Protection Off of the Playing Field: Student Athletes Should be Considered University Employees for Purposes of Workers' Compensation

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NOTE

PROTECTION OFF OF THE PLAYING FIELD: STUDENT ATHLETES SHOULD BE CONSIDERED UNIVERSITY EMPLOYEES FOR PURPOSES OF WORKERS' COMPENSATION

I. INTRODUCTION

College athletics are no longer concerned with just winning and losing, but are now also concerned with making a profit. College athletics has become very profitable, and thus, a business relationship has evolved between colleges and student athletes. Both television contracts and ticket sales from college sporting events generate hundreds of millions of dollars annually for universities. Many courts now even consider university athletic programs to be products that are marketed by the National Collegiate Athletic Association ("NCAA"). Besides making millions of dollars for their schools, student athletes are also utilized as a means to increase student enrollment and enhance the school's national reputation.
However, the student athletes that work to achieve each school’s success on the playing field are rarely protected if injured while playing their sport. Athletes are often discarded after they have been seriously injured. As a result, many college scholarship athletes have turned to workers’ compensation statutes in an attempt to receive the protection they deserve for the costs of their injuries.

Part II of this Note provides a general background of workers’ compensation, including the various tests courts use in determining an employer-employee relationship between universities and student athletes. Part III discusses the major cases that either support or oppose the applicability of workers’ compensation statutes to college athletes. Finally, Part IV discusses why courts should hold that scholarship athletes are employees of their colleges and universities and should be able to receive workers’ compensation.

II. GENERAL BACKGROUND OF WORKERS’ COMPENSATION

The purpose of workers’ compensation legislation is to place the cost of workers’ injuries on the consumer through the price of products or services. As stated by one court:

[A]ny worker whose services form a regular and continuing part of the cost of that product [or service], and whose method of operation is not such an independent business that it forms in itself a separate route through which his own cost of... accidents can be channeled, is within the presumptive area of intended protection.

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6. For example, examine the situation of Kent Waldrep, a former Texas Christian University football player, who suffered a serious injury on the playing field, leaving him paralyzed. See id. at 1338-39; Juan B. Elizondo Jr., Paralyzed Football Player Sues for Worker’s Compensation Benefits, ASSOCIATED PRESS, Oct. 15, 1997, available at 1997 WL 4888295. Even though he has incurred more than $500,000 in medical costs alone, the university has only contributed about $10,000. See Manny Topol, Payback Time, NEWSDAY (Nassau), Aug. 8, 1993, at 10.


Each employer is obligated to pay for its employees' injuries while on the job by either arranging for insurance or paying premiums to the state workers' compensation fund. In return, the employer is protected from excessive damage awards resulting from tort litigation and the injured employee is guaranteed prompt, limited compensation.

There are two basic inquiries that must be made to entitle an individual to workers' compensation. First, the agreement between the employer and the individual must be analyzed in order to determine if an employer-employee relationship existed at the time of the injury. However, most workers' compensation statutes do not contain a specific definition of the term "employee." Therefore, "the term "employee"...has probably produced more reported cases than any definition of status in the modern history of law." Second, if an employer-employee relationship exists, it must then be decided whether the injury occurred as a result of, or in connection with, the employment. In this Note, this second inquiry is not addressed. Rather, the purpose of this Note is to demonstrate that student athletes have an employer-employee relationship with their universities under workers' compensation laws. Therefore, this Note examines the various tests that courts use in determining whether this relationship exists.

A. The Control Test

The control test, the traditional test used in questions of employment, focuses on whether the employer has a right to control the employee. "The test to be used in determining the relationship of

10. See Mark R. Whitmore, Note, Denying Scholarship Athletes Worker's Compensation: Do Courts Punt Away a Statutory Right?, 76 IOWA L. REV. 763, 769-70 (1991) (construing 4 ARTHUR LARSON, LARSON'S WORKERS' COMPENSATION LAW § 1.01, at 1-3 (1990)).
13. See Kidder, 564 N.W.2d at 875.
16. See Edwards v. Caulfield, 560 So. 2d 364, 370 (Fla. Dist. Ct. App. 1990) ("Control has always been the critical test for determining whether one is an employee or an independent
[employee to employer] is whether [the employer] had a reserved right of control over the means and agencies by which the work was done or the result produced, not the actual exercise of such control.” In other words, for the purposes of this Note, the question is whether universities have a right to control their student athletes.

The control test basically uses the same criteria as the “master-servant” analysis under the Restatement (Second) of Agency. “[T]he four principal factors under the control test, are (1) direct evidence of right or exercise of control; (2) method of payment; (3) the furnishing of equipment; and (4) the right to fire.” In addition, when applying the control test, each of the factors present must be balanced to determine their relative weight and importance; none of the factors are controlling.

B. The “Relative Nature of the Work” Test

The “relative nature of the work” test is usually referred to by courts to either supplement or replace the control test. The “relative

contractor for workers’ compensation purposes . . . .”); Abramson v. Long Beach Mem’l Hosp., 478 N.Y.S.2d 105, 106-07 (App. Div. 1984) (holding that a hospital dictating an employee’s wardrobe and regulating her movements while working was sufficient to show right to control); Owens v. Turner, 362 S.W.2d 793, 794 (Tenn. 1962) (holding that a right to terminate employment evidences right to control). The majority of states currently rely on the control test in deciding whether an employer-employee relationship exists. See Roberts, supra note 5, at 1322 n.45.


