

Gig Economy Bill

By Donald C. Collins

AB5, the California gig economy bill, is the latest salvo in the independent contractor/employee wars. The bill wasn't written with amateur sports officials in mind, but the bill's language could impact officials.

AB5 enshrines into law a three-factor independent contractor/employee test called the "ABC" test. Under AB5, a worker is presumed to be an employee unless he or she meets all three of the following factors: (A) whether the worker is free from the employer's control and direction; (B) whether the worker performs work that is outside of the usual scope of the employer's business; and (C) whether the worker is in an independent business.

If the ABC test applied to sports officials, they would likely be classified as employees in some, if not most, cases.

The latest salvo in the independent contractor/employee wars.

Quite frankly, all it would take is one or two findings that amateur sports officials are employees to create massive business problems in California's amateur sports industry. Worse, though, one would not have to wait for the wrong result in a lawsuit to create problems.

The mere possibility of the ABC test being applied to amateur sports officials would create business uncertainty. Litigation and business restructuring would rule the day as everybody would scramble to protect themselves against their new, uncertain business positions.

Fortunately, the ABC test will probably never be applied to California's officials. AB5 has some exemptions that may make the ABC test inapplicable to amateur sports officials.

The first AB5 exemption states that any exceptions to the term employee in the Unemployment Insurance Code or Labor Code shall remain in effect. This is key language. Sports officials' independent contractor legislation takes the form of exceptions to the term "employee" under state workers'

compensation and unemployment insurance codes. The first AB5 exemption reflects the bill author's intent not to disturb settled law.

California has a settled sports officials' independent contractor law, but that law still could generate litigation. Under California law, officials' independent contractor status is directly addressed in the California Labor Code, which covers workers' compensation.

California does have an unemployment law that makes sports officials independent contractors, but that law is enshrined in the California Code of Regulations. A court could rule that the Code of Regulations doesn't meet the terms of the exemption to AB5 as the exemption is enshrined in a regulation, not in legislation.

California has another exemption under which the ABC test does not apply to businesses that have a separate address from their employer, a business license, have sufficient market power to negotiate their own contracts and have multiple clients. Officials who work for officials associations would be exempt from the ABC test in their relationships with schools if their association got a business license and met this test. However, those very same officials may not always be independent contractors in their relationships with their officials associations or with sports governing bodies that hire officials directly instead of going through an association.

Ultimately, the biggest problem created by AB5 is business uncertainty. Litigation appears likely. The mere threat of litigation could lead schools and associations to alter their business relationships, leading to litigation over contracts in some cases and creating competition for service between associations trying to force change and groups that seize new business opportunities by promising that they will not change.

The business uncertainty created by AB5 could cause problems. We shall see. *Donald C. Collins is executive director of the San Francisco Section of the California Interscholastic Federation. He is a longtime basketball official and lawyer. This material is for informational purposes only and is not legal advice. □*

What Next After Stopping Play for an Injury?

After an official has stopped play because of a player injury, there are some basic guidelines to follow for proper risk management:

- Determine if the player really is in need of assistance. If so, get the coach on the floor or field and keep the immediate area clear.
- Do not attempt to treat the player yourself. (Note: In some states, licensed healthcare professionals may have a legal duty to provide aid.)
- Don't discuss the cause of the injury with anyone.
- Do not request anyone to move the injured player so that you can get the game started again. It does not matter if the delay is one minute or four hours. Only the medical personnel should determine if the player can be moved and when.
- Continue to supervise the activity of both teams: Keep both teams separated at or near their bench areas.

SOURCE: SPORTS OFFICIATING: A LEGAL GUIDE BY ALAN S. GOLDBERGER

Contract Breach

If an official breaches a contract, that official would be responsible for all damages, if any, sustained by the school or assigner. Monetary damages may be spelled out in the contract and are generally enforceable unless the amount is so unreasonably excessive that it has no relationship to the potential actual damages.

If the contract is silent as to damages, the official would be liable to the school or assigner for actual damages. However, the other party has the duty to mitigate (reduce or eliminate) its damages and must use reasonable efforts to do so. If an official gives ample notice and a suitable replacement is found, damages are zero or minimal (the cost of finding the replacement and any difference in pay). However, if the official fails to show up or a suitable replacement cannot be found and the game must be postponed or canceled, damages would be more extensive (such as costs of reschedules and lost revenue).

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