



Would OSHA “Punt” on Inspecting an NFL Team?

Insights

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The tragedy this August that claimed the life of one worker and injured another during construction of the new \$1.1B Minnesota Vikings football stadium reminded us that serious accidents can happen at any site no matter the size or cost. As an avid football fan and OSHA lawyer, and with football season just getting started, it also got me thinking about workplace safety issues occurring at professional football stadiums on Sunday afternoons.

Could (and would) OSHA actually inspect the “workplace” of a professional football team?¹

This question is intriguing for a variety of reasons. It involves sports, which is always fun. And it addresses safety, which is important. The answer is more complicated than you might imagine.

Obviously, there are no OSHA regulations specifically addressing the on-field hazards of professional football. Believe it or not, the OSH Act does not include a subpart entitled “professional sports.”

If OSHA cited an NFL team for on-field safety hazards taking place during a game, it would have to resort to the general duty clause, which mandates generically that employers provide a workplace free of recognized hazards. Because there is no standard on point, OSHA has a heightened burden of proof. In addition to identifying a hazard, it must also provide a feasible abatement when citing under this clause.

A general duty clause citation issued to an NFL team for an on-field safety hazard would read something like this:

Section 5(a)(1). General Duty Clause.

The Atlanta Falcons football team failed to provide its employees a workplace free from recognized hazards. On or about October 4, 2015, its quarterback suffered a concussion after being tackled during a game against the Carolina Panthers. This hazard could have been prevented by the following feasible abatements:

1. Replace the current helmets worn by its players with those that include additional padding or other protective measures; or

2. Institute new blocking systems to train its offensive linemen to better protect the quarterback.

Proposed Penalty: \$7,000

Abatement Date: October 31, 2015

Sure, this is how OSHA “could” cite a pro sports team. But would an OSHA inspector actually visit mini-camp?

Probably not. OSHA’s September 12, 2008 standard interpretation letter strongly suggests that OSHA would punt on the issue. Pun intended.

In its 2008 interpretation, OSHA claimed that a case-by-case analysis must be used to determine if professional athletes are employees or independent contractors. This analysis includes an examination of various factors concerning the control the employer has over the employee. If the athletes are considered independent contractors, OSHA has no jurisdiction. OSHA, of course, could cite professional teams for any safety issues concerning team employees (e.g., trainers, maintenance employees).

OSHA admitted in its 2008 letter that the likelihood of it exercising jurisdiction over safety issues at professional sporting events is minimal. OSHA conceded that it “does not take enforcement action with regard to professional athletes . . . in most cases.”

So football fans, don’t worry about OSHA affecting your favorite team’s salary cap. The likelihood of a workplace safety inspection occurring on a Sunday afternoon appears minimal.

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1. There is some history here. OSHA inspected the Dallas Cowboys following the collapse of their practice field’s roof in 2009. No citations were reported as a result of this inspection.

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