20. See Klele, 905 P.2d at 84. However, many courts recognize that the most important factor is evidence of the right to control the details of the work. See S.G. Borello & Sons, Inc. v. Dep’t of Indus. Relations, 769 P.2d 399, 404 (Cal. 1989); Wangen, 255 N.W.2d at 815.

21. See Griffin v. N.D. Workers Comp. Bureau, 466 N.W.2d 148, 150 (N.D. 1991) (stating that the “relative-nature-of-the-work” test can be used “as an additional aid in judging worker status, particularly when the control ‘test is not clearly determinative’”); Lowe, 731 A.2d at 21 (stating that “[t]he relative nature of the work test supplements the control test in limited circumstances”).

22. See Pollack v. Pino’s Formal Wear & Tailoring, 601 A.2d 1190, 1196 (N.J. Super. Ct. App. Div. 1992) (stating that “the [New Jersey] courts have placed greater reliance upon the relative nature of the work test”). Furthermore, the New Jersey Superior Court, Appellate Division, believes
nature of the work” test determines whether a worker is an employee by assessing whether a worker’s tasks constitute an integral part of the employer’s regular business. In other words, “whether the [worker’s] services were substantial, essential and recurring.”

With respect to the character of the work performed, the claimant would be required to show: (1) the degree of skill involved; (2) the degree to which the work is a separate calling or business; and (3) the extent to which a worker so situated reasonably can be expected to carry the burden of accident. With respect to the relationship of the work to the putative employer’s business, the claimant would have to establish: (1) the extent to which the work is a regular part of the putative employer’s regular business; (2) the extent to which the work is being performed continuously or intermittently; and (3) the extent to which the work is of sufficient duration to constitute continuing services rather than a particular assignment.

The “relative nature of the work” test is of particular value if the working relationship involves professional services such that the employer cannot exercise control over the methods used to provide those services.

C. The “Economic Reality” Test

A third, but less utilized test is the “economic reality” test, which appears to be a combination of both the control and the “relative nature of the work” tests. Under the “economic reality” test, there are certain


23. See Hanson v. Transp. Gen., Inc., 716 A.2d 857, 861 (Conn. 1998); Evans v. Naihaus, 326 So. 2d 601, 604 (La. Ct. App. 1976); Kertesz, 686 A.2d at 372. Other courts state the “relative nature of the work” test in terms of looking at two distinct areas: (1) the nature of the claimant’s work and (2) the relation of that work to the alleged employer’s regular business. See Oilfield Safety & Mach. Specialties, Inc. v. Harman Unlimited, Inc., 625 F.2d 1248, 1253 (5th Cir. 1980). However, both focus on the same factors.

24. Evans, 326 So. 2d at 604.

25. Hanson, 716 A.2d at 861-62; see also Santos v. Standard Havens, Inc., 541 A.2d 703, 711 (N.J. Super. Ct. App. Div. 1988) (analyzing the character of work, level of skill, degree of independence, and whether the individual deals with his or her own injury to determine whether the claimant was an employee); Griffin, 465 N.W.2d at 150 (stating these same elements as they are described in 1C ARTHUR LARSON, WORKMEN’S COMPENSATION LAW § 43.52, at 8-25 (1990)).

26. See Lowe, 731 A.2d at 21 (stating that “[t]he relative nature of the work test allows the [c]ourt to account for that ‘necessary exercise of independent judgment’”). For example, practicing physicians are expected to exercise independent, professional judgment while treating patients and educating medical students. See id.
factors that the court must consider in deciding whether an employer-employee relationship existed.  

These factors include: (1) the proposed employer's right to control or dictate the activities of the proposed employee; (2) the proposed employer's right to discipline or fire the proposed employee; (3) the payment of "wages" . . . ; and (4) whether the task performed . . . was "an integral part" of the proposed employer's business.  

No one factor is controlling, and all of them must be taken into account in determining the existence of an employment relationship.  

In applying the "economic reality" test, courts also examine the totality of the circumstances surrounding the work performed. The test was adopted "as a more realistic attempt to define the employer-employee relationship through a 'balancing of all the relevant factors in each case.'"  

III. MAJOR CASE LAW—THE STUDENT ATHLETE, THE UNIVERSITY, AND WORKERS' COMPENSATION  

A. In Support of the Student Athlete as an Employee  

In University of Denver v. Nemeth, a football player sustained injuries while practicing for the University of Denver. At the time of the accident, he was receiving fifty dollars a month and free housing from the university in exchange for working on the school's campus. However, these jobs were contingent upon his participation on the football team.  

Nemeth brought a workers' compensation claim for his injuries. The court held that an employer-employee relationship existed because

29. See Clark, 594 N.W.2d at 451; Coleman, 336 N.W.2d at 226.  
32. 257 P.2d 423 (Colo. 1953).  
33. See id. at 424.  
34. See id.  
35. See id. at 427.
his performance on the football field directly affected his compensation. If Nemeth had failed to produce on the field, then his compensation would have ceased. The court also noted that "[h]igher education . . . is a business, and a big one . . . A student employed by the University to discharge certain duties, not a part of his education program, is no different than the employee who is taking no course of instruction so far as the Workmen's Compensation Act is concerned." 

