

# Turning Back Games Amid the Pandemic

By Donald C. Collins

You accepted a game during the pandemic, and now you don't want to work it. Don't worry. You can probably turn back the assignment.

As with all things, we start with our contracts. Unfortunately, though, individual contracts and association bylaws probably don't address pandemics.

Officials with written contracts or bylaws can do a word search for "pandemic" or "act of God." If you find something, it may tell you your turnback rights.

The legal phrase for contract clauses that list acts that let you out of a contract is called a "force majeure" clause. Don't worry about the legal terminology. The key thing to note is the clause lists the type of unexpected emergencies that let you escape your contract obligations. For example, you may see references to acts of God, acts of war, pandemics, tornadoes, earthquakes and disruptions to transportation systems.

Most of us are not going to see contract and bylaw clauses that excuse an official's performance in dire emergencies. People tend to contract for the circumstances they can anticipate. Officials anticipate rainouts, canceled and postponed games, and even power outages. So we might see or have a means to address how we get paid in those circumstances. We also have bylaw and contract provisions that tell us how to turn back a game — after all, we can anticipate things coming up that prevent us from working. The problem with a pandemic is nobody might want the turned-back game even though the event sponsor may still plan to hold it (and yes, there are still games being played in the pandemic).

Don't worry, you can probably turn back your game without penalty in a pandemic even if the contract doesn't address turnbacks. The law understands every contract is predicated upon certain, normal underlying conditions. Where the apprehension of extreme danger arises after the contract, the

underlying conditions are altered. Wars, terrorist acts and pandemics apply here. This is called impossibility of performance — even though officiating may actually be possible and even practically doable. The notion is all bets are off if some truly awful and impactful unexpected event occurs after you contracted.

You might be able to turn back your game due to a pandemic due to a force majeure clause or impossibility of performance. But, you can't just stick it to your association, league or assigner. You need to give notice. You may even be expected to at least try to find a replacement if your bylaws say so. But after a reasonable effort, you could turn back the game.

Also, timing is everything. You could turn back games at the last minute in March as COVID-19 was new at that time. Now, we know COVID-19 exists. So officials should address matters with their assigners or client leagues and teams in advance. It is essential officials make sure there's a mechanism that allows them to turn back games if their locale shuts down again — even if the client plans to play amid worsening conditions.

Finally, today's pandemic does not provide an excuse for life. There are places where officials book games well in advance — sometimes years in advance. Today's COVID-19 pandemic does not excuse turnbacks well into the future (although there may be other reasons for turning back games booked so far in advance). We must keep in mind all officials aren't in the same boat; there's no one-size-fits-all solution, especially amid the pandemic.

Just remember, the pandemic lets us turn back games. But you have to turn the games back ethically and you should go over turnbacks in advance of accepting any new games.

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. □

## Media Safety

With professional sports disrupted by the pandemic, amateur events have been getting a greater media spotlight. For example, a senior baseball league game in Wisconsin this summer featuring two former MLB pitchers got media coverage when it would not have gotten any notice in ordinary times. At events, the media likes to get as close to the action as it can, which could be unsafe for both the media and players. Officials should never sacrifice player safety for the convenience of the media. A judge or jury considering a civil lawsuit against officials for negligence arising from a player/media collision will ask, "Was the media member in a potentially dangerous location? Were the officials aware of the potential danger and did the officials take preventive measures?" Officials should take precautions before and during contests to keep media members clear of dangerous areas. If they refuse, stop the game and have them directed to a safe area.

## Avoiding Litigation

No official wants to get sued over something that happened on the field, court or pitch. *Sports Officiating: A Legal Guide*, by officiating legal expert Alan S. Goldberger, offers some tips in brief for avoiding litigation:

- Enforce all rules relative to player safety strictly and without compromise or deviation.
- Any time a rule requires the officials to ask questions and get answers: *Ask questions and get answers.*
- Act intelligently and consistently, employing the overriding principle of player safety in enforcing the rules.
- Do not, under any circumstances, make up your own rules regarding player safety or attempt to explain the consequences of one court of action or another to anyone.

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