I.C. for U and Almost All

By Donald C. Collins

The 2023 National Officiating Survey had one head-scratcher. Only 67.83% of the respondents indicated they were independent contractors. While there are some sports officials who are employees (most pro officials, for example), nearly all officials working at the high school and college levels — and in almost all youth leagues — are independent contractors.

It turns out the base survey result includes respondents who did not answer the question. When blank answers are removed, 91.8% indicated they were independent contractors. But even that number seems low.

There's a practical way and a technical way to add some clarity to how you're classified when you step on the field or court.

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The practical way is to classify yourself as the schools and leagues that pay you classify you. If no employment taxes are withheld, file your taxes as an independent contractor. If you're paid on a payroll, and employment taxes are deducted from your check, file as an employee.

This practical approach ensures you neither overpay nor underpay your taxes. Amateur sports officials are almost always paid as independent contractors. Of course, there's still room for confusion as some leagues put officials on the payroll.

Now, there is a technical aspect also. Remember, just because the school or league that pays you classifies you as an employee or an independent contractor doesn't make it so. The law is not based on say so.

There are two key things to look for.

First, you can see if your state has an independent contractor statute. If it does, you're going to be an independent contractor when you fall under the statute. However, the statutes are usually part of state workers' compensation laws. They don't cover every possible situation.

Second, if you're not fully covered by the statute or there is no statute, you have to rely upon a long line of legal cases and government agency regulations. The cases and regulations use various legal standards to assess whether a worker is independent and has the right to control the means by which they do their work, or whether a worker is an employee because the entity paying the worker has the right to control.

Courts generally note that it's a close call. The determinative factor often is that officiating is a profession predicated upon high skill.

Officials are not interchangeable parts — like workers at the local employment agency are. Officials exercise precise judgment and look more like businesspersons than hourly workers. However, there are definitely elements of employee status. Officials wear uniforms (just like the Burger King worker), and the people who pay officials often make them go to meetings, sometimes even license them and occasionally exert a lot of control over everything they do except making the calls during a game.

Virtually every published legal opinion says amateur sports officials are independent contractors. However, state and federal agencies have occasionally ruled amateur sports officials are employees on matters ranging from unemployment to workers' compensation to labor. The agencies have almost always been reversed if the cases were reviewed in court.

We might never know why so many people left the question blank on the survey. The one thing we do know is courts almost always find amateur sports officials are independent contractors.

Donald C. Collins is a longtime basketball official and attorney from San Francisco. This article is for informational purposes and is not legal advice. □

The 12 Commandments of Avoiding Liability

Here are a handy dozen ways to avoid a lawsuit. This list is not intended to be all inclusive, but it's a solid start:

1. Enforce all safety-related rules regardless of the level of play.

2. Pay particular attention to rough play and ill will developing.

3. Penalize taunting and baiting without hesitation — the first time.

4. Develop and follow injury mechanics as injuries mean harm, and harm, especially to a child, sometimes means lawsuits.

5. Always take time to inspect the playing surface and surroundings *before* the game so management can correct any hazards before play begins.

6. Keep an eye out for illegal and dangerous equipment and uniforms that do not conform to safety standards. In that regard, know your rulebook for the sport involved and be aware of state association adoptions as well.

7. If security issues, weather or other environmental conditions make the contest unsafe, especially if electrical storm activity is present, suspend the game.

8. Understand that officials cannot prevent all injuries, but officials can sometimes prevent injuries from being exacerbated by removing an athlete from a game when indicated or not permitting an athlete to return to play in violation of rules and relevant law. These items are especially critical to preventing or mitigating brain injury scenarios.

9. Do not permit players to fight ever.

10. Beware of the myth: "It's only a rec league game." These events, often loosely organized, poorly administered and coached, devoid of security, are powder kegs for injuries to happen.

11. Know when the game is over. Briefly stated, the game is over when any extremely unusual situation leaves the officiating crew shorthanded or the facility unsafe for any reason.

12. Last but not least, pay rigorous attention to the "first rule of officiating" — don't turn your back!

SOURCE: EXCERPTED FROM A 1/19 COLUMN IN NASO'S *IT'S OFFICIAL* BY ALAN GOLDBERGER, OFFICIAL AND ATTORNEY FROM FLORHAM, N.J.