Ten years later, in Van Horn v. Industrial Accident Commission, the wife of a member of the California State Polytechnic football team successfully brought a workers' compensation claim to recover for the death of her husband, who died in a plane crash while returning from a game. The decedent received an annual one hundred and fifty dollar "'athletic scholarship.'" The court rejected the commission's contentions that allowing students with athletic scholarships to receive compensation benefits would impose a heavy burden on the schools, would discourage the granting of scholarships, and therefore, would be against public policy.

Instead, the court held that there was a contract of employment between the decedent and his coach. In holding for the decedent's wife, the court compared student athletes to other students who have been held to be employees, such as student nurses and student teachers. "[O]ne may have the dual capacity of student and employee in respect to an activity." The court also noted that "direct compensation in the form of wages is not necessary to establish the relationship so long as the service is not gratuitous."

B. Against the Student Athlete as an Employee

In State Compensation Insurance Fund v. Industrial Commission, a student athlete was the recipient of a "grant-in-aid" scholarship and

36. See id. at 426.  
37. See id.  
38. Id. at 425-26.  
40. See id. at 170.  
41. See id. at 171.  
42. See id. at 174.  
43. See id. at 172-73.  
44. See id. at 173.  
45. Id. "The fact that academic credit is given for participation in the activity is immaterial."  
Id.  
46. Id. at 172. "The form of remuneration is immaterial." Id. at 174.  
47. 314 P.2d 288 (Colo. 1957).
was employed part-time by the school. The court, in denying the claim for workers’ compensation, reasoned that it was significant that the college received no direct benefit from football, since it was not in the football business. It also distinguished the holding of Nemeth by finding that Nemeth’s employment “depended wholly on his playing football, and it is clear that if he failed to perform as a football player he would lose the job provided for him by the University.”

More recently, in Rensing v. Indiana State University Board of Trustees, a scholarship athlete was rendered 95-100% disabled from a football injury. The Indiana Supreme Court, reversing a lower court’s ruling, held that the parties had no intent to enter into an employee-employer relationship when they made the agreement, and that the financial aid the athlete received did not constitute pay or income to allow him to qualify as an employee. The court also focused upon the NCAA’s policies concerning the protection of a student athlete’s amateur status.

Finally, in Coleman v. Western Michigan University, the university reduced a football player’s renewable scholarship following an injury. The court applied the “economic reality” test, under which it found that the university did possess some control over Coleman, but maintained that this control was not dependent upon his scholarship. Instead, it applied to all student athletes. The court also concluded that Coleman’s activities, as a football player, were not an integral part of the school’s business.

48. See id. at 289.
49. See id.
50. See id. at 290.
51. Id.
52. 444 N.E.2d 1170 (Ind. 1983).
53. See id. at 1172.
54. See id. at 1173.
55. See id. For evidence that Rensing’s financial aid did not constitute pay or income, the court looked at the fact that he did not report his scholarship for income tax purposes. See id.
56. See id.
58. See id. at 225.
59. See id. at 225-26. The court stated that “[p]laintiff’s scholarship did not subject him to any extraordinary degree of control over his academic activities.” Id. at 226.
60. See id.
61. See id. The court stated “that defendant’s academic program could operate effectively even in the absence of the intercollegiate football program.” Id. at 227. The court did, however, find that Coleman’s “scholarship constituted ‘wages.’” Id. at 226. Wages are defined “as items of
In addition to the foregoing cases, there are two more recent California cases that hold that student athletes are not employees of their universities. In *Graczyk v. Workers' Compensation Appeals Board*, a scholarship athlete sustained injuries to his head, neck, and spine while playing college football. The court applied California's Labor Code section 3352(k), which provides in pertinent part:

> 'Employee' excludes ... [a]ny student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for such participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

The court commented that "the state has a significant, if not a compelling interest in defining the employer-employee status." *Cheatham v. Workers' Compensation Appeals Board* also applied section 3352(k) in a case involving a college scholarship wrestler who was injured during a wrestling team scrimmage. However, unlike *Graczyk*, the *Cheatham* court included reasons for its decision beyond the statute. The court reasoned that the university is really the one "'rendering service'" to the student, and it is not the other way around. In addition, the court also stated that it was unable to distinguish between an athletic scholarship and an academic scholarship.

However, the court in *Cheatham* did recognize that athletics are an integral part of universities. It also distinguished *Cheatham* from the

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63. 229 Cal. Rptr. 494 (Ct. App. 1986).
64. See id. at 496.
65. Id. at 499-500 (quoting CAL. LAB. CODE § 3352(k) (West 1981)) (alterations in original). The legislature amended the code in 1981 to include the terms "scholarships" and "grants-in-aid" in order to expand the existing exclusion concerning athletes. See id. Hawaii is the only other state to expressly exclude scholarship athletes from receiving benefits under its workers' compensation statutes. See Roberts, *supra* note 5, at 1327 n.72.
68. See id. at 55.
69. See id. at 58. The university provides the student with a "full panoply of educational resources for the student's use." Id.
70. See id. at 59.
71. See id.
case of *Van Horn v. Industrial Accident Commission.* 72 Agreeing with the decision in *Van Horn,* the court stated that a “school’s payment of consideration to the student-athlete brings the school measurable and tangible benefits, including money, sufficient to establish an employer-employee relationship.” 73 However, in *Cheatham,* the court found that “the absence of any fair inference of economic benefit to” the university from its wrestling program distinguished it from *Van Horn.* 74

IV. STUDENT ATHLETES SHOULD BE CONSIDERED EMPLOYEES OF UNIVERSITIES

A. An Analysis of the Case Law

An analysis of the relevant case law reveals that many of the decisions holding that student athletes are not employees languish from poor reasoning. In *State Compensation Insurance Fund v. Industrial Commission,* 75 the court reasoned that a student athlete was not an employee because the university did not receive a direct benefit from the athlete. 76 Furthermore, in *Coleman v. Western Michigan University,* 77 the court justified its decision by concluding that college athletics were not an integral part of the school’s business. 78 These conclusions appear unsubstantiated and unreasonable or perhaps they have just become outdated.

