

66 *See Current College Sports Television Contracts*, Bus. of Coll. Sports (Mar. 19, 2024), https://businessofcollegesports.com/current-college-sports-television-contracts/ (describing multibillion-dollar television agreements between major networks and the NCAA and athletic conferences, including the NCAA men's basketball tournament and Power Five conference media rights deals).

67 *See* Ben Huddleston, *Breaking down the CFB TV selection process,* Sports Media Watch (Nov. 3, 2024), https://sportsmediawatch.com/2024/11/college-football-tv-selection-process-explained (last visited Feb. 28, 2026).

games equal more TV content)—meaning athletes have to play additional games (that is, work more hours) to accommodate TV-driven tournament growth.

Under a joint-employer analysis, the question would be, Do these networks exercise sufficient control over the terms and conditions of the players' work? Scheduling and game timing may be relevant indicia of influence, but they are typically contractual and indirect and therefore weaker markers of control than the kinds of indicia courts often emphasize in FLSA joint-employment analysis—such as supervision of day-to-day work, control over pay practices and records, and authority over hiring, firing, or discipline. For that reason, absent unusual facts demonstrating a broadcaster's direct involvement in supervision or compensation practices, broadcaster influence is more likely to matter downstream—through indemnity provisions, allocation of labor-compliance costs in media-rights agreements, and contractual mechanisms that shift responsibility for wage-and-hour exposure—than through a successful showing that the broadcaster itself is a joint employer.

The NBC/Olympics analogy underscores the intuition: Broadcast leverage over scheduling rarely supplies the kind of employer-like control that wage-and-hour doctrine typically demands. If broadcast agreements and game operations incorporate regularly scheduled commercial breaks, that shapes how the game (and the players' effort) is structured. If a network insists on moving a football game to a Wednesday night, that effectively changes the players' work schedule for that week. One could argue this resembles situations in which a downstream business sets a worksite schedule that materially constrains how services are performed—an arrangement that, in some contexts, has supported joint-employment findings. Here, the network's control is somewhat indirect and exercised through agreements with conferences, but it undeniably affects athletes' working hours and conditions.

There is an intuitive reluctance to call a broadcaster an "employer" of talent it does not directly manage—for example, we do not generally call NBC an employer of Olympic athletes, even though NBC pays for broadcast rights and influences event scheduling for viewer-friendly times. Typically, the legal link is missing: The network does not hire or fire players, does not set their pay, and does not discipline them (aside from perhaps indirectly influencing league discipline for conduct that might tarnish a broadcast). Media companies thus might be one step further removed than even the NCAA in terms of direct control.

That said, if college athletes gain employee status, media companies will undoubtedly be part of the conversation. One can imagine a scenario where a creative plaintiffs' attorney includes ESPN as a defendant in an overtime lawsuit, alleging it was a joint employer because its TV scheduling directives caused athletes to work uncompensated late-night hours beyond the usual limits. Even if such a theory is untested, the mere potential could prompt media companies to seek indemnification clauses in their contracts with conferences (requiring the schools/conference to shoulder any labor costs or legal liabilities for the athletes). In essence, while a broadcaster-as-employer theory would be pushing the boundaries, the entanglement of media in setting the conditions of athletes' "work" means it cannot be entirely dismissed.

E. Parallels in Other Industries

The fragmented nature of college sports governance invites analogies to other complex work arrangements. These comparisons are illustrative only; the governing question remains the FLSA's fact-specific economic-realities inquiry into whether particular entities meaningfully participate in directing the work and structuring compensation and whether they derive more than incidental benefit from it:

- Gig Economy Platforms: Companies like Uber or DoorDash connect workers with end-users and set many terms of work via algorithms, even while claiming not to "employ" the drivers or couriers. Courts and legislatures have wrestled with whether such platforms are employers.[68] College sports has a similar platform quality: The NCAA or conferences connect the labor (athletes) with consumers (fans) under a unified brand, while denying any employment relationship. In some jurisdictions, gig economy companies have been deemed employers (or been required to assume employment obligations) when their control over workers is high.[69] Similarly, if the NCAA's or a conference's control over athletes is found to be pervasive, they too might be saddled with employer duties despite the formal denials.

- Franchise Systems: In franchise arrangements, joint employment can arise if the corporate franchisor exercises pervasive control over its franchisees' workers (for example, dictating even small details of hiring, scheduling, etc.).[70] The NCAA's control over minutiae of athletes' experience (for example, limiting hours of practice or types of benefits athletes may receive) could be viewed as akin to a franchisor's control over franchisee operations. If that control is sufficiently detailed, the franchisor (NCAA) may be treated as a joint employer of the franchisee's workers (the university's athletes).

- Staffing Agency Models: Often a staffing agency and its client are considered joint employers—the agency hires and pays the worker, but the client directs the daily work.[71] Analogously, a university could

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68 *See* O'Connor v. Uber Techs., Inc., 82 F. Supp. 3d 1133, 1141–43 (N.D. Cal. 2015); Dynamex Operations W., Inc. v. Superior Court, 416 P.3d 1, 5 (Cal. 2018); CAL. LAB. CODE, §§ 2775–2787(2025).

69 *See* Vega v. Postmates Inc., 475 F. Supp. 3d 251, 269–70 (S.D.N.Y. 2020) (holding that Postmates couriers could be employees under New York labor law due to the company's high degree of control over performance); *see also* People v. Uber Techs., Inc., No. CGC-20-584402, 2020 WL 5440305 (Cal. Super. Ct. Aug. 10, 2020) (California court granted preliminary injunction requiring Uber and Lyft to classify drivers as employees under AB 5 due to their control over driver work).

