



Student-Athlete Employment: It's a Team Effort

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The relationship between student-athletes and their institutions has been a topic of exploration for more than 30 years. Stemming from a 1984 Supreme Court ruling, which upheld the National Collegiate Athletics Association's (NCAA) categorization of student-athletes as amateurs¹, student-athletes' opportunities for compensation have been a hot topic in college athletics. Traditionally, it has been thought that student-athletes are compensated fairly through athletics scholarships amounting to free or reduced educational costs, support services, and professional development opportunities. However, in thinking about the rules and regulations student-athletes face from their institutions and the NCAA, courts are reconsidering how to classify student-athletes. With the emergence of Name, Image, and Likeness (NIL) laws, complaints filed by the National Labor Relations Board (NLRB), and some student-athletes' efforts to unionize², it seems increasingly likely that student-athletes will soon be considered employees of their respective institutions. Now, it is once again up to the courts to usher in a new era of college sports, pending the final approval of House v. NCAA, which focuses on two major issues in college athletics. The first component of the pending settlement, which awaits approval from a federal judge, is the reparatory back-pay to Division I student-athletes who competed prior to when NIL payments were formally allowed by the NCAA in July 2021³. The second component is a future revenue-sharing model that could allow schools to pay approximately \$20M/year directly to student-athletes⁴. The current thinking around this model is that those student-athletes competing in the highest revenue sports will receive the bulk of the share, such as football and men's and women's basketball. However, it is still unclear what the impacts of Title IX will be on any proposed payout, as opinions differ on whether this money will be governed by the seminal anti-discrimination law for universities receiving federal funding. To navigate the new terrain of the collegiate playing field, athletic administrators and coaches, HR leadership, and university presidents/chancellors must each play a role in shaping the future for student-athletes.



Athletics Departments



The concept of student-athletes as employees sits right at the crux of their **athletic administration's** priorities – the best possible on-field product, student-athlete development, compliance with legislation and governing bodies, and the needs of their institution. Considering student-athletes as employees, athletics departments will need to adjust program culture, operations, and norms to offer support and set expectations for student-athletes. It is possible that this could be many student-athletes' first job, and athletics administrations should consider developing a holistic onboarding program to help them understand their academic, athletic, and employment expectations. In addition to their own acculturation, athletics departments should focus on guidance from their conference, the NCAA, and legal decisions to understand impacts to program operations. For example, general recruiting policies for employees likely do not account for guidance and restrictions from the NCAA such as time periods for recruiting and types of recruiting activities that can take place. There may also be gaps in how recruited scholarship student-athletes are hired versus non-scholarship student-athletes. Athletics departments and leadership will also need to update training and practice requirements to follow employment regulations. Universities will need to review policies about mandatory versus voluntary practices, team meetings, and study hours, in order to structure operations to ensure wellbeing, compliance, and time for academics. A third focus for athletics departments should be the program's reputation and value proposition. Compensation, benefits, and employment stipulations are likely to influence student-athletes' decisions on where they want to compete and learn. All athletics programs, and especially Division II and III schools, should develop strategic plans to maintain the spirit and success of athletics at their institution. These strategic plans should address the financial, operational, and cultural impacts of the emergence of student-athletes as employees.



Key takeaway for Athletics Departments:

Focus on evolving responsible, ethical, and supportive programs such as onboarding and policy training for coaches, training staff, athletics administrators, and student-athletes alike.

HR Leadership



The role of **HR leadership** will be critical in guiding compliance, equity, and employment efforts as student-athletes get closer to becoming employees. There are several ways HR leaders can be proactive to help lead their universities through this new era of college athletics. In preparation for pending changes, institutions should first review their Human Resources and employment policies to see where gaps exist for student-athletes. This includes a full review of employee policy manuals, administration guides, conduct policies, and other agreements where carveouts are needed to account for student-athletes using a new employee classification. HR needs to assume the perspective that student-athletes are not covered by existing policy for any type of current university employees and should consider impacts throughout the end-to-end employee lifecycle from recruiting to separation. For example, there may be a need for unique personal conduct policies for student-athletes that are not covered in existing employee and student conduct policies. Beyond NCAA guidelines, it is also critical to align policies to applicable federal and state regulations such as minimum wage, time-off and leave accruals, overtime pay, and workers' compensation. If a student-athlete is injured during practice or competition, will they be eligible for workers' compensation, and can the university provide insurance policies such as loss of value to student-athletes with prospects at playing in highly compensated professional leagues? Another policy area to focus on is recruiting. Currently, there are many aspects of student-athlete recruitment that are only governed by NCAA and school rules. If student-athletes are considered employees, their recruitment may need to adhere to federal, state, and local regulations for recruiting of general employees. Policies like these have widespread impacts to day-to-day

HR processes and should be updated to provide guidance to university administration, HR, and student-athletes themselves as they navigate a new and unique employee-employer relationship.

