PUBLICATION

NCAA, Colleges Defeat FLSA Lawsuit Claiming Student-Athletes Are Employees

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Last week, an Indianapolis federal court dismissed the NCAA and more than 100 Division I schools from a lawsuit that claimed student-athletes should be entitled to minimum wage and overtime payments for the athletic "work" they perform as school "employees" under the Fair Labor Standards Act (FLSA).

Judge William T. Lawrence first dismissed all claims against defendants other than the University of Pennsylvania (the plaintiffs' school) because the plaintiffs did not claim to be employees of those other schools. Judge Lawrence made this determination even though briefing was not yet completed on the plaintiffs' request to certify the case as a collective action on behalf of all student-athletes at all defendant schools.

The court then engaged in a substantive analysis of why student-athletes cannot be considered employees under the FLSA's extremely broad terms. Judge Lawrence rejected the plaintiffs' arguments that student-athletes should be treated like interns, stating that Department of Labor (DOL) guidance related to interns "fails to capture the nature of the relationship" between student-athletes and their schools. Instead, Judge Lawrence explained that "the ultimate inquiry" is whether the student-athlete is the "primary beneficiary" of the athletic activity after "weighing and balancing … all of the circumstances." With respect to the plaintiffs, the court noted that "generations of Penn students have vied for the opportunity" to play for the school's teams "with no thought of compensation" – not wages and not even the prospect of an athletic scholarship because, as an Ivy League school, Penn does not award athletic scholarships. "This demonstrates unequivocally," Judge Lawrence wrote, "that the students at Penn who choose to participate in sports – whether NCAA sports, club sports, or intramural sports – as part of their educational experience do so because they view it as beneficial to them."

Further, the court noted that the DOL has never taken the position that student-athletes could be employees. "[T]he fact that … thousands of unpaid college athletes [exist] on college campuses each year is not a secret, and yet the [DOL] has not taken any action to apply the FLSA to them," Lawrence wrote. Instead, he quoted DOL guidance that declared that interscholastic activities, including athletics, are typically "conducted primarily for the benefit of the participants as part of the educational opportunities provided to the students by the school or institution, are not 'work' [under the FLSA,] and do not result in an employee-employer relationship between the student and the school or institution."

Judge Lawrence's decision strikes a major blow to student-athletes' efforts to be compensated beyond financial aid awards. It is likely that the plaintiffs will appeal; Baker Donelson will continue to provide additional alerts as appropriate. Stay tuned.

Baker Donelson does significant work in the FLSA field. With more than 70 L&E attorneys and more than 30 Higher Education attorneys, Baker Donelson is a leader in this field. If you missed Dena H. Sokolow's presentation last week on the unique challenges posed to higher education institutions and athletic departments by the DOL's upcoming changes to the FLSA overtime regulations, please feel free to contact her or the authors of this alert.