70 *See* Salinas v. Commercial Interiors, Inc., 848 F.3d 125, 140–42 (4th Cir. 2017) (explaining that joint employment can arise where multiple entities "codetermine the key terms and conditions of a worker's employment"); *see also In re* Domino's Pizza, Inc., 163 F. Supp. 3d 153, 165–67 (S.D.N.Y. 2016) (denying motion to dismiss joint employer claims against franchisor for allegedly exercising control over franchisee employees' training, uniforms, and scheduling).

71 *See* Castaneda v. Ensign Grp., Inc., 229 Cal. Rptr. 3d 187, 199–200 (Ct. App. 2018) (recognizing that staffing agencies and their clients may be joint employers when both exercise control over the worker); *see also* Torres-Lopez v. May, 111 F.3d 633, 639–40 (9th Cir. 1997) (finding joint employment where farmworkers were formally hired by one entity but the grower directed

> be seen as the "staffing agency" (enrolling the athlete and providing the scholarship/wages), while the conference or NCAA is the client directing the "what, when, where" of the work (scheduling games, setting eligibility rules, etc.). In this analogy, the NCAA and conferences are the ultimate beneficiaries directing the work, much as a worksite employer directs a temp agency's employees.

Each analogy is imperfect, but all reinforce a core legal principle: When multiple entities codetermine the terms of a person's work and all benefit from it, the law can treat all of them as employers responsible for compliance. In the college sports context, this means universities almost certainly are employers, and there are colorable arguments that conferences and the NCAA (and maybe even others like media partners) are joint employers of the athletes. It is quite conceivable that courts or regulators will find, for example, that a Power 4 conference and its member schools jointly employ football players—the school controls the local, day-to-day aspects, the conference controls broader aspects (scheduling, league rules), and both reap financial rewards.

Notably, in the *Johnson* case itself the athletes lumped the NCAA together with the schools in their FLSA wage claim. Similarly, in *Dawson*, athletes pursued claims against the athletic conference and NCAA.[72] This shows that athlete advocates are already pursuing multientity responsibility under wage laws. If multiple entities are deemed employers, they would each have legal obligations to the athletes. For instance, under the FLSA, joint employers are jointly and severally liable[73]—meaning an athlete could recover unpaid wages from the NCAA or a conference even if the school was primarily responsible for payroll. The risk and responsibility thus may not stop at the campus gates. The entire collegiate sports apparatus—from the campus to the conference office to NCAA headquarters, and even out to the broadcast studio—might be viewed collectively as the "employer" of the college athlete.

Recognizing this helps pinpoint who must be prepared to adapt to comply with employment laws. The following part assumes that college athletes (at least in the revenue sports in top divisions) are to be treated as employees and examines what it would actually look like for universities—and potentially conferences and other stakeholders—to comply with the FLSA's wage and hour requirements. In doing so, we confront the looming, underexplored issue that hangs over the end of amateurism: How do you implement employment law in an environment built entirely around an amateur model?

IV. FLSA COMPLIANCE: WHAT WOULD IT LOOK LIKE?

Assume that courts mandate that college athletes are employees entitled to minimum wage and overtime under the FLSA. This part explores the practical,

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their day-to-day work and benefited from their labor).

72 Dawson v. NCAA, 932 F.3d 905 (9th Cir. 2019).

73 *See, e.g.*, Falk v. Brennan, 414 U.S. 190, 195 (1973); Antenor v. D&S Farms, 88 F.3d 925, 937–38 (11th Cir. 1996); *cf.* 29 C.F.R. § 791.2(a) (2019) (rescinded 2021).

nuts-and-bolts aspects of FLSA compliance in the college sports context. How do you record work hours for an athlete? What counts as "work"—practices, games, training-table meals, travel, mandatory study halls? Would athletes be paid by the hour, by salary, or in some other way? Are there existing FLSA exemptions that could apply to them? What new infrastructure would universities need to implement, and how costly would compliance be? We delve into each of these questions below.

A. Work Hours Accounting

The FLSA requires that employers keep records of an employee's work hours and pay at least the minimum wage for all hours worked (and overtime pay for hours over forty in a week for nonexempt employees).[74] For college athletes, tracking "work hours" is a novel challenge because historically their time commitment has been regulated only by NCAA bylaws, not by a time clock. Currently, NCAA Bylaw 17 imposes the well-known twenty-hour rule, which nominally limits "countable athletically related activities" to twenty hours per week in-season (and eight hours per week in the off-season), with at least one day off per week.[75] However, this rule has loopholes. Only certain activities count toward the twenty-hour limit: practices, team meetings, and competitions (with each game counted as three hours no matter its actual length[76]). Many other activities are explicitly excluded from the twenty-hour cap: for example, weightlifting and conditioning sessions outside of formal practice; "voluntary" workouts where coaches are not present; time spent in training-room rehab or traveling to games; and any nonphysical meetings like study halls or compliance meetings.[77] In reality, a dedicated athlete's weekly time commitment far exceeds twenty hours. The NCAA's own surveys (cited in litigation) found athletes in some sports reporting thirty, forty, even fifty hours per week devoted to their sport.[78] The "voluntary" sessions are often voluntary in name only—players know that not participating could hurt their standing with the coach, so these activities are de facto required. Travel can consume entire days, yet under the twenty-hour rule, a road game might only count as three hours for the week.[79]

From an FLSA standpoint, many—and potentially most—of these hours could qualify as compensable "hours worked." The law defines work broadly as any

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74 *See* 29 U.S.C. §§ 206(a), 207(a)(1), 211(c); 29 C.F.R. § 516.2(a) (2024).

75 NCAA, 2023–24 NCAA Division I Manual §§ 17.1.7.1 (twenty-hour weekly limit during playing season), 17.1.7.2 (eight-hour weekly limit outside playing season), and 17.1.7.4 (one required day off per week).

76 *Id.* § 17.1.7.3.2.

77 *Id.* § 17.02.1.

