11 Action Steps for California Youth Sports Teams Classifying Coaches as Independent Contractors

Insights
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Youth club sports teams in California need to correctly classify coaches as independent contractors or employees to avoid potential legal problems down the road. Legal issues that could arise if you misclassify your coaches include a California Employment Development Department (EDD) audit, a workers' compensation carrier audit, or a lawsuit from a coach who believes they were misclassified – each of which could carry a high level of legal exposure. The good news is that there is a fairly clear roadmap you can follow if you want to put your organization in the best position. This Insight will provide an 11-step action plan that any California youth club sports team can follow.

Bad News, Good News

A bit of background first. As most businesses in California are aware, state lawmakers passed Assembly Bill 5 (AB 5) in 2019 to enshrine the "ABC test" for determining whether an individual is classified as an employee or an independent contractor into law. This new law threatened to upend business as usual for most organizations that used contract labor, as the ABC test is notoriously difficult to satisfy and seeks to define as many workplace relationships as possible as employee-employer.

But in 2020, a follow-up bill offered a form of salvation to youth sports clubs. AB 2257 added "youth sports coaching" to the list of businesses that could potentially fall under an exemption and escape the ABC test. If your organization is considered a "referring agency" and the coach in question is considered a "service provider," you'd be in luck and would only need to satisfy a flexible and forgiving test to confirm independent contractor status. But to enjoy this escape hatch, the relationship in question must satisfy 11 different factors.

Proceed With Caution: Not an Automatic Fit

Applying the referral agency/service provider exemption to youth sports coaching presents some challenges, however. Assessment of the 11 factors will depend on your club's operational relationship with coaches and the terms of any independent contractor agreements currently in use. To determine whether the "referral agency/service provider" exemption applies to your youth sports club, it's best to meet with your workplace attorney for a thorough analysis based on your club's existing agreements and operational structure.

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11 Action Steps for Your California Youth Sports Club

With those cautions in mind, here are the 11 action steps you can take to put your youth sports club in the best possible position when it comes to properly classifying your coaches as independent contractors.

1. First and foremost, the service provider needs to be **free from the control and direction** of the referral agency in connection with the performance of the work to satisfy the standard, both as a matter of contract and in fact. That means that your club must not exert direction and control over the way coaches perform their work. If coaches have discretion to develop and implement their own curriculum, then the overall definition is likely satisfied. If not, then the coach may not be able to satisfy this exemption factor. You should consider including language to that effect in a written independent contractor agreement to help satisfy the first factor.
2. If the work for the client is performed in a jurisdiction that requires the service provider to have a **business license or business tax registration** in order to provide the services under the contract, the service provider needs to certify to the referral agency that they have the required business license or business tax registration. Therefore, verify whether the city or county in which your club operates requires coaches to have a business license or business tax registration for coaching duties. If coaches are registered like a true business – with an applicable business license and business tax registration – it would strengthen the argument that the coaches are independent contractors. You should consider adding this requirement to your coaching agreement to strengthen satisfaction of this element of the exemption.
3. Similarly, if the work requires the service provider to hold a **state contractor's license**, the service provider has the required contractor's license. Verify that your coaches have any license needed to perform the work. As of now, California does not require a state contractor's license for youth sports coaching, but make sure you are up to speed on any potential changes that could impact youth sports and be ready to pivot as necessary.
4. Along those same lines, if there is an **applicable professional licensure, permit, certification, or registration** administered or recognized by the state available for the type of work being performed, the service provider shall certify to the referral agency that they have the appropriate professional licensure, permit, certification, or registration. Just as with the two previous elements, verify that all of your coaches have valid credentials.
5. The service provider needs to deliver services **under the service provider's name**, without being required to deliver the services under the name of the referral agency, in order to satisfy the test. You should require coaches to provide coaching services under their name (ideally their business name) rather than under the club's name. This means coaches should contract with the club and invoice the club (or team players) under their own name. Since it would likely be odd for a coach to invoice players directly, it would be appropriate for the club to collect a "coaching fee" from players on behalf of coaches, and then pay that fee (without any deduction) to the coach or coach's business entity.

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6. The service provider needs to **provide their own tools and supplies** to perform the services to satisfy the law. Therefore, coaches should provide their own tools and supplies to perform coaching duties. This means they should bring their own cones, clipboards, whistles, etc. to practice.
7. The service provider needs to be **customarily engaged, or have been previously engaged, in an independently established business or trade** of the same nature as, or related to, the work performed. Therefore, the coaching candidates you retain should have some history of engaging in coaching services and have a history of doing so with some regularity. While this factor might present a gray area for first-time coaches, you can verify that any such new coach intends to customarily engage in independent coaching from here on out to put yourself in the best position.
8. The referral agency **cannot restrict the service provider from maintaining their own clientele**, as they should be free to seek work elsewhere – including through a competing referral agency – in order to pass the test. Your agreements with coaches should not prohibit them from providing coaching services to others, including competing clubs. To satisfy this exemption factor, your coaching agreements should include language stating coaches have a right to perform similar services for others.
9. The service provider needs to **set their own hours and terms of work** or negotiate their hours and terms of work directly with the client to pass muster under the law. Therefore, your coaches should generally be allowed to determine their own hours and set their own practice times and schedules.
10. Without deduction by the referral agency, the service provider needs to be able to **set their own rates**, negotiate their rates with the client through the referral agency, negotiate rates directly with the client, or be free to accept or reject rates set by the client. Your coaches, therefore, should be permitted to set their own rates for coaching services. While it is currently unclear whether clubs may dictate rates, allowing a coach to negotiate and set their own rates for their services would help support satisfaction of this exemption element. Since it would be unusual for a coach to directly invoice each player for coaching services, the law permits a club (as a "referral agency") to collect payment on behalf of players ("clients") and disburse that payment — without deduction — to coaches (the "service provider").
11. Finally, the service provider must be **free to accept or reject clients and contracts without being penalized** in any form by the referral agency (but this doesn't mean they can accept a client or contract and then fail to fulfill the contractual obligations). In other words, clubs should consider granting coaches discretion regarding which players make the team. This practice would help to support satisfaction of this factor. However, if a club chooses players and doesn't give coaches any say in the process, then there is a risk that some could argue that this factor may not be met. Remember, all 11 factors must be satisfied in order to be exempt from the ABC test under the referral agency/service provider exemption.

Conclusion

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Classifying individuals as employees or independent contractors can be tricky, especially in California. Between the ABC Test, the more flexible test, and the referral agency/service provider exemption factors, youth sports clubs are understandably confused when it comes to determining whether an individual should be an employee or independent contractor.

The California attorneys at Fisher Phillips can help you organization navigate this web of tests and standards to help your organization avoid future legal problems related to misclassification of employees and independent contractors. Make sure you are subscribed to the Fisher Phillips Insight service to ensure you receive the latest news directly to your inbox. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any member of our Sports Industry Practice Group.

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