

SPORTS MEDICINE

LEGAL DIGEST

QUARTERLY LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

FALL 2024



02

GEARING UP FOR FALL

03

UNDERSTANDING NATAPAC

07

**LAW 101: LABOR DEPARTMENT
UPDATES OVERTIME RULES**

NATA
NATIONAL ATHLETIC TRAINERS' ASSOCIATION

IN THIS ISSUE

FEATURES

- 02** Gearing Up for Fall
- 04** From PRAT: Navigating the New Overtime Landscape for Athletic Trainers
- 07** Law 101: Labor Department Updates Overtime Rules
- 08** From COPE: Preventing NATA Code of Ethics Violations

CASE SUMMARIES & LEGAL COMMENTARY

- 06** Court Finds School District Liable for Coach's Misconduct
- 09** U.S. College Athletes May Be Employees Under New Test, Court Rules

Q&A

- 03** Understanding NATAPAC

REVIEWED BY

The content included in this issue was reviewed by the NATA Editorial Advisors, Pat Aronson, PhD, LAT, ATC; Marisa Brunett, MS, LAT, ATC; Eric McDonnell, MEd, LAT, ATC; Tim Weston, MEd, ATC; and Cari Wood, LAT, ATC; and members of the NATA Professional Responsibility in Athletic Training Committee.



Gearing Up for Fall

Reviewing, updating and implementing emergency actions plans for the new school year

BY KRISTIN CARROLL

As athletic trainers in the secondary school and collegiate settings return to school and prepare for fall sports, it's important to review and update all emergency action plans. Doing so not only ensures the medical team is ready for any situation that may arise, but can help prevent legal troubles for the AT, their staff and their employer.

The importance of EAPs in an AT's practice was emphasized by the release of a new NATA position statement in June. The Emergency Action Plan Development and Implementation in Sport Position Statement, led by Samantha Scarneo-Miller, PhD, LAT, ATC, includes recommendations for optimizing patient outcomes, development, implementation and response. The position statement updates recommendations originally made in 2002.

One of the key recommendations is to make EAPs venue and sport specific.

"We know that if a football team is practicing on the football field, they're going to have different resources and different personnel than the lacrosse team," Scarneo-Miller said in a virtual media briefing on the statement held July 23. "We should have changes in our emergency action plan to reflect those different resources."

The position statement also highlights the AT as the EAP coordinator for their employer, but Scarneo-Miller said ATs shouldn't shoulder the burden alone.

"We should use those around us to help us document," she said. "We should be documenting so that we can say what we have been doing and we can track our changes."

Read the full statement at www.nata.org/news-publications/pressroom/statements/position and watch the media briefing at vimeo.com/989149002.

The *Sports Medicine Legal Digest* is © 2024 National Athletic Trainers' Association (NATA). All rights reserved.

NATIONAL ATHLETIC TRAINERS' ASSOCIATION, NATA and all other names, logos and icons identifying NATA and its programs, products and services are proprietary trademarks of NATA, and any use of such marks without the express written permission of NATA is strictly prohibited.

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY NATA, THE SPORTS MEDICINE LEGAL DIGEST ("DIGEST") IS PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND MAY INCLUDE ERRORS, OMISSIONS, OR OTHER INACCURACIES. THE INFORMATION

CONTAINED IN THE DIGEST MAY OR MAY NOT REFLECT THE MOST CURRENT LEGAL DEVELOPMENTS OR PRACTICE REQUIREMENTS. YOU ASSUME THE SOLE RISK OF MAKING USE OF THE DIGEST. THE DIGEST IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE, OR BE A SUBSTITUTE FOR, PROFESSIONAL LEGAL ADVICE FROM AN ATTORNEY OR MEDICAL ADVICE FROM A PHYSICIAN. ALWAYS SEEK THE ADVICE OF A QUALIFIED ATTORNEY FOR LEGAL QUESTIONS AND A PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PROFESSIONAL FOR MEDICAL QUESTIONS.

