

# ADVISOR



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## HELP NEW BOARD MEMBERS CONTRIBUTE FROM THE START

By David Westol

**E**lections are over. Your newly elected board members – the “rookies” – are ready to begin their service.

And ...

What will you include in their orientation session? Of equal importance: How will you teach them about service on your officials association board of directors? Is it possible to bring a rookie up to varsity status on a board of directors via onboarding and effective orientation so that a new board member can immediately contribute to discussions and outcomes?

Or do you subscribe to the slacker philosophies of, “Hey, they’ll pick it up as they go along,” or “Everybody understands what it means to serve on the board”? Those translate to, “We don’t care whether new board members ‘get it’ and we don’t want to invest the time to prepare them to be effective board members.”

As a leader, you don’t want to encourage mediocrity. And mediocrity in an association can be identified by the lack of an onboarding process.

An excellent board of directors has a documented onboarding process – another way of defining the process of integrating and familiarizing new board members with everything from ethical duties

to meetings. Let’s consider what a good onboarding process looks like, with the understanding this would involve a special or additional meeting. Things to share include:

SEE “CONTRIBUTE” P.6

## ARE YOU SURE MEMBERS ARE NOT EMPLOYEES?

By Donald C. Collins

**T**he last thing an officials association needs is to get a surprise letter saying one of its officials is its employee, and it has to pay a bunch of back taxes. We want certainty. The lack of certainty creates anxiety. Most associations treat their officials as independent contractors, but will a court see it that way? Well, if you can do the following, you’ll have a better chance of having independent contractors instead of employees.

### Live in the Right Place

The best way to have a sports official be an independent

contractor instead of your employee is to be in the right place. You want to be in a state that has legislation making officials independent contractors.

State legislation may be the best protection, but it’s still pretty thin protection. Sports officials’ independent contractor laws exempt officials working amateur athletic contests from being employees for workers’ compensation and unemployment insurance purposes. But that’s it. State independent contractor laws don’t apply to employment discrimination cases or to unionization efforts.

SEE “EMPLOYEES” P.7

and ideally after each meeting.

- Spend a few minutes at each meeting asking questions of board members — this can be accomplished anonymously using a survey as well as in real time.

- Check in with the new board members as a group and as individuals after the first meeting and second meetings. It's a quick phone call but people remember that you cared enough to call and ask for their opinion. The "you" doesn't have to be the board president — in fact, it would be healthier if other board members shared that responsibility.

Onboarding will occur in two ways in an officials association. It will be planned, executed and evaluated for improvement, as

outlined above. Or it will be unplanned, disorganized, left to chance and the vagaries of a new board member asking a current board member, "Hey, you got a minute? I have some questions." Excellent boards of directors assume nothing and initiate plans to meet needs. And the need in terms of new board members is to provide them with as many tools and as much expertise as possible for their role. *Dave Westol, an NASO member, is a longtime football official. He is principal and owner of Limberlost Consulting Inc., in Carmel, Ind. Westol consults with a number of national fraternities and sororities and other nonprofit associations. His website is [limberlostconsulting.com](http://limberlostconsulting.com). ■*

#### EMPLOYEES (CONTINUED FROM P. 1)

Location may matter, but state legislation is a narrow precipice to hang one's hat on.

#### Make Someone Else Write That Check

Unemployment and workers' compensation agencies follow the money. The entity that writes the official's check will face the issue of whether the official is an employee or an independent contractor. So, one strategy is to simply have someone else write that check.

The school, league or governing body will face the employee/independent contractor question if it pays the officials directly. Conversely, the officials association will face the issue if the school, league or governing body pays the association, and the association cuts a check to the official who worked the game. If you make someone else write the check, you can avoid the issue.

Again, it's never that simple. You can't escape labor laws and employment discrimination laws simply by having some other party write the check. Also, making

someone else write the check could create a new set of unforeseen business problems.

#### Link Assignments to Ratings and Evaluations

Linking assignments to ratings and evaluations won't impact an employer/independent contractor determination. So, why is it the third item? Simple. This item makes it less likely officials will bring employment discrimination cases against associations.

Associations can't avoid being considered either employers, joint employers, or jointly liable in employment discrimination cases. Schools, leagues and governing bodies can be dragged into these cases also. Everybody can take a hit where discrimination occurs.

It's best to take steps not to have such cases. The best solution for an independent contractor/employee issue is to avoid the issue by staying out of court.

#### Circulate Those Bylaws

An association's bylaws are a contract between the association and the members. Good bylaws can

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help an association show it is simply not structured in a way that would make its member officials its employees.

Many officials associations are set up as a band of brothers and sisters. The members are often a group of equals who elect or create a mechanism to appoint business representatives, and some person to divide up assignments. This structure sets a good context for a finding the officials aren't employees.

Good bylaws aren't enough, though. Association members need to see the bylaws; so be sure to circulate them.

### Use Written Contracts

Sometimes we're too informal. Officials associations should use written contracts with all of their client schools, teams and leagues. In an independent contractor/

employee context, a written contract may help a workers' compensation or unemployment insurance agency conclude the client is really paying the official and that your association is just a pass through. This is a long shot as these agencies generally look at the group that writes the check, but it's a long shot worth taking if the agencies determine the officials are the client's employees, not the association's.

### Have Independent Contractor Agreements

Some associations require their members to sign independent contractor agreements. As a legal matter, these agreements would appear to have the same effect as the old legal adage, "Saying so don't make it so." However, in *PIAA v. NLRB*, 926 F.3d 837 (D.C. Cir. 2019) (the Pennsylvania

lacrosse case), the D.C. Circuit Court of Appeals found independent contractor agreements to be quite persuasive. Who are we to say the second-highest court in the land is wrong? Independent contractor agreements can't hurt — even if "saying so don't make it so." Associations should not deny membership to members who refuse to sign. That may create a new set of problems. Just have the dissident members sign an acknowledgement form that the board advised them they were independent contractors. *Donald C. Collins is the commissioner of the San Francisco Section of the California Interscholastic Federation. He is a longtime basketball official and lawyer. This article is for informational purposes and is not legal advice. ■*

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