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ALERTS

Should College Athletes Be Paid? The Ball Seems To Be Moving In That Direction

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Historically, college athletes have been considered amateurs, and a number of restrictions have prevented college athletes from receiving compensation to maintain that amateur status. These restrictions have been imposed and enforced by the National Collegiate Athletic Association (NCAA), the national governing body for collegiate athletics. Over time, sponsorships, social media, and product marketing have evolved; college athletics is now a multibillion dollar national and worldwide sports property, and the concept of the college athlete as an amateur has become increasingly difficult to defend.

As a result, the role of college athletes and their amateur status is now being reviewed in a number of different ways.

Most recently, on Oct. 29, the NCAA announced it would begin the process of changing its rules to permit student-athletes to be compensated for the use of their name, image and likenesses. It has left the actual implementation of any such rules or regulations to each of its three divisions. The divisions were instructed to develop rules no later than January 2021.

The NCAA's change in course is largely attributed to California Gov. Gavin Newsom's signing into law, on Sept. 30, 2019, the Fair Pay to Play Act. The measure (which the NCAA, the Pac 12 Conference, and a number of California schools and others opposed) is groundbreaking, as it is the first legislation, state or federal, allowing college athletes to be compensated through endorsement deals, licensing of their likeness and other commercial use of their identies. While the act has already been

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signed, it does not take effect in California until Jan. 1, 2023.

There is a lot of gray area involved in this legislation, but it clearly establishes some significant precedents. First, and with limited exceptions, the act prohibits California colleges and universities from denying their student-athletes access to compensation for the use of their name, image and likeness (now commonly referred to as NIL rights). Second, it guarantees those student-athletes the opportunity to employ licensed agents or other representatives to assist in negotiating and consummating NIL compensation arrangements.

As a safeguard designed to protect an institution's own sponsorship revenue, the act does not allow a school's student-athletes to sign agreements that conflict with existing school sponsorships, but it appears to leave open other possible arrangements that might benefit student-athletes – for instance, some form of joint licensing and revenue-sharing agreement similar to those traditionally found in professional sports.

Notwithstanding some early reporting to the contrary, the act does not allow schools to pay their student-athletes directly, and specifically prohibits schools from offering revenue in its recruiting efforts. In other words, the act does not turn student-athetes into paid professionals on a college campus, though those opposing the compensation movement suggest this change to the definition of collegiate amateurism inevitably leads there.

The legislation not only anticipated but was designed to provoke the response it has caused.

This is now a rapidly developing area of law for universities and colleges. Congressional bills are expected to be introduced that will expand the issue of NIL rights nationwide, and a number of states – including Colorado, Florida, Illinois, Kentucky, Minnesota, Nevada, New York, Pennsylvania and South Carolina – are either considering bills or have bills already introduced in their state legislatures. Predictably, a number of the legislators or representatives carrying these proposals forward are former NCAA student-athletes. Pro athletes, sponsors, licensees, media and fans are also weighing in. The different rules that emerge at the federal and state levels, as well as within the NCAA and its different divisions, conferences, and institutions, will significantly alter the collegiate athletics landscape.

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