78 NCAA, *GOALS Study of the Student-Athlete Experience* (2016), https://www.ncaa.org/news/2016/1/14/third-goals-survey-findings-unveiled.aspx.

79 NCAA, 2023–24 NCAA Division I Manual § 17.1.7.3.1 (providing that the time spent in competition counts as three hours toward the weekly limit, regardless of actual duration, and excluding travel time).

time spent predominantly for the employer's benefit and under its control.[80] If a coach or trainer requires an athlete's presence—be it a weightlifting session, a film study meeting, a team meal, or a bus trip—that is likely time under the employer's control. Even so-called "voluntary" workouts could be deemed work if, in reality, they are expected as part of team participation (courts will look past superficial labels to the substance—if missing a "voluntary" session results in lost playing time or other repercussions, it is not truly voluntary).[81] Notably, employee status would not dilute institutional control over athletes; it would formalize and, in many respects, expand it by converting informal expectations into legally enforceable work obligations. Travel time that is for the benefit of the team (for example, riding the team bus or plane to an away game) typically is compensable work time under FLSA rules, especially if it cuts across normal hours.[82] In short, the vast majority of time athletes dedicate to their sport—on-field and off-field—would likely be compensable hours under the FLSA.

This presents a compliance challenge. Most college athletes in season easily exceed forty hours of work per week if one counts everything they do for their sport. A 2015 lawsuit against UNC and the NCAA highlighted athletes often spending more than fifty hours/week on sports during the season.[83] If an athlete works, say, fifty hours in a week, the FLSA would mandate that ten of those hours be paid at the overtime rate of time-and-a-half. Thus, tracking hours is not just an administrative formality—it is critical for calculating overtime owed, as discussed more fully below.

One point to consider, some state labor laws impose even stricter requirements, such as higher minimum wages or daily overtime thresholds (for instance, California requires overtime pay for more than eight hours worked in a single

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80 *See* Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123, 321 U.S. 590, 598 (1944) ("[W]ork or employment [under the FLSA] means physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer."); *see also* IBP, Inc. v. Alvarez, 546 U.S. 21, 25 (2005) (emphasizing that "work" includes all activities "controlled or required by the employer and pursued for the benefit of the employer").

81 *See, e.g.*, Reich v. Parker Fire Prot. Dist., 992 F.2d 1023, 1026–27 (10th Cir. 1993) (holding that "voluntary" training was compensable work under the FLSA when employees were led to believe that attendance was expected and nonattendance would have adverse consequences); Wage & Hour Div., U.S. Dep't of Labor, *Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)* (July 2008), https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked (stating that time spent in "voluntary" programs is compensable if participation is required or if non-participation results in adverse consequences).

82 *See* 29 C.F.R. § 785.39 (2024) ("Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days."); *see also* 29 C.F.R. §§ 785.33–785.41(2024) (regulations governing when travel time is compensable under the FLSA).

83 Plaintiff's Complaint, McCants v. NCAA, No. 1:15-cv-00176 (M.D.N.C. Mar. 17, 2015), ¶¶ 57–61 (alleging that UNC football and basketball players routinely spent more than fifty hours per week on athletically related activities during the season).

day).[84] Schools in those states would have to comply with applicable state-law protections as well.

B. Overtime and Minimum Wage Considerations

Under the FLSA, the federal minimum wage is $7.25/hour, though many states and localities require higher rates.[85] Employers must pay at least this rate for all hours worked. For a college athlete, at first glance paying minimum wage for, say, thirty hours a week of practice (~$218/week at $7.25) seems trivial given the revenues involved. However, we must remember two things: (1) Athletes currently receive scholarships covering tuition, room, board—would those be counted as wages or not? (We address that shortly; generally, they likely cannot be counted as "wages" for FLSA purposes.) And (2) overtime pay at time-and-a-half is required for hours over forty per week for nonexempt employees.[86]

As noted, many college athletes in season would easily exceed forty hours in some weeks if we count all their commitments. If an athlete logs fifty hours in a week, the FLSA mandates that ten of those hours be paid at the overtime rate (1.5 × pay). This significantly increases weekly compensation. For example, if an athlete were paid $10/hour, forty hours yields $400 and the additional ten hours of overtime yields $150, totaling $550 for that week. Even at minimum wage, ten hours of overtime would add about $109 on top of the $290 base for forty hours. In short, overtime could substantially boost the pay owed to athletes during busy weeks.

Under the existing statutory scheme, most college athletes would likely be classified as "nonexempt" employees, meaning they are entitled to overtime pay. Nonexempt status is the default under the FLSA unless a specific exemption applies (such as the executive, administrative, or professional exemptions for certain white-collar jobs, among others).[87] It is obvious that athletes are not executives or administrators. Could they be "professionals"? The FLSA's professional exemption generally covers jobs requiring advanced knowledge in a field of science or learning (for example, doctors, lawyers) or creative professionals (artists, writers) in some cases.[88] Athletes do not fit the learned professional category, and while one might

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84 CAL. LAB. CODE § 510(a) (West 2024) ("Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.").

85 29 U.S.C. § 206(a)(1) (establishing the federal minimum wage at $7.25 per hour); *see, e.g.*, WASH. REV. CODE § 49.46.020 (2024); MO. REV. STAT. § 290.502 (2025).

86 29 U.S.C. § 207(a)(1) ("[N]o employer shall employ any of his employees … for a workweek longer than forty hours unless such employee receives compensation … at a rate not less than one and one-half times the regular rate at which he is employed.").

87 29 U.S.C. § 213(a)(1) (exempting from FLSA coverage "any employee employed in a bona fide executive, administrative, or professional capacity"); *see also* 29 C.F.R. Pt. 541 (2024) (defining and interpreting the "white-collar" exemptions, including duties tests and salary thresholds).

