



Dartmouth Basketball Team Withdraws Petition to Form First Student-Athlete Union: 5 Compliance Tips for Colleges and Universities

Insights

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The country's first unionized college basketball team is no more. After making history just under a year ago, the union representing Dartmouth College men's basketball players withdrew its petition on December 31 and will no longer seek to represent the players in collective bargaining. While the Dartmouth case ends without the National Labor Relations Board having the chance to review the underlying Regional Director's decision that found the basketball players to be "employees" under federal law, the issue of student-athletes as employees remains contentious and unresolved. What does your college or university need to know about this development and the status of related legal battles over student-athlete employment? More importantly, what are five compliance tips for athletic departments navigating this evolving landscape?

Background: The Dartmouth Petition and Broader Context

The movement for student-athlete employee status gained momentum following a 2021 guidance memorandum from the agency's General Counsel suggesting certain student-athletes might qualify as employees. This guidance followed litigation over a similar claim in *Johnson v. NCAA*, which challenged the NCAA's tradition of amateurism by pursuing wage-and-hour claims under the Fair Labor Standards Act.

In February 2024, an NLRB Regional Director held that student-athletes were employees and permitted a union election to proceed. The ruling considered factors such as the services athletes provide to the college, the forms of compensation received (including non-economic benefits), and the degree of institutional control over their activities. The players subsequently voted in favor of unionization, and Dartmouth sought review by the full NLRB.

This week, the players' abandoned their efforts to collectively bargain, likely to avoid giving the incoming GOP-controlled NLRB the opportunity to reverse the Regional Director's decision. On a broader scale, unions used this strategy somewhat successfully during the first Trump administration to deprive the NLRB from overturning pro-union precedents – most notably in cases involving the "employee" status of graduate student workers. Just last week, graduate student workers at Vanderbilt University withdrew their petition to unionize.

The Dartmouth players' union push, had it advanced, could have set precedent by recognizing college athletes as employees under federal labor law. However, the withdrawal of their unionization petition is unlikely to diminish the momentum of the student-athlete employment debate. Significant legal developments, such as *Johnson v. NCAA* and the proposed settlement in *House v. NCAA*, continue to challenge the traditional amateurism model in collegiate athletics. Additionally, potential congressional interventions could further redefine the landscape in the year ahead.

Full Court Press: Other Developments Athletic Departments Should be Tracking

The Dartmouth union drive is not the only significant development for colleges and universities to track. Here are some other key matters you need to know about.

The *Johnson* Litigation: The 3rd Circuit Court of Appeals' July 2024 ruling in *Johnson v. National Collegiate Athletic Association* was the first to rule that student-athletes at NCAA Division I schools can bring a lawsuit claiming they are employees and may be entitled to minimum wage and overtime payments under federal law. In doing so, the court established a somewhat unique version of the "economic realities" test under which college athletes may be employees of their institution when they:

- perform services for the institution;
- necessarily and primarily for the institution's benefit;
- under the institution's control or right of control; and
- in return for express or implied compensation or in-kind benefits.

The 3rd Circuit then sent the case back to the lower court to apply its newly fashioned test. The student-athletes in the *Johnson* case filed an amended complaint in November, and the NCAA and institutions have until February to respond.

Key Takeaway: Unlike the NLRB cases, which only apply to private institutions, federal wage and hour law applies to both public and private institutions alike. An adverse outcome in *Johnson* may lead to significant (and retroactive) financial burdens, necessitating allocation of substantial portions of athletic budgets to athlete compensation. This shift could lead to increased tuition, cuts to non-revenue sports, or a reevaluation of the overall financial model of college athletics.

Challenges to the *House* Settlement: The proposed settlement in *House v. NCAA* represents a transformative shift in collegiate athletics. The settlement includes a nearly \$3 billion fund to compensate Division I athletes who participated since 2016 for lost opportunities due to previous NIL restrictions. Additionally, it introduces a revenue-sharing model allowing schools to distribute up to 22% of their athletic revenue to student-athletes starting in the 2025-26 academic year. This model could direct more than \$20 billion towards athletes over a decade, significantly altering the financial dynamics of college sports. The deal also eliminates all scholarship limits for collegiate sports,

replacing them with roster limits.

However, the settlement has sparked concerns, particularly regarding new roster limits that may lead to the reduction or elimination of playing opportunities, or the elimination of non-revenue sports programs – not to mention the potential for a disparate impact on women’s sports. Smaller institutions may face financial challenges in implementing these changes, potentially impacting opportunities for student-athletes seeking scholarships.

What’s Next? A final approval for the hearing is set for April, though it remains unseen whether or how the final settlement may differ from the one preliminarily approved in October.

Congressional Intervention: With a Republican-controlled Congress and the White House transition about to take hold, there is renewed potential for legislative action that could preempt court rulings and establish a uniform standard regarding the employment status of student-athletes. Last session’s attempt – the “Protecting Student Athletes’ Economic Freedom Act” (H.R. 8534) – sought to clarify that student-athletes are not employees under federal or state law based on their participation in collegiate sports. The bill aimed to preserve the amateur status of college athletes while addressing economic opportunities related to NIL compensation. However, it did not reach the House floor.

What Will Happen in 2025? NCAA President Charlie Baker has emphasized the importance of maintaining the student-athlete model and has urged federal lawmakers to prevent athletes from being classified as employees. Incoming Chair of the Senate’s Commerce Committee, Sen. Ted Cruz, recently stated that a college sports bill is a “top priority.”

Five Compliance Tips for College Athletic Departments

While the Dartmouth case is over, colleges and universities should remain vigilant. The unresolved legal questions surrounding student-athletes as employees creates uncertainty while recent developments continue to signal a paradigm shift in collegiate athletics. If this happens, it will come with significant implications for compliance, budgeting, and the overall management of athletic programs. What can you do now to best prepare your college or university? Here are five tips.

1. **Monitor Legislative and Regulatory Developments:** Establish a process to track federal and state legislative actions, agency decisions, and court rulings related to student-athlete employment status. Regularly update institutional policies to ensure alignment with the latest legal standards.
2. **Evaluate Employment Practices:** Conduct comprehensive audits of current practices concerning scholarships, stipends, and NIL compensation. Ensure that all forms of athlete compensation comply with state laws and NCAA regulations to avoid potential legal or NCAA compliance challenges.
3. **Strengthen Internal Policies:** Develop clear policies that define the relationship between the institution and student-athletes. Address issues such as time commitments, compensation, and

benefits to best preempt claims of employee misclassification.

4. **Engage Legal and Compliance Experts:** Consult with legal professionals specializing in labor and employment law to assess institutional vulnerabilities. Consider conducting mock audits and training sessions to prepare for potential legal scrutiny.
5. **Align Budgeting and Resource Allocation with Evolving Risks:** Reevaluate budgets to account for potential increases in compensation or benefits for student-athletes. Prioritize resources to ensure prospective compliance with applicable laws while maintaining a balanced approach to supporting non-revenue generating sports and other extracurricular programs.

Conclusion

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Related People



Joshua D. Nadreau
Regional Managing Partner and Vice Chair, Labor Relations Group
617.722.0044
Email

Service Focus

Labor Relations

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