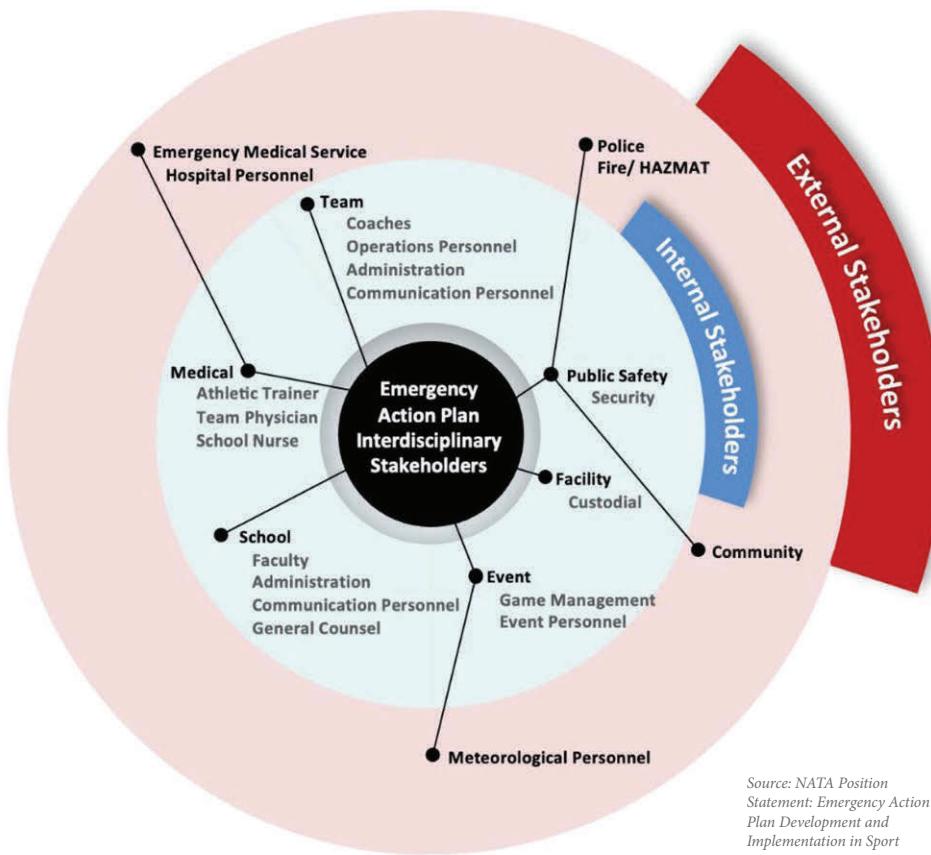
MOREOVER, IN NO EVENT SHALL NATA BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR

CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH USE OF THE DIGEST, EVEN IF NATA HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IF SUCH LIMITATION IS FOUND TO BE UNENFORCEABLE, THEN NATA'S LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITATION OF THE FOREGOING, THE TOTAL LIABILITY OF NATA FOR ANY REASON WHATSOEVER RELATED TO USE OF THE DIGEST SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO NATA FOR THE RIGHT (BY THE PERSON MAKING THE CLAIM) TO RECEIVE AND USE THE DIGEST.

Use of the Digest will be governed by the laws of the State of Texas.

Figure 1:

Internal and external interdisciplinary stakeholders who are integral to emergency action plan development, implementation and response



Who's Involved?

Everyone involved in athlete safety needs to be involved in the review and any updates made to the EAP for each sport at a school, said NATA Secondary School Athletic Trainers' Committee Chair Ciara Taylor, EdD, LAT, ATC. This includes coaches, EMTs, school administrators, physical therapists and team physicians. (See Figure 1 for additional stakeholders to consider.)

Taylor said her school is adding the school nurse to EAPs this year as they can assist with an emergency during school hours when the AT is or isn't present.