88 29 C.F.R. § 541.301(a) (2024) ("The term 'employee employed in a bona fide professional capacity' … shall mean any employee … [w]hose primary duty is the performance of work requiring advanced knowledge … in a field of science or learning … or work that is original and creative in a recognized field of artistic endeavor.").

argue they are highly skilled, the exemption for creative professionals is meant for work involving invention, imagination, or talent in an artistic field—sports performance has not been treated as such for overtime purposes.[89] Moreover, the white-collar exemptions (professional, executive, etc.) require the employee to be paid on a salary basis above a certain threshold (currently about $684/week). In short, even if schools attempted to classify athletes as exempt professionals, they would fail both the duties and salary tests.

A possible exception is that lawmakers could create a special exemption for college athletics. This could take the form of expressly exempting student-athletes from the definition of employee, thereby removing the applicability of the FLSA, or creating a new exemption category for student-athletes to exempt them from minimum wage and/or overtime requirements. Indeed, certain professional sports roles have been exempted in limited ways—for example, there is an FLSA exemption for employees of seasonal amusement or recreational establishments (like summer baseball teams),[90] and in 2018 Congress explicitly exempted minor league baseball players from minimum wage/overtime via the *Save America's Pastime Act*.[91] College sports, though, currently have no such exemption.

Schools thus face paying not just $7.25 for each hour, but $10.88 for each overtime hour beyond forty (if using the federal minimum wage as base). Realistically, schools might pay a higher base wage anyway—paying the bare minimum could be seen as unseemly given the revenue athletes produce, and many state laws or university policies might effectively push the rate up.

One big question, Would athletes be paid hourly or salaried? Schools might be tempted to pay athletes a flat stipend or "salary" per semester or year, mirroring the way scholarships are awarded. But under the FLSA, simply paying a fixed amount does not eliminate minimum wage or overtime obligations for nonexempt employees.[92] For example, if a school paid $20,000 for the academic year, it would still need to ensure that amount covers all hours worked at no less than the applicable minimum wage, plus an overtime premium for hours over forty in a workweek. If the effective hourly rate fell below the minimum wage or overtime hours were unpaid, the school would be in violation. One permissible approach for nonexempt employees on a fixed salary is the "fluctuating workweek" method, in which the salary covers all straight-time hours and overtime is paid at a half-

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89 *See* 29 C.F.R. § 541.302(a) (2024) (defining the creative professional exemption as applying to work "requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor" such as "music, writing, acting, and the graphic arts"); *see also* Reich v. Gateway Press, Inc., 13 F.3d 685, 699 (3d Cir. 1994) (noting that the creative professional exemption is narrowly construed and applies only to artistic or creative fields as defined in the regulation).

90 29 U.S.C. § 213(a)(3) (exempting from minimum wage and overtime provisions "any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if … it does not operate for more than seven months in any calendar year …" or meets certain revenue tests).

91 Save America's Pastime Act, Pub. L. No. 115-141, div. S, tit. II, § 201, 132 Stat. 348, 1127 (2018) (codified at 29 U.S.C. § 213(a)(19)).

92 See 29 C.F.R. § 778.113(a) (2024)

time rate. However, that method has strict prerequisites[93]—including a clear mutual understanding between employer and employee—and may be difficult to implement or explain in the college athletics context.

Perhaps a more plausible approach would be to pay athletes an hourly wage and have them log hours like part-time employees. They might even literally clock in for practice and clock out after training or treatment sessions. While that image seems antithetical to the culture of sports, it might be what compliance necessitates. Some have suggested a compromise: Pay athletes a stipend per game or per week that approximates expected hours, rather than an hourly wage. But if actual hours exceed the expectation, the law requires additional pay—a stipend cannot legally excuse underpayment if the hourly tally runs high.

A creative compliance idea floated in discussions is to credit the value of the athletic scholarship toward the wage requirement.[94] For example, if tuition is $30,000 per year and housing/meal benefits add another $15,000, a school might argue that the athlete already receives $45,000 in participation-linked remuneration. Could the school count that value toward its minimum wage obligation under the FLSA? Under current law, tuition assistance is unlikely to qualify as a wage credit, and the FLSA's limited in-kind credit mechanism generally applies only to "board, lodging, or other facilities" furnished in defined circumstances—not to education benefits valued at sticker price.[95] At the same time, *Johnson* underscores why the scholarship matters analytically: It treated athletic scholarships as potentially relevant in-kind remuneration when assessing whether athletes may be employees under an economic-realities framework.[96] But recognizing an in-kind benefit as evidence of compensation for employee-status purposes is distinct from allowing an employer to offset statutory wage-and-hour obligations with tuition benefits.[97] Absent a statutory or regulatory change, schools therefore could not simply assert that "our players already receive $45,000 in value, so minimum wage and overtime are satisfied"; they would need to pay cash wages (or restructure the scholarship into taxable wages, which would raise separate tax and financial-aid complications).[98]

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93 See 29 C.F.R. § 778.114 (2024) (outlining the fluctuating workweek method and its requirements, including a fixed salary, clear mutual understanding, and payment of additional half-time for hours over forty).

94 See Amber Stoner, *The State of College Play-For-Pay*, Palisades Hudson Fin. Grp. (Sept. 2024), https://www.palisadeshudson.com/2024/09/the-state-of-college-play-for-pay/ ((discussing whether schools might credit scholarships toward FLSA wage obligations and noting that such an approach is likely impermissible under current law).

95 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.27–531.36 (2024).

96 Johnson v. NCAA, 108 F.4th 163, 178–80 (3d Cir. 2024)

97 *Cf.* Tony & Susan Alamo Found. v. Sec'y of Labor, 471 U.S. 290, 301 (1985) (economic realities control; noncash benefits may be relevant to employment status but do not displace statutory protections).