Universities currently earn hundreds of millions of dollars annually from college athletics. 79 This has led many courts to consider college sports as a form of substantial business for universities and the NCAA. 80 To allege that college athletics are not an integral part of a school’s business, or that the school does not to receive a direct benefit from the athletics, is absurd.

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72. *See id.* at 61.
73. *Id.*
74. *Id.* The court stated that it will not “assume that a ‘minor’ sport, such as wrestling produces tangible economic benefits analogous to the benefits received from a major, revenue-producing sport such as football.” *Id.*
75. 314 P.2d 288 (Colo. 1957).
76. *See id.* at 290.
78. *See id.* at 227.
In addition, the more recent case of Cheatham v. Workers' Compensation Appeals Board, although holding against the student athlete, stated that "the student-athlete brings the school measurable and tangible benefits, including money, sufficient to establish an employer-employee relationship." The court in Cheatham also concluded that "[o]ur oldest colleges and universities have for many decades included intercollegiate athletics as an integral part of their program of instruction." Therefore, a student athlete of a major, revenue-producing college sport, such as football, should be considered an employee of his or her school.

Rensing v. Indiana State University Board of Trustees illustrates another poor analysis. The court blindly reasoned that a student athlete did not receive any payment for playing football in order to qualify him as an employee, even though his financial aid was contingent upon his participation in the sport. Several courts have established that a contractual relationship exists between student athletes and universities in which there is a "pay-for-play" relationship. Moreover, in Coleman v. Western Michigan University, the court held that a scholarship constituted wages. In return for his athletic services, a student athlete "receive[s] certain items of compensation which are measurable in money, including room and board, tuition and books." However, direct compensation in the form of wages is not necessary to establish the [employment] relationship so long as the service is not gratuitous.

In addition to poor reasoning, several of the courts' decisions resulted from either reversing the decision of a lower court or a decision

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82. Id. at 61.
83. Id. at 59.
84. 444 N.E.2d 1170 (Ind. 1983).
85. See id. at 1174.
86. See Begley v. Corp. of Mercer Univ., 367 F. Supp. 908, 910 (E.D. Tenn. 1973) (stating that under an athletic scholarship agreement the university provides the student athlete with monetary aid for the completion of an undergraduate degree in exchange for participation in its athletic program); Taylor v. Wake Forest Univ., 191 S.E.2d 379, 382 (N.C. Ct. App. 1972) (excusing the university's obligation to provide financial assistance under the contractual agreement because of the student athlete's refusal to participate in its athletic program).
88. See id. at 226. The lower court in Rensing v. Indiana State University Board of Trustees, 437 N.E.2d 78 (Ind. Ct. App. 1982), also stated "that scholarships or similar benefits may be viewed as pay." Id. at 85.
89. Coleman, 336 N.W.2d at 226.
of a workers' compensation commission.91 A decision that is reasonably based upon the evidence should be sustained.92 In Rensing, the Indiana Supreme Court reversed the decision of its court of appeals,93 which held that a student athlete was an employee and entitled to workers' compensation.94 The Indiana Court of Appeals reached its decision by finding that "athletes generally play a beneficial role in creating the desired educational environment at the University."95 The court concluded that the football team "must properly be viewed as an aspect of the University's overall occupation."96

Likewise, in State Compensation Insurance Fund v. Industrial Commission,97 the Colorado Supreme Court reversed the decision of the Industrial Commission of the State of Colorado, which awarded death benefits to the decedent's wife.98 The Commission based its decision on the fact that the deceased left his job to return to college because the school offered him a job at the college in exchange for playing football.99 The employment at the school was dependent on his participation in the athletic program.100

In addition to higher courts sustaining the original decisions made in the lower courts and commissions, courts will reach better results if they adhere to the proposition that workers' "compensation law should be liberally construed to effect the law's beneficent purposes."101 "[I]n applying the statutory definition of 'employee' to particular fact situations, a measure of liberality should be indulged in . . . to the end that in doubtful cases an injured workman or his dependents will not be deprived of the benefits of the humane provisions of our workmen's compensation law[s]."102 Therefore, if a court is unsure as to whether a student athlete meets the statutory definition of employee, it should not deny him or her the benefits of the law.

92. See Van Horn, 33 Cal. Rptr. at 172.
93. See Rensing, 444 N.E.2d at 1171.
95. Id. This was evidenced by increased enrollments as the university prospered athletically.
96. See id.
98. See id. at 289.
99. See id. at 290.
100. See id.
102. Rensing, 437 N.E.2d at 84.
Finally, many of the cases fail to clearly apply any of the three tests used to determine whether an employment relationship exists for purposes of workers' compensation. These tests should be employed to aid courts in reaching their decisions. Under any of the three tests, a court could reasonably find a student athlete to be an employee of his or her university.