"If there's an emergency during the school day, then she needs to be the point of contact for that," Taylor said. "We don't get there until 2 o'clock, which is athletics period. If something happened [before then], the school nurse can come assist."

Athletic trainers in the collegiate setting may also want to communicate with leadership at local hospitals, said NATA Intercollegiate Council for Sports Medicine Division II Chair Michelle Menard, MS, LAT, ATC.

"[My campus is] close to a trauma center and a regular hospital," Menard said. "We

What Else Should You Review?

After reviewing and practicing emergency action plans, athletic trainers and their staff should sit down and review other athlete health and safety forms. These include:

- Risk management forms
- Waivers
- Compliance forms
- Athlete medical history forms
- Mental health screening forms
- Insurance forms

loop in leadership from those places so that they are aware of our plan, but then they also give us feedback on what should be changed based on any changes with their departments."

Campus safety should also be in the know, Menard said, since they will have the most up-to-date traffic patterns if a college or university

Q&A

UNDERSTANDING NATAPAC



The NATA Political Action Committee (NATAPAC) is the sole federal PAC for the athletic training profession. It allows NATA members the opportunity to join efforts and finances to elect members of Congress who support the athletic training profession.

Sports Medicine Legal Digest sat down with NATAPAC Chair Karen Fennell, MS, LAT, ATC, to learn more about how the PAC works, how it makes decisions on which candidates to back and its fundraising efforts throughout the year. Learn more about NATAPAC at www.natapac.org.

Q. About how many members contribute to NATAPAC each year?

Karen Fennell, MS, LAT, ATC:

NATAPAC averages contributions from about 1,000 to 1,100 members in a year. Unfortunately, that means that we only receive contributions from about 2.8% of NATA members.

Q. How do priorities change during an election year versus a nonelection year?

Fennell: PACs operate on an election cycle, which is every two years. Since the election cycles don't change, we don't alter our fundraising methods during election years, which means we don't really see changes in contributions. The key to the success of NATAPAC will be increasing the number of members who contribute to the PAC and being consistent in growing our fundraising efforts.

continued on page 04

Q. How does NATAPAC determine which candidates to back in a federal election, and who is involved in the process?

Fennell: The NATAPAC Board of Directors has a contributions subcommittee that includes two at-large members of the NATAPAC Board of Directors, NATAPAC chair, NATA board liaison and NATAPAC treasurer. This subcommittee determines which candidates receive contributions and for how much. The entire federal legislative team reviews all 535 members of the House and Senate individually. Then they jointly confer to make suggestions to the contributions subcommittee. They consider committee assignments, electability, previous support, knowledge of the profession and areas of interest. The overarching goal for every contribution is that it benefits the athletic training profession and the legislative objectives of NATA. The contributions subcommittee votes to approve the contributions and the NATAPAC Board of Directors reviews them.

Q. What are some of the regulations that surround operating a PAC? Who oversees a PAC and what does that look like?

Fennell: NATAPAC is a separately formed organization. It's governed by its own board of directors, articles of incorporation and bylaws. Each NATA district has a representative on the board of directors, appointed by the NATA president. The NATA president or their appointee serves as the president or chair of NATAPAC. My appointment as chair began in June of this year and will last three years.

When it comes to regulating PACs, that is the jurisdiction of the Federal Elections Commission (FEC), an independent regulatory agency charged with administering and enforcing federal campaign finance law. All federal PACs must register and consistently file reports with the FEC according to campaign finance law.

continued on page 05

GEARING UP FOR FALL *continued from page 03*

has construction projects going on that could reroute first responders.

Practicing EAPs with all stakeholders is another crucial step to ensuring a safe sports season, and another key recommendation of the position statement. Taylor said this helps everyone know the procedures set in place that are in the best interest of the athlete, such as cool first, transport second in the event of heat illness.

"You don't want to have that battle with EMS when there's an emergency," Taylor said. "If you meet with your EMS every year and go over your protocols, then they know we're going to cool first. We're going to monitor [the athlete's] temperature. We have thermometers and we know the threshold. They know we have cold tubs available and ice for practice."