98 29 U.S.C. §§ 206–207.

C. Exemptions and Special Challenges

We have touched on the likely absence of any perfectly fitting exemption for athletes under the FLSA. A few specific possibilities (and challenges) deserve mention:

- Seasonal Amusement or Recreational Establishment Exemption: The FLSA exempts employees of certain "amusement or recreational establishments" that either (1) operate for no more than seven months in a calendar year, or (2) meet an alternative receipts test.[99] Could a college athletic department qualify as such an establishment? Probably not. While an individual sport may have a defined competitive season (for example, football operates four to five months), athletic departments operate year-round, fielding teams in multiple sports and conducting off-season training, recruiting, and other activities. Courts have also construed "amusement or recreational establishment" narrowly, typically applying it to businesses whose primary function is providing recreation to the public (for example, summer camps, amusement parks, golf courses).[100] A university's core mission is education, not recreation, and it is unlikely to be classified as an "amusement or recreational" business for FLSA purposes. Accordingly, this exemption is unlikely to apply in any broad way to collegiate athletics.

- Unpaid Intern/Student Trainee: Courts sometimes analyze unpaid internships or student training programs under a classification framework—not as an exemption from the FLSA, but as a means of determining whether an employment relationship exists in the first instance. Under that approach, often described as the "primary beneficiary" test, the question is whether the individual is the primary beneficiary of the relationship or whether the putative employer derives the predominant benefit from the work performed.[101] That framework, however, has limited applicability to Division I college athletics. Unlike internships or academic training programs—where the work is typically short term, closely tied to a curriculum, and structured primarily for educational benefit—revenue-generating college sports involve sustained, highly supervised labor that is integral to a commercial enterprise. As the Third Circuit recognized in *Johnson*, treating such athletic participation as analogous to unpaid training risks collapsing a fact-intensive economic-realities inquiry into a categorical assumption untethered from the modern structure and scale of college sports.

- Student Employees in Other Contexts: The FLSA does not have a blanket exemption for students. In general, "an employment relationship will

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99 29 U.S.C. § 213(a)(3); see also 29 C.F.R. § 779.23 (2024) (defining "establishment" as a "distinct physical place of business").

100 *See, e.g.*, Jeffery v. Sarasota White Sox, Inc., 64 F.3d 590, 594–95 (11th Cir. 1995) (minor league baseball team qualified only because it met the receipts test).

101 *See, e.g.*, Glatt v. Fox Searchlight Pictures, Inc., 811 F.3d 528, 536–37 (2d Cir. 2016).

generally exist with regard to students whose duties are not part of an overall educational program and who receive some compensation."[102] Some on-campus jobs (like resident advisors or work-study positions) have special rules or exclusions,[103] but generally work-study students are paid at least minimum wage. The difference is those roles are discrete jobs with limited hours, whereas an athlete's "work" is of a different character and scale.

The Department of Labor's *Field Operations Handbook* (FOH) has historically suggested that participation in interscholastic athletics is generally not "work" under the FLSA where the activity is primarily recreational and for the benefit of the participant.[104] The FOH, however, is nonbinding agency guidance, not a regulation, and reflects assumptions about amateur sports that predate the commercialization and direct compensation now characteristic of Division I athletics.

Critically, the FOH's analysis rests on the premise that athletic participation is noncommercial and predominantly educational or recreational in nature. That premise is increasingly difficult to sustain for revenue-generating college sports in the post-*Alston*, post-*House*, and post-NIL landscape, where athletic labor is tightly supervised, monetized, and integral to institutional business operations. As the Third Circuit recognized in *Johnson,* reliance on generalized agency guidance cannot substitute for a fact-specific economic-realities inquiry where the underlying assumptions no longer match the structure of the enterprise.

In addition to these exemption issues, several *special challenges* would accompany the shift to employment status:

- Student vs. Employee Tensions: Consider when team commitments conflict with academics—historically this has been viewed as a student-life balance issue. As employees, could this become an employment law issue? Likely not directly under FLSA (missing class for a game is not an FLSA issue per se). Studying for class is for the student's benefit, not the employer's, so it would not count as work time. Schools certainly would not want to pay athletes for hours spent in the library. However, there is a blurry line: Mandatory "study hall" sessions orchestrated by the athletic department for the purpose of keeping athletes eligible could arguably be seen as partially for the employer's benefit (ensuring the athlete remains eligible to play). It is doubtful that would be treated as compensable time, but it is a gray area that could prompt disputes. Schools might respond by dropping mandatory study halls or making

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102 U.S. Dep't of Labor, Field Operations Handbook § 10b24(b), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch10.pdf.

103 *See, e.g.*, Wage & Hour Opinion Letter, 1994 WL 1004845 (Jan. 21, 1994) (concluding that RAs receiving housing/board and modest stipends were not employees for FLSA purposes); See 29 C.F.R. § 519.14(a) (2024) (excluding student-learners in certain programs from some FLSA provisions)

104 *See* U.S. Dep't of Labor, Field Operations Handbook §10b03(e), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch10.pdf (last visited Jan. 13, 2026). (describing interscholastic athletics as generally nonwork).

them clearly voluntary (and truly voluntary) to avoid any argument that those hours are work time.

- International Athletes: If treated as employees, most international students on F-1 visas would be violating their visa status by "working" beyond the limited on-campus employment allowed. F-1 student visa rules permit only very limited work (and usually only if related to studies or as part of practical training).[105] Paying international athletes a wage could jeopardize their immigration status.[106] Congress or immigration authorities would likely need to adjust visa rules to allow international athletes to be paid legally, or else many international players might become ineligible (or face visa revocation) when classified as employees. This is a significant complication that observers have noted[107] and would need a solution outside of the FLSA (likely through immigration policy tweaks).