B. The Application of the Tests

The control test encompasses four principal factors, which "are (1) direct evidence of right or exercise of control; (2) method of payment; (3) the furnishing of equipment; and (4) the right to fire." The coaches and athletic departments of each university control, or have the right of control over, their athletes. Consequently, due to this control, the daily lives of student athletes are highly regulated. They must attend practices, games, and film sessions. These obligations can occupy several hours on an average day. In addition, their academic responsibilities are restrained by the demands of their athletic responsibilities. Due to athletic scheduling, athletes are constantly forced to miss classes, and also have limited access to the library and other educational aids.

The second element of the control test is whether, and how, the university compensates the student athlete. A student athlete who receives a scholarship is clearly compensated by his school for his participation in athletics. As previously stated, several courts have established that a contractual relationship exists between student athletes and universities, in which there is a "pay-for-play" relationship.

103. See Van Horn, 33 Cal. Rptr. at 174 (using public policy to determine if a student athlete constituted an employee); State Comp. Ins. Fund, 314 P.2d at 290 (reasoning that the college received no direct benefit from football); Nemeth, 257 P.2d at 426 (recognizing that the student athlete's performance on the field directly affected his compensation); Rensing, 444 N.E.2d at 1173 (holding "that there was no intent to enter into an employee-employer relationship").


106. According to former Nebraska State Senator Ernest Chambers, "[f]ootball is a job... The athletes have regular hours, regular duties and they can be fired." Redman, supra note 105, available at 1985 WL 4077018; see also Whitmore, supra note 10, at 790.

107. See Whitmore, supra note 10, at 790.

108. See id.

109. See id. at 791.

110. See Begley v. Corp. of Mercer Univ., 367 F. Supp. 908, 910 (E.D. Tenn. 1973) (stating that under an athletic scholarship agreement the university provides the student athlete with monetary aid for the completion of an undergraduate degree in exchange for participation in its...
Moreover, it has also been held that a scholarship constitutes wages. In return for his or her athletic services, a student athlete "receive[s] certain items of compensation which are measurable in money, including room and board, tuition and books." In other words, they are "paid in the most meaningful way possible: with a free education." Additionally, "direct compensation in the form of wages is not necessary to establish the [employment] relationship so long as the service is not gratuitous."

Next, the control test looks at who furnishes the equipment. While the athletes provide the athletic talent, the universities provide the equipment, including athletic apparel, footwear, and facilities used for practice and competition. Finally, the test also analyzes the university's right to fire the student athlete. The university has the right to terminate its relationship with a student athlete by discontinuing the scholarship agreement. "Refusal to renew a scholarship agreement amounts to termination because it leaves the athlete with no place to play and without the benefits of the scholarship agreement."

Just as student athletes satisfy the elements of the control test, they also fulfill the "relative nature of the work" test. The "relative nature of the work" test concentrates on whether the student athlete's tasks constitute an integral part of the university's regular business. Courts look at (1) the nature of the student athlete's work and (2) the relation of that work to the university's regular business. Universities receive

athletic program); Taylor v. Wake Forest Univ., 191 S.E.2d 379, 382 (N.C. Ct. App. 1972) (excusing the university's obligation to provide financial assistance under the contractual agreement because of the student athlete's refusal to participate in its athletic program).


112. Coleman, 336 N.W.2d at 226.

113. KNIGHT FOUNDATION, COMMISSION ON INTERCOLLEGIATE ATHLETICS, KEEPING FAITH WITH THE STUDENT-ATHLETE: A NEW MODEL FOR INTERCOLLEGIATE ATHLETICS 11 (1991) [hereinafter KNIGHT REPORT].

114. Van Horn v. Indus. Accident Comm'n, 33 Cal. Rptr. 169, 172 (Dist. Ct. App. 1963); see also Betts v. Ann Arbor Pub. Sch., 271 N.W.2d 498, 500 (Mich. 1978) (awarding workers' compensation to a student teacher who only received training and class credit for teaching); Krause v. Trs. of Hamline Univ., 68 N.W.2d 124, 126 (Minn. 1955) (holding that a student nurse receiving free room and board is an employee for workers' compensation purposes).

115. See Whitmore, supra note 10, at 794 (construing NCAA, NCAA MANUAL 173 (1991)).

116. See Rensing, 437 N.E.2d at 85 (stating that the right to terminate exists under certain prescribed conditions).

117. Whitmore, supra note 10, at 791.


millions of dollars annually from their athletic programs," as well as an increase in student enrollment and visibility, resulting in a more prominent national reputation. Successful athletic "programs appear to promise a quick route to revenue, recognition and renown for the university."122

Aside from being a regular part of the university's business, a student athlete's work also continues year round. "To participate at a level of top physical performance and to satisfy their scholarships, athletes must practice and stay healthy throughout the year, or risk deterioration of their skills to a level unacceptable to their coaches."123 Athletes may be reminded that the university can choose not to renew an athletic scholarship.124

Besides having a significant relationship to the university's business, the services of student athletes resemble the type of work performed by employees. Student athletes are given scholarships based on their abilities to perform in their sport, just as any other employee is paid to perform in his or her line of work.125 Additionally, the financial burden that is imposed on a student athlete, if an accident should incur, is almost impossible for most student athletes to handle.126

The third, and final, test is the "economic reality" test, which consists of four factors. The first three, the right to control, the right to fire, and the payment of wages,127 have all been covered previously in the discussion of the control test.128 The last factor, whether the task performed was an integral part of the university's business,129 was
discussed under the "relative nature of the work" test. Like the other two tests, an analysis pursuant to the "economic reality" test also concludes that student athletes are employees of their universities.