Practice can also help prepare the AT for situations such as removing equipment from an injured player, Taylor said. It's important to have the right tools on hand to get equipment off.

"Make sure you familiarize yourself with all the different helmets your school may have and all the different shoulder pads," she said. "If there's a situation, you're going to have to

take that helmet off. Do you need a pin or a screwdriver to get the facemask off?"

Getting Buy-In

It's important that all stakeholders understand how EAPs affect athlete safety so they are on board with any updates. This may require a bit of explanation from the AT.

"The way we get the most buy-in [to updates] is on the front end say, 'This is what we're trying to avoid,'" Menard said. "And you know things will happen that are out of your control, but we're blunt when we say this is why we're doing this."

Not getting everyone on the same page can lead to catastrophic results for the athlete, Menard said, especially if the injury or incident was avoidable through proper preparation. It also opens the AT and the school up to legal consequences, Taylor said.

"You never want to open yourself up for litigation," Taylor said. "Dot your I's and cross your T's. You want to make sure that you're doing best practices as an athletic trainer and that you are working within your scope of practice." ♦

PRAT COLUMN

Navigating the New Overtime Landscape for Athletic Trainers

BY SUZANNE KONZ, PHD, ATC, CSCS, NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE CHAIR

Athletic trainers have long navigated a challenging landscape regarding overtime pay. Despite the demands of the profession – ranging from late-night practices to weekend games – many athletic trainers work extensive hours without adequate compensation. This longstanding issue has been a source of frustration and financial strain within the profession.

However, the recent Department of Labor (DOL) final rule represents a potential game changer in overtime regulations. (Read more about the DOL rule in the Law 101 feature on

p. 7.) By redefining eligibility criteria and increasing the salary threshold for overtime pay, this new rule promises to significantly impact the lives and livelihoods of athletic trainers. The implications are far-reaching: from enhancing job satisfaction and financial stability to potentially reshaping the operational dynamics of athletic programs nationwide. As the profession faces these changes, it's crucial to understand the opportunities and challenges this regulation presents.

The DOL's new rule, which became law July 1, brings several key changes that reshape the overtime landscape for many professionals,

including athletic trainers. First and foremost, the rule increases the salary threshold, meaning more employees will now qualify for overtime pay, signaling a significant shift from the previous standards and broadening the scope of who is eligible. Additionally, the rule introduces automatic updates to the salary threshold every three years, ensuring that the threshold keeps pace with economic changes without requiring new legislation. However, the duties test, which determines if an employee's job responsibilities qualify them for exemption from overtime, remains unchanged.

These changes affect the classification of employees across various industries, potentially reclassifying many previously exempt workers to now being eligible for overtime pay. While the increased salary threshold and broader eligibility are positive steps toward fairer compensation, the automatic updates create uncertainty for employers and employees. Long-term financial and workforce planning becomes more complex as organizations must anticipate and adapt to periodic changes in compensation requirements. This uncertainty can impact budgeting, staffing decisions and overall operational strategy, necessitating a more flexible and proactive approach to human resource management.

The new salary thresholds set by the DOL rule have the potential to significantly impact the classification of athletic trainers. For athletic trainers who were previously exempt from overtime pay but now fall below the new salary threshold, this change means they will qualify for overtime compensation, leading to better financial recognition for their extensive hours. However, this shift also presents potential scenarios where employers might seek to reclassify athletic trainers to avoid increased labor costs, possibly by altering job responsibilities or titles to fit an exempt category. Additionally, athletic trainers who continue to meet the duties test and now earn above the salary threshold will maintain their exempt status, ensuring that their pay remains unaffected.

Understanding the implications of these changes requires a closer look at the specifics of the salary threshold and duties test. The salary threshold is the minimum amount an employee must earn to be considered exempt from overtime pay, which has increased significantly with the new DOL rule. The duties test, conversely, determines if an employee's job duties meet the criteria for a particular exemption category,

such as the "learned professional" exemption for athletic trainers.