D. Compliance Infrastructure

Transitioning to an employment model means athletic departments must adopt the trappings of HR compliance that other university units use. Key components of the necessary compliance infrastructure include the following:

- Time-Tracking Systems: Schools would need a reliable method to record athletes' hours worked, ranging from paper timesheets verified by supervisors to ID-based facility access logs to mobile applications that require athletes to check in for required activities. Given the volume and variety of athletic activities—and the informal nature of some, such as rehabilitation sessions or activities labeled "voluntary"—accurate tracking would be operationally complex. Institutions may need additional compliance personnel to monitor, verify, and reconcile reported hours. While coaches may resist the administrative burden such systems impose, effective supervision and verification would be necessary to avoid institutional exposure for unrecorded or off-the-clock work.

- Payroll Systems: Athletes would need to be integrated into the university's payroll infrastructure. Many large universities already employ thousands of students in campus roles, so paying students per se is not novel. Paying scholarship athletes, however—potentially on a year-round basis and with overtime calculations—would be new. Institutions would need to establish pay periods, process wages through standard payroll systems, and administer required tax withholding. Wages paid to athletes would be taxable compensation, in contrast

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105 8 C.F.R. § 214.2(f)(9) (2025).

106 *Id*.

107 Catherine Haight, *Leveling the Playing Field: Why DHS Must Act Now to Protect International Student-Athletes*, HAIGHT LAW BLOG,: https://haightlaw.com/leveling-the-playing-field-why-dhs-must-act-now-to-protect-international-student-athletes/ (last visited Feb. 17, 2026).

to scholarship amounts used for qualified tuition and fees, which are generally tax favored. Universities would also need to administer any lawful deductions, such as garnishments, and—if applicable under institutional policy, collective bargaining, or benefits eligibility rules—dues or benefit premiums.

- Reclassification of Scholarships: Institutions may reassess how athletic scholarships are structured alongside wage payments. One option could be to combine partial scholarships with hourly wages to cover the balance of an athlete's participation-related compensation. However, as discussed above, scholarships are unlikely to function as wage credits under existing FLSA rules, and any allowable in-kind credits (for example, for board or lodging) are narrow and administratively constrained. Another theoretical option would be to replace scholarships entirely with wages, but doing so would raise significant tax, financial-aid, and recruiting implications. More plausibly, schools would retain scholarships in their current form—particularly to cover tuition, which remains central to recruiting and is generally tax favored—and layer cash wages or stipends on top to compensate athletic work. That approach would require careful coordination between athletics, payroll, and financial-aid offices to account for interactions with need-based aid, cost-of-attendance stipends, and other aid formulas, and to avoid inadvertently disadvantaging athletes through increased taxable income or aid displacement.

- Overtime Management: University HR departments would need to monitor whether athletes are routinely working overtime and may adopt internal controls to manage predictable overtime exposure. For example, athletic leadership could require advance approval for required activities that would push an athlete's weekly hours beyond forty or establish scheduling guidelines to limit routinely mandated hours absent specific justification. Coaches might be required to obtain approval—potentially including budgetary sign-off—for training camps or other intensive periods that would generate recurring overtime. Over time, institutions could formalize internal policies governing practice and activity limits as part of wage-and-hour compliance. Unlike the NCAA's twenty-hour rule, which is rooted in student-welfare and competitive-equity considerations, such policies would be designed to align institutional practices with employment-law obligations. As a byproduct, clearer limits on required athletic time could also reinforce athlete well-being.

- Time Off and Breaks: The FLSA does not require employers to provide rest breaks or days off, though many states impose additional requirements. In jurisdictions with meal-period laws, athletes who work extended shifts may be entitled to meal breaks, and failures to provide or document those breaks can result in statutory penalties. Institutions will therefore need to consider how existing athletics policies—such as the NCAA rule requiring at least one day off per week—interact with employment-law obligations. In many respects,

those rules dovetail: Employers may provide days off without difficulty. However, if an athlete performs required activities on a designated off-day—for example, mandatory rehabilitation or treatment—that time may constitute compensable work. Clear internal policies would be necessary, such as limiting athletic activities on designated off days absent approval by medical or athletics staff and requiring that any approved activity be logged and compensated. Compensatory time off in lieu of overtime is generally unavailable in the private sector and permitted only in limited circumstances for public employers, meaning institutions cannot simply offset overtime with a later day off without still satisfying applicable overtime requirements.

- Hiring/Firing and Onboarding: Treating athletes as employees would require institutions to incorporate them into standard onboarding processes, including completion of work-authorization and tax-withholding forms and enrollment in payroll systems. International athletes would raise additional complexities, as employment eligibility would depend on immigration status and work-authorization rules; in some cases, participation as an employee may be limited or require alternative visa pathways or policy changes beyond athletics governance.

- Discipline and Separation: Employee status would also materially alter how athletic departments approach discipline and separation. Under current practice, a coach may remove a player from the team or decline to renew a scholarship for performance or conduct reasons, subject to NCAA and institutional rules. If athletes are employees, separation decisions—whether framed as removal from the roster, termination of paid work, or nonrenewal of an employment relationship—would implicate employment-law constraints. Depending on institutional policy, contract terms, collective-bargaining arrangements, or public-sector due-process requirements, schools may need to adopt more formal disciplinary and documentation procedures than athletics departments historically employ.

Other Consequences: Employee classification could also trigger collateral consequences, including potential eligibility for unemployment insurance under state law and the availability of grievance or dispute-resolution mechanisms. While at-will employment principles would still apply in many settings, termination decisions perceived as arbitrary, retaliatory, or inconsistent with stated policies could give rise to statutory or contractual claims. Over time, the athlete–institution relationship would begin to resemble an employment relationship not only with respect to compensation, but also in matters of onboarding, supervision, discipline, and separation—requiring significant cultural and procedural adjustments within athletic departments.