C. Analogous Case Law

Outside the scope of workers' compensation law, student athletes have previously been classified as employees of their universities. "Alabama grand juries called college athletes 'employees' and the schools their 'employers' in indictments returned against sports agents . . . ." In particular, "[t]he grand juries alleged that the agents 'did confer or offer to confer a benefit upon an employee [student athlete] without the consent of the . . . employer [university].'" Similarly, in United States v. Walters, the court applied the mail fraud statute, designating the student athlete as an employee and his school as an employer.

Many other students have also been held to be employees for workers' compensation purposes, including, in particular, student nurses, student medical interns, and student teachers. Courts look at practically the same factors when resolving these student cases. Furthermore, many of the everyday lives of these students do not differ greatly with those of student athletes.

First, there is not much variance within the control issue. Student nurses are given set schedules and are "entirely subject to the control and supervision of the head nurse." In addition, "[g]eneral control over the student nurses, such as reassignment . . . and satisfying itself that . . ."
compliance with the curriculum was attained, [is] maintained by the university.\textsuperscript{139} Similar control also exists in the case of student medical interns.\textsuperscript{140} As for student athletes, the same type of control and supervision are imposed upon them by their coaches and universities.\textsuperscript{141}

Furthermore, the right of termination exists against all of these students at any time. Specifically, student medical interns can "be dismissed at any time for failure to follow protocol or other unsatisfactory work."\textsuperscript{142} Likewise, the scholarships of student athletes can be terminated under several conditions, including a failure to meet academic requirements and behaving in a manner which would render oneself ineligible for competition.\textsuperscript{143}

Finally, and most analogous to student athletes, there is the issue of the payment of wages. Just as with student athletes, "'[t]he element of payment ... need not be in money, but may be in anything of value. Board, room, and training, such as might be furnished [to] a student nurse or hospital intern ... or student teacher are treated as the equivalent of wages.'"\textsuperscript{144} In Croston v. Montefiore Hospital,\textsuperscript{145} the court ruled that "although there was no financial remuneration for plaintiff's services, it has been held that the training and experience attained at the hospital, which is necessary for eventual technologist certification, is a thing of value and, therefore, equivalent to wages."\textsuperscript{146} This scenario is similar to that of the student athlete. Most student athletes need the coaching and experience available to them in college to have any chance of achieving a professional career in sports.

In Heget v. Christ Hospital,\textsuperscript{147} the court held that in return for the plaintiff's services as a student nurse, "she received instruction, training, food and lodging and incidental equipment. This constituted her

\begin{footnotes}
\footnote{139. Krause, 68 N.W.2d at 126.}
\footnote{140. See Croston, 645 N.Y.S.2d at 472; Olsson, 598 N.Y.S.2d at 349.}
\footnote{141. See supra notes 105-09 and accompanying text.}
\footnote{142. Croston, 645 N.Y.S.2d at 472.}
\footnote{143. See Rensing v. Ind. State Univ. Bd. of Trs., 437 N.E.2d 78, 85 (Ind. Ct. App. 1982).}
\footnote{144. Walls v. N. Miss. Med. Ctr., 568 So. 2d 712, 717 (Miss. 1990) (quoting IC ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION § 47.43(a). at 8-361 to -64 (1986)); see also Oelrich v. Schlagers, Inc., 426 N.W.2d 430, 433 (Minn. 1988) (noting that payment may take many forms).}
\footnote{145. 645 N.Y.S.2d 471 (App. Div. 1996).}
\footnote{146. Id. at 472. See also Betts v. Ann Arbor Pub. Sch., 271 N.W.2d 498, 501 (Mich. 1978) (stating that the fact that the student teacher's payment "was in the form of training and qualification for a professional goal does not disqualify [him] from the designation of employee"); Walls, 568 So. 2d at 718 (holding that training received as a student nurse is sufficient to qualify as an advantage to constitute a "wage"); Olsson v. Nyack Hosp., 598 N.Y.S.2d 348, 349 (App. Div. 1993) (noting that "training is a thing of value and the equivalent of wages").}
\footnote{147. 58 A.2d 615 (N.J. Ct. C.P. 1948).}
\end{footnotes}
Most scholarship student athletes are also compensated in the same exact manner. Student athletes usually obtain room and board, as well as tuition and books, in exchange for participating in their school’s athletic program.

Besides those previously mentioned, there are other groups of students that have been held to be employees. Students serving as resident coordinators and resident advisors have been held to be employees of their universities. In Marshall v. Marist College, each student serving as a resident coordinator or resident advisor received a stipend from his or her school that was directly credited against their tuition, room, and board. Effectively, this stipend worked the same way as a student athlete’s scholarship. In addition, similar to student athletes, the daily lives of the resident coordinators and resident advisors were highly regulated. They were given certain duties to perform, which occupied approximately twenty-five to fifty hours a week.