For instance, an athletic trainer with a salary of \$60,000 per year would now be above the new salary threshold. However, if their duties primarily involve providing athletic training services requiring advanced knowledge and specialized training, they would likely still meet the duties test for the "learned professional" exemption. In this case, they would remain exempt from overtime pay. It's crucial for athletic trainers to meet both the salary threshold and duties test to maintain their exempt status. If an athletic trainer's salary is above the threshold but their job duties don't qualify them as a learned professional, they may become eligible for overtime pay as the salary threshold changes in coming years.

In light of these regulatory changes, it's crucial for athletic trainers to proactively understand the new overtime regulations and their rights under the new rule. Accurate timekeeping and meticulous recordkeeping are essential to ensure that all hours worked are properly accounted for and compensated. Athletic trainers uncertain about their employment status or how the new rule affects them should seek legal advice to clarify their situation and protect their rights. Ultimately, fair compensation isn't just a matter of compliance but a fundamental recognition of athletic trainers' hard work and dedication to their roles. Ensuring that athletic trainers are fairly compensated for their time and efforts is essential for maintaining the integrity and sustainability of the profession.

The new DOL overtime regulations mark a significant shift in how athletic trainers are classified and compensated, with increased salary thresholds and automatic updates expanding eligibility for overtime pay. These changes promise to provide much-needed financial recognition for athletic trainers who work extensive hours, yet also introduce uncertainties and potential challenges in employment classification. Athletic trainers must stay informed about their rights, maintain accurate records and seek legal counsel. Continued advocacy from professional organizations is essential to support athletic trainers through this transition and ensure fair treatment and compensation. Athletic trainers and employers alike must take proactive steps to adapt to these regulations, fostering an environment where athletic trainers' dedication and hard work are duly recognized and rewarded. Now is the time to advocate for fair compensation and uphold the profession's standards.

Q&A, continued from page 04

Q. Who can and can't contribute to NATAPAC?

Fennell: Due to federal election law, only NATA members can contribute to NATAPAC. You must also be a U.S. citizen. The FEC also sets restrictions on how much money an individual can contribute to a PAC and how much a PAC can donate to a candidate.

Q. Why do contribution restrictions exist?

Fennell: Election law exists to protect the public and ensure fair elections in our democratic society. This helps protect our voting rights and the election process.

Q. How can members contribute to NATAPAC? Why are these fundraising efforts important?

Fennell: The easiest way to contribute is by visiting www.natapac.org. You can set up a one-time or recurring contribution with your credit card.



Another vitally important opportunity is to make a contribution with your NATA dues renewal. This fundraising mechanism is crucial since it doesn't have any overhead expenses. Other opportunities are district events, with your NATA Clinical Symposia & AT Expo registration or at in-person experiences during convention, such as the Chuck Kimmel Memorial NATAPAC Lunch or NATAPAC booth. Another option is our annual sweepstakes, which occurs in the fall. This is a great opportunity to support NATAPAC while having the potential to win some awesome prizes. Each opportunity is an important part of our fundraising efforts, and we appreciate every dollar that is given to the PAC. We are proud to say that 100% of our PAC dollars are used for contributions to candidates.

CASE SUMMARY

Court Finds School District Liable for Coach's Misconduct

Editor's note: To ensure readers have access to unbiased, valuable content, the real-life case summaries published in Sports Medicine Legal Digest have been deidentified. Case summaries are shared for educational purposes to provide insight into legal proceedings and lawsuits relevant to athletic trainers as health care providers.

A female high school basketball player sued her coach and her school district for sexual misconduct. While this case doesn't involve an athletic trainer, it could impact ATs in several ways. First, the case was tried as a criminal matter, but the litigation didn't end there. The basketball player also filed a civil action. Second, the case involved an allocation of responsibility – and thus a differentiated payment of damages – between the coach and school district.