V. CONSIDERATIONS AND IMPLICATIONS FOR EMPLOYEE STATUS UNDER FLSA

There are a number of related considerations and implications of student-athletes being considered employees under the FLSA. Employee status under the

FLSA raises questions about Title IX[108] compliance, legal and practical implications of employee-status under other federal and state laws, and the heighted potential for federal legislation in this space.

A. Title IX Implications of Athlete Compensation

One potential implication of recognizing athletes as employees under the FLSA is that it may reframe (and in some respects narrow) the Title IX question that surfaced after *House* regarding institution-funded direct payments to athletes. The *House* settlement ushered in a new era of direct payments and revenue-sharing to athletes. Because those payments disproportionately favor football and men's basketball players,[109] schools have faced uncertainty over whether they should be treated as "athletic financial assistance" subject to the proportionality rule in 34 C.F.R. § 106.37(c)(1), or instead as compensation governed by Title IX's employment provisions, 34 C.F.R. § 106.54. Employee classification would strengthen the argument that institution-funded payments should be analyzed under the compensation framework—requiring the absence of sex-based pay discrimination while permitting differences grounded in nonsex factors such as market dynamics or role-specific demands—rather than as scholarship-like aid requiring proportional allocation.

Under Title IX, institutions must provide nondiscriminatory athletic opportunities and administer athletics-related financial assistance without sex-based disparity. The implementing regulations draw an important distinction between (1) athletic financial assistance and (2) employee compensation. For student "financial assistance," 34 C.F.R. § 106.37(c)(1) provides that athletic scholarship and grant-in-aid dollars must be awarded in a manner substantially proportionate to male and female participation rates; as a practical illustration, if women comprise roughly sixty percent of a school's varsity athletes, the Office of Civil Rights generally expects women to receive roughly sixty percent of the institution's total athletic scholarship dollars. By contrast, Title IX's employment provisions, set forth in 34 C.F.R. § 106.54, prohibit sex-based distinctions in compensation: a recipient "shall not make or enforce any policy or practice which, on the basis of sex, makes distinctions in rates of pay or other compensation." Pay differentials may be permissible where supported by sex-neutral factors (such as experience, market conditions, or role-specific responsibilities), provided the institution is not using sex as a basis for setting compensation. In short, the financial-aid rules emphasize participation-based proportionality, while the employment rules emphasize nondiscriminatory compensation practices rather than proportional allocation.

This distinction has concrete consequences. By classifying athletes as employees rather than students receiving "aid," payments to them would be reviewed under

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108 Title IX of the Education Amendments Act of 1972 (20 U.S.C. §1681 et seq.)

109 House v. NCAA, No. 4:20-cv-03919, slip op. at 6–10 (N.D. Cal. June 6, 2025); Dan Murphy, *Judge Approves $2.8 Billion Settlement, Clearing Way for Colleges to Pay Athletes*, ESPN (June 6, 2025), https://www.espn.com/college-sports/story/_/id/45467505/judge-grants-final-approval-house-v-ncaa-settlement.

34 C.F.R. § 106.54. As one commentator has explained, treating revenue-sharing or NIL pay as wages "takes wage payments outside the purview of Title IX's equal opportunity requirement for athletes," placing them instead within Title IX's employment framework.[110] Courts have recognized this principle in analogous contexts. In *Stanley v. USC*,[111] for example, the Ninth Circuit rejected a female basketball coach's claim that she was entitled to the same salary as the men's coach. The court held that Title IX and the Equal Pay Act forbid sex-based wage disparities but do not require schools to ignore revenue generation, promotional responsibilities, or other nonsex-based factors in setting salaries. The same reasoning would allow schools to pay football and men's basketball players more than athletes in other sports, provided the rationale is grounded in market or sport-specific realities rather than sex.

In January 2025, the Department of Education's Office for Civil Rights issued a memo stating that NIL payments made by institutions should be treated as athletic financial aid and thus subject to the proportionality mandate of 34 C.F.R. § 106.37.[112] By that logic, school-funded NIL or revenue-sharing pools could not be disproportionately allocated to male athletes without violating Title IX. But in February 2025, the Department rescinded this guidance as "overly burdensome" and unsupported by statutory text. The Acting Assistant Secretary for Civil Rights emphasized that Title IX "says nothing about how revenue-generating athletics programs should allocate compensation among student athletes," explicitly disavowing the proportionality requirement.[113]

In the absence of clear rulemaking or judicial consensus, institutions remain in limbo. If athletes are not employees, schools may be forced to treat direct payments like scholarships, with proportional allocation required. If athletes are employees, however, the question is likely clearer: Payments are "compensation to employees" under 34 C.F.R. § 106.54, not "financial assistance" under 34 C.F.R. § 106.37. This shift has practical and legal significance. Schools could defend revenue-weighted compensation schemes by pointing to sex-neutral rationales—market demand, time commitments, or injury risks—without fear that Title IX compels dollar-for-dollar proportionality. Conversely, if athletes remain nonemployees, revenue-sharing in its current form may invite constant litigation over proportional aid.

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110 *See, e.g.*, Deborah L. Brake, *College Athletes as Employees: Implications for Title IX and (Un)Equal Pay*, U. CHI. L. REV. ONLINE (Feb. 12, 2025), available at: https://lawreview.uchicago.edu/online-archive/college-athletes-employees-implications-title-ix-and-unequal-pay (last visited Feb. 17, 2026).

111 178 F.3d 1069 (9th Cir. 1999).

112 See U.S. Dep't of Educ., *Office for Civil Rights, Fact Sheet: Ensuring Equal Opportunity Based on Sex in School Athletic Programs in the Context of Name, Image, and Likeness (NIL) Activities* (Jan. 16, 2025), https://calmatters.org/wp-content/uploads/2025/02/ocr-factsheet-benefits-student-athletes.pdf.