The court in Marshall also ruled that the resident coordinators and resident advisors were employees because their functions primarily benefited the college. Their work promoted good student morale, which is essential to the harmonious operation of the school. Similarly, the activities of student athletes also tend to advance good student morale, along with other benefits. “[M]ajor collegiate athletic programs . . . provide an opportunity for student-athletes to obtain an education which might otherwise be unavailable to them, while at the same time boosting school morale and providing needed revenues.”

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148. Id. at 617; see also Krause v. Trs. of Hamline Univ., 68 N.W.2d 124, 126 (Minn. 1955) (holding that student nurses who perform services and are furnished board and room are employees); Bernstein v. Beth Israel Hosp., 140 N.E. 694, 695 (N.Y. 1923) (stating that “[t]he fact that interns [sic] . . . receive no money for their services, but only lodging, board, and uniforms, does not defeat their right to an award”).


150. See Marshall v. Marist Coll., 15 Fair Empl. Prac. Cas. (BNA) 1328, 1330, 1331 (S.D.N.Y. 1977). In Marshall, the students were held to be employees within the meaning of the Fair Labor Standards Act. See id. at 1331.


152. See id. at 1329-30.

153. See id. at 1330. For example, their duties included such responsibilities as the supervision of the dormitory and its students, maintaining discipline in the dormitory, and holding and attending regular meetings. See id.

154. See id.

155. See id.

In addition, there is the case of *Clevvidence v. Portland School District #1*. In *Clevvidence*, a fourth-grader, who put away tables in the cafeteria in exchange for receiving free lunch, was considered an employee of his school under workers' compensation laws. The court noted that the legality of the child's employment, being only a minor, made no difference regarding his rights to the benefits of the workers' compensation system. Therefore, if a minor child in elementary school can be considered an employee of his school because he receives a free lunch, surely a student athlete who receives a free education, along with free room and board, should also be considered an employee of his or her university.

Besides holding that students may be employees of their schools, courts "have recognized that a person may occupy the dual status of an employee and student with respect to an activity." In *Hallal v. RDV Sports, Inc.*, the plaintiff participated in a sports internship program in order for him to satisfy the requirements necessary to earn his college degree. Although he was only involved in the program for academic reasons, the court held that he was still considered an employee. Student athletes seem to have this same hybrid status of an employee and student. Many students participate in athletics as a means of attaining an education that they would otherwise not be able to afford.

**D. Public Policy**

The current alternatives, or the lack of alternatives as it may be, to workers' compensation that are available to student athletes are inadequate. "At most schools, scholarship athletes are covered for athletics-related injuries during the term of their scholarship, but have no long-term benefits." The recent catastrophic injury insurance plan of the NCAA does not cover the wide array of injuries that are prevalent in college athletics. It only "provides coverage for life-threatening
injuries such as paralysis." Additionally, the plan does not require a member college or university of the NCAA to subscribe to the plan or to any alternative insurance coverage.

Likewise, a disability insurance coverage plan that is available only "to 'exceptional student-athletes'" is insufficient. This plan only provides for those athletes with future star potential in the three major sports of football, basketball, and baseball. The vast majority of other athletes are virtually ignored. In addition, the NCAA allows "medical hardship" cases in which universities may continue to provide athletic scholarships to those student athletes who are physically unable to perform anymore because of an injury. Although this helps to allow athletes to complete their education, it does not protect them against a significant loss of future earning power.

Another possible course of recovery is through the tort system. However, an injured student athlete has very difficult obstacles to overcome due to the affirmative defenses of contributory negligence and assumption of risk. In order to prevail, it is likely that a student athlete needs to show either gross negligence or intent to harm on behalf of the university. A final alternative for the student athlete is that he or she can always purchase his or her own insurance or family insurance; however, it is often at an unreasonable and expensive price. "Given the vast amount of revenue which universities earn through athletic programs, it seems highly inequitable to force a scholarship-athlete to pay for their own insurance or otherwise face the risk of being left without any means of compensation."

Therefore, the most fair and just way to protect student athletes from possible athletic injury would be to hold them as employees of their universities in order to make workers' compensation available to them. Workers' compensation would allow an injured student athlete to seek an award that would extend beyond his school career.

167. Id. at 615 n.29.
168. See id. at 615.
169. See id.
170. See id.
171. See id.
172. See Whitmore, supra note 10, at 797.
173. See id.
174. See id.
175. See id.
176. See id. at 798.
177. See Woodburn, supra note 15, at 615-16.
178. Id. at 616.
179. See Topol, supra note 6.
Furthermore, "allowing scholarship athletes to recover workers’ compensation would benefit the university by affording it protection from potentially high adverse judgments." In 1984, the University of Nebraska estimated that workers’ compensation premiums for student athletes would only cost approximately $55,000 a year. This is a small price for universities to pay considering the amount of money, as well as other assets, that student athletes raise for them each year. In addition, the total amount to be paid would be even less than expected because not every school gives scholarships and not all student athletes receive scholarships.

Concluding that student athletes qualify as employees would be a step in the right direction for college sports. In the past, the typical college athlete has usually been "placed in an unequal bargaining position," with "no voice or participation in the formulation or interpretation of [the] rules and regulations governing his scholarship." This seems quite unfair since his conduct is controlled on and off the playing field. The availability of workers’ compensation would provide each scholarship student athlete with at least some comfort that he or she would be compensated in the case of an injury.

