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House Considers Bill Declaring Student Athletes Not Employees

Labor Relations Update on **June 15, 2024**

On Thursday, June 13, 2024, the U.S. House of Representatives Education and Workforce Committee held a hearing on H.R. 8534, entitled "The Protecting Student Athletes' Economic Freedom Act" ("Act"). If passed, the Act would declare that student-athletes are not employees with respect to any federal or state law (including the National Labor Relations Act ("NLRA")) of any institution of higher education, athletic conference, or athletic association based on their participation on a varsity sports team. The Committee advanced the bill along party lines in a 23-16 vote. Now that the bill has passed the Committee, the next step is to schedule the bill for a vote or debate before the entire House.

June 13 Hearing on Bill Presents Arguments on Both Sides

Representative Bob Good, a Republican from Virginia, first introduced the bill on May 23, 2024. At the hearing, Congressman Good remarked that classifying student-athletes as employees would set limits on the name, image, and likeness ("NIL") benefits that student-athletes can now receive. Congressman Good also stated that employee classification could result in inadvertent negative consequences for these student-athletes, such as strained relationships with coaches, union dues they may have to pay, the possibility of entering into employment contracts, and limiting the "student" element from the student-athlete experience. Good also warned that classifying college athletes as employees presents an existential threat to college athletics due to the rising costs and liability associated with this change.

Democratic Congressman Bobby Scott voiced opposition to the bill, noting that it "strip[s] varsity athletes from their rights under fundamental labor and employment statutes," and that many student-athletes spent more than forty hours per week on their sports activities and face significant demands that restrict their academic schedules. Scott also stated that a number of labor unions and other organizations have expressed concerns with this bill.

Employment Status of Student-Athletes Is A Timely Issue

The employment status of student-athletes under the NLRA, in particular, has generated significant attention in recent years. For instance:

- In 2021, the NLRB's General Counsel issued a memorandum, which we covered, asserting that college athletes are employees under Section 2(3) of the Act with the right to form a labor union and engage in other protected, concerted activity, and that the National Labor Relations Board (the "Board") would pursue unfair labor practice charges in appropriate cases against universities and athletic conferences that do not classify student athletes as employees under the NLRA.
- Then, last year, we also covered that Region 31 of the Board issued an unfair labor-practice complaint against USC, the PAC-12, and the NCAA for allegedly misclassifying college athletes as non-employees and infringing upon their Section 7 rights under the NLRA. A hearing was held this past spring before an Administrative Law Judge.
- Earlier this year, a NLRB Regional Director found the players on the Dartmouth men's basketball team are employees under the NLRA and could vote in a union election. The players voted to unionize, becoming the first unionized college sports team in the United States. The University appealed the decision to the NLRB.
- A case alleging that college athletes are employees entitled to minimum wage and overtime under the Fair Labor Standards Act, *Johnson et al. v. NCAA et al*., is currently pending before the Third Circuit Court of Appeals.

Although there have been prior legislative efforts concerning this subject, this is the first time a bill concerning the employment status of college athletes advanced past the Committee phase. We will continue to provide updates on this topic as developments occur.

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