113 U.S. Dep't of Educ., *Office for Civil Rights, OCR Rescinds Biden 11th Hour Guidance on NIL Compensation* (Feb. 12, 2025) (press release), https://www.ed.gov/about/news/press-release/us-department-of-education-rescinds-biden-11th-hour-guidance-nil-compensation (quoting Acting Assistant Secretary for Civil Rights Craig Trainor describing the guidance as "overly burdensome" and lacking "credible legal justification," and stating that Title IX "says nothing about how revenue-generating athletics programs should allocate compensation").

In short, employee status would not only reshape wage-and-hour obligations under the FLSA; it would also likely narrow and clarify a pressing Title IX ambiguity in the post-*House* landscape. To the extent institution-funded athlete payments are treated as employee compensation rather than athletics financial assistance, those payments are more naturally evaluated under Title IX's employment provisions, which prohibit sex-based distinctions in compensation while permitting differences grounded in sex-neutral considerations such as market conditions and role-specific demands. On that understanding, reclassification would reduce the force of arguments that Title IX compels participation-based proportionality for institution-funded pay pools—though it would not eliminate Title IX risk in an unsettled area. What begins as an FLSA reclassification thus carries a potential compliance dividend: It may temper the proportionality mandate that could otherwise destabilize emerging models of athlete compensation.

B. Legal and Practical Implications on Other Employment Laws

As noted in Part II, employment and labor laws have varying tests to determine whether someone is an employee. A discussion of each of these laws and the associated test is beyond the scope of this article; however, it is important to note that the erosion of amateurism, adoption of revenue sharing, and a determination that a student-athlete is an employee under the FLSA may trigger renewed scrutiny of student-athlete employee status under other federal and state laws. Issues relating to collective bargaining, work authorization, equal pay, religious and disability accommodations, unemployment, workplace safety, retirement, taxation, and more may come into play. This would have both legal and practical implications for student-athletes and institutions that vary between states and among private and public institutions. For example, Division I student-athletes currently have access to robust medical care in accordance with NCAA legislation and guidelines.[114] A determination that a student-athlete is an employee for state workers' compensation purposes would subject the care to applicable state workers' compensation statutes and could impact an athlete's experience with medical care and services. The complexity associated with student-athlete employee status goes far beyond the FLSA and is worthy of additional study and consideration.

C. Federal Legislation

The implications and complexity of the end of amateurism and potential employee status highlight the need for federal legislation in this space. A number of bills relating to reform of collegiate athletics have been introduced in the 119th Congress, including, for example, the SCORE Act,[115] Restore College Sports Act,[116] and Student Athlete Fairness and Enforcement (SAFE) Act.[117] Pending federal legislation is a moving target, and no bill has garnered adequate support to pass

114 NCAA, NCAA Sports Medicine Handbook, (2025), https://ncaaorg.s3.amazonaws.com/ssi/publications/SSI_SMHB.pdf.

115 H.R. 4312, 119th Cong. (2025–26).

116 H.R. 2663, 119th Cong. (2025–26).

117 S. 2932, 119th Cong. (2025–26).

thus far. Nonetheless, thoughtful, comprehensive legislation is important to guide some of the more challenging issues associated with student-athlete employment. The NCAA and institutions may be generally aligned on pertinent issues, but the perspectives, motivations, and interests of student-athletes may vary widely. Legislation should balance the rights and interests of the parties, not merely seek to preserve the outdated notion of amateurism. Thoughtful consideration of the breadth of pertinent legal issues, including the considerations under the FLSA explored in this article, and practical impact on institutions and student-athletes is critical. Detailed analysis regarding future legislation is beyond the scope of this article, but should consider, among other things, the applicability of the plethora of federal labor and employment laws, the need for consistency across states and among public and private institutions, and unique issues that pertain to certain groups of student-athletes, such as international students.

VI. CONCLUSION

The collapse of amateurism is no longer theoretical. *O'Bannon*, *Alston*, *Johnson*, and most recently *House* have all pushed the enterprise to a tipping point. The next question is not whether college athletes will be paid but under what legal framework—and with what collateral consequences for institutions.

The FLSA provides the clearest lens for evaluating what employee status entails: minimum wage, overtime, hours tracking, payroll systems, and a host of compliance obligations. These are not trivial burdens, but they are also familiar terrain for universities that already employ thousands of students, staff, and faculty. In some respects, athlete employment could professionalize athletic departments, rationalize time commitments, and inject long-needed labor protections into a multibillion-dollar industry.

At the same time, reclassification carries ripple effects beyond wage and hour law. One perhaps unintended consequence is clarifying how Title IX applies to direct athlete compensation. As the *House* settlement underscored, treating revenue-sharing dollars as "financial aid" risks importing the strict proportionality mandate of 34 C.F.R. § 106.37, creating near-insoluble conflicts when payments flow predominantly to football and men's basketball. Recognizing athletes as employees shifts those payments into Title IX's compensation framework, 34 C.F.R. § 106.54, where the rule is equal pay for equal work—not proportional dollars across the sexes. In that way, the FLSA analysis doubles as a Title IX solution, providing institutions with a clearer compliance path at the very moment when uncertainty is greatest.

The transformation of the "student-athlete" into the "athlete–employee" is disruptive, but it also offers coherence. It aligns the legal reality with the economic one: Many athletes are workers in a commercial enterprise, and institutions are their employers. The task ahead is to design policies or legislation that honor both the rights of those athletes and the educational mission of their universities. If colleges embrace this shift with foresight—integrating FLSA compliance, clarifying Title IX obligations, and building transparent pay structures—the future of college sports can be more sustainable, equitable, and legally defensible than the amateur ideal it replaces.