One reason that some may object to classifying student athletes as employees of their universities is its effect on the amateurism of college athletics. However, it has been suggested that the amateurism of college athletics is really just a myth. Rarely do college teams face one another believing that their opponents have satisfied the eligibility requirements. Approximately thirty percent of schools affiliated with the NCAA engage in dishonest activities every year. Furthermore, "[f]ifty-seven percent of the 106 NCAA Division I-A football members alone were either censured, sanctioned or put on probation at least once during the 1980’s." Major college sports are really just a farm system for the professional leagues.

180. Roberts, supra note 5, at 1352.
181. See Elizondo, supra note 6.
182. Division III schools do not give athletic scholarships. See Topol, supra note 6.
184. Id.
185. See id.
186. See Roberts, supra note 5, at 1353.
188. See id.
189. See Roberts, supra note 5, at 1353.
190. Id. at 1353-54.
In addition, even if amateurism really does exist and needs to be protected, holding student athletes as employees of their universities for workers' compensation purposes does not affect the status of college athletes.

Student-athletes are [only] ineligible to participate in a sport if they do any one of the following:

1. They contract to be represented by an agent in the marketing of the individual's athletic ability or reputation in that sport.
2. They take any pay for participation in that sport including the promise of pay when such pay was to be received following completion of the student-athlete's intercollegiate athletic career.
3. They receive financial assistance other than that administered by their schools except where the assistance comes from the athletes' family or was awarded on a basis having no relationship to athletic ability.\(^\text{192}\)

Allowing student athletes to be able to receive workers' compensation does not interfere with any of the above eligibility requirements.

In fact, entitling student athletes to workers' compensation benefits is likely to protect their status as amateurs. Student athletes would no longer feel the need to take money from agents or those affiliated with the university because of a fear of injuring themselves and ruining their chances at a professional sports career. Many of them would also be less encouraged to leave school early in order to avoid an injury that could hinder their chances at a professional sports career. Instead, under workers' compensation laws, they would be able to receive a monetary award from an injury that has, unfortunately, led to the end of their athletic careers.

Another reason that there may be objections to an employee status for student athletes in the workers' compensation context is the fear that a door may then be opened "for other employment claims, such as salaries, benefits, and the right to form unions.\(^\text{193}\) However, being entitled to workers' compensation would not require application of any other employment claims, such as those under the National Labor Relations Act.\(^\text{194}\) In reference to the National Labor Relations Act, "certain classes of employees may be expressly excluded from coverage under the Act by the National Labor Relations Board.\(^\text{195}\) Those

193. Roberts, supra note 5, at 1352.
194. See id. at 1353.
195. Id.
employees that may be expressly excluded can include scholarship athletes.¹⁹⁶

Likewise, some may worry that the applicability of workers’ compensation could spread to non-athletic scholarship students, such as musicians or merit scholars.¹⁹⁷ However, due to the non-athletic activities of these students, the cost of workers’ compensation premiums for them would probably be very inexpensive.¹⁹⁸ "Moreover, in light of the millions of dollars athletes bring to universities each year, workers’ compensation for all scholarship students would be economically feasible and fair."¹⁹⁹

V. CONCLUSION

Courts must now concede that college athletics is more than just friendly competition between schools. Universities have placed a great deal of importance on their athletic teams in an effort to increase revenue and reputation.²⁰⁰ Therefore, for all essential purposes, college athletics qualifies as a sizeable business.²⁰¹

Student athletes are no longer solely looked upon as students. Additionally, they are employees of their universities. The amount of proof available to show that an employment relationship exists between student athletes and colleges is substantial. Many of the prior cases ruling against the student athlete as an employee lack adequate reasoning.²⁰² Furthermore, the various tests that the courts apply, to look for an employment relationship, all lead to the conclusion that such a relationship exists.²⁰³ There is also a considerable amount of public policy in favor of the employee classification.²⁰⁴

¹⁹⁶. See id.
¹⁹⁷. See id. at 1354.
¹⁹⁸. See id.
¹⁹⁹. Id.
²⁰⁰. See KNIGHT REPORT, supra note 113, at 4-5.
²⁰¹. See NCAA v. Bd. of Regents, 468 U.S. 85, 111 (1984) (recognizing that NCAA television contracts have a commercial nature); see also Hennessey v. NCAA, 564 F.2d 1136, 1149 (5th Cir. 1977) (holding that the NCAA, with its multi-million dollar annual budget, is engaged in a business venture and is not entitled to a complete exemption from anti-trust regulation on the ground that its activities are educational and carried on for the benefit of amateurism); Gaines v. NCAA, 746 F. Supp. 738, 744 (M.D. Tenn. 1990) (agreeing with the Hennessey decision that the NCAA is involved in a business venture). "[I]ntercollegiate athletics in its management is clearly business, and big business at that.” Hennessey, 564 F.2d at 1150.
²⁰². See supra notes 75-90 and accompanying text.
²⁰³. See supra Part IV.B.
²⁰⁴. See supra Part IV.D.
Finally, it is unjust and unfair to allow student athletes to take part in an employment relationship without having the protection that should be bestowed on all employees. If student athletes must submit themselves to the total control of their coaches and their universities, they, in return, should be able to expect that the universities will provide them with an appropriate form of compensation should they injure themselves. This compensation should be obtainable in the form of workers' compensation.

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205. See supra notes 105-09 and accompanying text.

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