

## Ratings: Objective vs. Subjective

By Patrick Rosenow



Who's the best official in your association? Does your officials' group have a system in place to grade, rank or rate its members? Most do, but vary widely in how they rate officials and how

they use those ratings. Very few groups have really considered why they have ratings and whether those ratings serve that purpose.

There can be a number of reasons for assessing officials' performance: determining the effectiveness of the organization as a whole; providing feedback to the official and letting the official know what he or she is doing well and not so well; identifying which officials should be considered for the more difficult contests.

Obviously, the reason for the ratings should determine the type of rating system. For example, it wouldn't be necessary to gather data on individual officials by name if you're just trying to

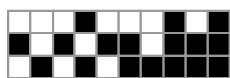
measure performance of the entire group. Moreover, you'd probably put more emphasis on coach or athletic director input since they are our primary customers. On the other hand if you're only trying to provide feedback to help each official improve, you wouldn't need to rate individuals and place them in order from top to bottom. You'd just need to let them know what areas they should work on. Finally, if the only reason you evaluate is to decide who goes to the playoffs, then you wouldn't need to do anything except give each official his or her class standing.

Of course, the real answer is you use evaluations for all of those reasons. As a result, all groups tend to use a mix of

*(See "Objective vs. Subjective" p.2)*

## Common Talk on Independent Contractor Status

By Donald C. Collins



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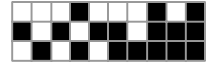
Independent contractor problems are clearly going to be with us for quite some time. There's been a substantial amount of legislation and published cases that state quite clearly that officials working amateur sports contests are independent contractors in their relationships with the teams, leagues, associations and governing bodies that assign and pay them.

The legislation and published legal cases have still left a lot of lingering questions. Indeed, independent

contractor issues lend themselves to a lot of misunderstanding. This article answers some of the common questions arising under that area of the law association leaders might have. Then the article suggests some practical steps associations can take to reduce ongoing problems in the area.

**Common questions.** 1. What does independent contractor legislation do? The legislation grants a group of people (in our case amateur sports officials) an exemption from the

*(See "Independent Contractor" p.7)*



## Independent Contractor (Continued from page 1)

definition of employee for workers' compensation tax purposes. That workers' compensation exemption also provides a practical exemption from unemployment tax liability as state unemployment agencies tend to stay consistent with state workers' compensation agencies.

2. What does the exemption from the definition of employee mean? It means nobody involved in the hiring, assigning or payment of an amateur sports official will have to pay workers' compensation tax. For purposes of consistency, those groups will almost certainly not pay state unemployment or federal unemployment insurance (FUTA) tax either. The exemption probably means courts will rule that officials are not the association's employees, but it's not guaranteed. A court could say you're an employee for one purpose but not for another. However, we should note that often doesn't happen. If you're independent for workers' compensation purposes, courts won't generally make the officials your employees for other purposes.

3. What happens when there's no legislation? The association is more vulnerable to workers' compensation actions from injured officials and for back tax claims from state governments. The large amount of legal cases and legislation finding amateur sports officials to be independent contractors means that the association will probably win if it goes to court. However, going to court is painful and expensive. Life will be unpleasant, and a lot of time and energy will be spent worrying about whether your association can survive a finding that your officials are the association's employees.

4. How come the published legal cases don't help me? Every published case says you're an independent contractor. However, there aren't that many published cases and the cases are old. You'll probably win any actions

against you if the actions get to a state's highest court. However, you could lose in administrative agency hearings where the agency's hearing officers and Administrative Law judges may not be particularly interested in reading old cases from other states — or even from their own state. Even if you win, you're going to spend a lot of money and time to do it.

**Practical solutions.** The most important thing an association can do to prevent officials from bringing workers' compensation claims against it is to make the officials purchase

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### **Education can lead to buy-in and that can save your association a substantial amount of money and trouble.**

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insurance. The association should check with the insurer to make sure the insurance really provides the officials adequate coverage. The association should also make sure the association itself is covered by insurance against those potential claims.

- Associations do not need to feel hesitant about requiring officials to purchase insurance — or to do anything else. Independent contractors must abide by their contracts. Association bylaws are binding contracts under the law. Thus, associations can solve a lot of problems by simply amending their bylaws to require members to purchase insurance.
- Associations should then make sure they have insurance that protects their decision-makers from any actions. The insurers should defend the decision-makers and indemnify them if they lose.

- Associations also can benefit by incorporating. Incorporating means that individual decision-makers' assets are not generally at risk. However,

associations should note that insurance can save them the trouble of having to incorporate.

Also, associations should work with schools to pass independent contractor legislation. NASO has a special report on independent contractor legislation on its website ([www.naso.org](http://www.naso.org)). Associations should read that, become familiar with it and take steps to have it enacted.

- Finally, associations can educate their members. Education can lead to buy-in and that can save your association a substantial amount of money and trouble. Part of that educational process can be to have association members sign independent contractor agreements. Associations should note it is not clear whether those independent contractor agreements are binding. Nonetheless, some associations may not want a member who refuses to sign an independent contractor agreement. Other associations may decide not to disassociate itself with a member who refuses to sign the agreement. Those associations may wish to create a dissenter's form for members who refuse to sign the independent contractor agreement. That dissenter's form should acknowledge the member has received information that the prevailing law indicates he or she is an independent contractor and understands that information, but does not wish to sign an agreement that says they are an independent contractor.

Independent contractor status is clearly an ongoing and difficult issue that will be with associations for a long time. However, it is an issue that can be lived with and successfully managed. (Donald C. Collins is the executive director of the San Francisco Section of the California Interscholastic Federation. He is a longtime basketball official and lawyer.) □