



Are College Athletes Employees? NLRB Reverses The Call On The Field

September 30, 2021 | [Labor And Employment, National Labor Relations Board](#)



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The National Labor Relations Board general counsel is turning heads again with another [memo](#) signaling a big shift in labor law. Jennifer Abruzzo issued a memo on Sept. 29, 2021, outlining her position that college athletes at private institutions qualify as employees under the National Labor Relations Act (NLRA).

This is not the first time the NLRB has tackled this issue. In 2015, the Obama Board dismissed a [case about whether scholarship athletes](#) on the Northwestern University football team qualified as employees under the NLRA. The Board dismissed the case on jurisdictional grounds without addressing the central question of whether scholarship athletes at private colleges and universities qualify as employees under the NLRA. In her recent memo, Abruzzo opines that nothing in the Northwestern University decision “precludes the finding that scholarship football players at private colleges and universities, or other similarly situated Players at Academic Institutions are employees under the NLRA.”

In support of her opinion, Abruzzo explains that college athletes fit the Board’s expansive definition of “employee” under common law agency rules, noting that athletes perform services for their schools; are subject to their schools’ and the NCAA’s control regarding the terms, conditions, and manner of their services; and are provided with compensation in the form of athletic scholarships. In addition, Abruzzo finds support in the Supreme Court’s

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recent decision in *NCAA v. Alston*, noting that as courts continue to chip away at restrictions on compensation untethered to education, student athletes will be more fully within “employee status” under the law.

The memo further states that Abruzzo will pursue independent violations in “appropriate cases” where players are misclassified as “student-athletes,” arguing that such misclassifications have a chilling effect on Section 7 activity because it leads to players to believe they are not entitled to the NLRA’s protections, which include protections against retaliation for engaging in concerted action.

Notably, the NLRB only has jurisdiction over private employers, meaning this issue only affects athletes at private colleges and universities. While Abruzzo’s memo does not, on its own, convert college athletes into employees, it does signal a strong policy shift. As general counsel, Abruzzo has the power to influence matters the Board considers, oversee the investigation of charges, issue complaints, and advocate for how the Board ought to rule on certain issues. Therefore, private institutions should be ready for change down the road.