The uniqueness of the student-athlete sets them apart from both traditional student workers and university employees. As employees, they will need to be set up completely differently than other workforce populations with new policies, processes, and procedures. For example, many institutions set a maximum number of hours that traditional student workers can work while enrolled in classes, which must be considered against student-athletes' practice, training, and competition requirements. There are also some jobs for student workers that are only available to those who qualify for federal work-study, raising questions about compensation or other employment differences for recruited student-athletes versus non-scholarship student-athletes. These considerations should be incorporated into any employment agreements with student-athletes and documented in updated policies and workplace processes.



When it comes time to put policies into practice, higher education institutions need to prepare to manage student-athletes' employment on a day-to-day basis. From a process perspective, there will likely be an increase in common HR transactions such as payroll processing, time reporting, and benefits administration. Besides scaling up existing processes, institutions will need to update processes to incorporate the unique needs of student-athletes, such as I-9 and visa processing for international student-athletes. There will also be a need to consider technology implications to HR systems to enable these processes. When

managing employment information for student-athletes, institutions must abide by any data privacy guidelines for both minors, such as the Family Educational Rights and Privacy Act (FERPA), and international students. Finally, institutions will need the resources and personnel to manage these day-to-day processes. As a benchmark, CUPA-HR (Colleges and Universities Professional Association – Human Resources) finds that institutions have a ratio of less than 1 HR staff to every 100 students and 2 HR staff for every 100 full-time employees.⁵ In general, institutions will need to carefully plan to accommodate student-athletes as employees.

Key takeaway for HR Leadership:

Review existing HR policies and processes to identify gaps where updates are needed for student-athletes as employees.

University Leadership



University leadership should further strengthen their collaboration with the athletics administration and HR leadership in preparing for the possibility of student-athletes becoming employees. Athletics can be a big part of an institution's identity – on campus, in the local community, and in widespread alumni networks. University leaders should consider how this new era of college athletics might impact finances, operations, culture, and the missions of the university. While university leaders should play a significant role in all aspects of this development, they should pay close attention to impacts to financial aid, potential compensation, and program funding, all with a focus on ensuring equity to current and future student-athletes. It would also benefit presidents and chancellors to collaborate with other institutions in their athletic division and conference to develop coordinated responses to decisions from the courts or NCAA. For example, during HR policy review, university and HR leaders could benchmark

with other institutions to provide student-athletes a comparable employee experience across sports, divisions, and athletic conferences. University presidents and chancellors will also be responsible for keeping campus stakeholders informed of any guidelines on student-athlete employment to ensure all parties understand their responsibilities and protections as employees.



Key takeaway for University Leadership:

Proactively partner with the athletics administration, HR leadership, and the Office of General Counsel to understand potential impacts and develop a strategic response, with a focus on financials and institutional mission.

This topic will continue to evolve over the next several years and remain a top challenge for university and HR leaders to navigate. Staying current on the situation and beginning to plan for changes is imperative so that athletics, HR, and leadership are prepared to respond quickly while maintaining compliance.

Solutions for College Athletics



Faced with complex, never-before-seen issues and untapped opportunities, college athletics needs fresh perspectives and advanced skill sets to chart a way forward. Deloitte's College Athletics practice brings those to the table, enabling us to serve as a uniquely effective, collaborative partner. We bring a wealth of experience in sports and higher education to create new pathways to success for athletics programs, administrators, and student-athletes. Our professional services experience across strategy, HR, technology, risk, and compliance paired with our future-focused approach to problem-solving sets us apart as the destination professional services provider for athletics programs.

Learn more at:

<https://www2.deloitte.com/us/en/pages/public-sector/solutions/college-athletics.html>

Endnotes

- 1 <https://www.oyez.org/cases/1983/83-271>
- 2 <https://www.shrm.org/topics-tools/employment-law-compliance/ncaa-proposes-compensation-for-college-athletes>
- 3 <https://natlawreview.com/article/ncaa-board-approves-settlement-terms-antitrust-lawsuits>
- 4 <https://natlawreview.com/article/ncaa-board-approves-settlement-terms-antitrust-lawsuits>
- 5 <https://www.cupahr.org/surveys/workforce-data/national-median-ratios-for-staff-faculty-and-students/>





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