This case illustrates the pitfalls of ignoring sexual abuse warning signs. The player's coach began working for the school district in California as a volunteer assistant girls' basketball coach. After several years, he was hired as a paid assistant. He also had a business as a personal trainer and private coach for young athletes. After receiving a report of "an inappropriate relationship" between the coach and the 17-year-old student on the basketball team, who also received his private coaching, the local police arrested the coach.

Criminal Trial

The coach pleaded guilty to a felony of unlawful sex with a minor and was ordered to serve one year in custody. He also was given three years of probation and prohibited from having any association or contact with minors.

However, even though the basketball player's parents had urged the judge to impose a lifetime sex offender registration requirement, the judge decided not to require the coach to register as a sex offender at that time. Should the coach violate his parole terms, the registration could be enforced.

Civil Action

After the criminal trial, the basketball player and her parents filed a civil suit against the coach and school district. The player claimed that the coach was liable for sexual battery and assault,

and the school district was negligent in its supervision and employment of the coach.

The basketball player and her parents asserted that the school district had either completely missed or ignored several warning signs concerning the coach. They argued that the school district had failed to follow its own code of conduct policies that specifically banned coaches from being alone with children.

Taken to a Bar To Watch an NBA Game

If it had followed its own policies, the plaintiffs maintained, the school district would have been able to determine that the coach wasn't fit to be around minors in the first place. The plaintiff presented specific evidence that, during an out-of-town team trip, the head basketball coach allowed the assistant coach to take the player to a bar to watch an NBA game. The plaintiffs also argued that the coach was in a position of authority, which enabled him to take advantage of the player.

The school district countered that it didn't know that the coach would engage in sexual misconduct, but once discovered, it complied with all legal requirements by immediately reporting the incident to the police, interviewing the player and her teammates and placing the coach on leave.

After a trial, the jury found that the coach posed a risk of sexual misconduct toward students and that the school district was negligent in hiring, retaining or supervising the coach. That negligence, the jury determined, was a substantial cause of the harm to the player.

\$5 Million Award

The jury awarded the basketball player \$2.5 million in past, noneconomic damages and \$2.5 million in future noneconomic damages, for a total of \$5 million. In assigning fault, the jury apportioned 10% of the responsibility to the coach and 90% to the school district.

The school district argued that the damages were excessive and that the jury improperly allocated fault between the school district and coach.

In justifying the ruling that the school district knew or should have known the coach posed a risk of sexual misconduct toward students, the court noted that not only was there evidence

that the coach took the student to a bar to watch an NBA game during a team trip, but a previous member of the basketball team also submitted testimony regarding the coach's misconduct.

As for whether the damages were excessive, the court noted that there was substantial evidence in the record for the jury to have awarded \$5 million in noneconomic damages. The court noted that because of the coach's misconduct, the player suffered serious emotional injuries, requiring her to undergo years of therapy, and that she suffers from chronic post-traumatic stress disorder and major depressive disorder. Accordingly, the court found that the jury could reasonably have found such damages and they were therefore not excessive.

The court next examined whether there was substantial evidence in the record to support the jury's allocation of fault between the coach and school district. In modifying the jury's allocation, the court held that while a school district may be liable for its own negligence in supervising and hiring personnel who sexually abuses a student, it can't be held vicariously liable for the acts of sexual misconduct by personnel.

Therefore, the court concluded, that when negligence by an administrator or supervisor is established, the greater share of fault will ordinarily lie more with the individual who intentionally abused or harassed the student than with any other party, and that fact should be reflected in any allocation of comparative fault.

In the current case, the court held that the evidence demonstrated that the coach engaged in, and pleaded guilty to, criminal conduct and that he used his position of trust and authority, as well as his popularity with students and staff, to engage in his predatory acts. In contrast, the court found no evidence of any criminal conduct by the school district staff or supervisors. Therefore, the court concluded, while the school district can be held liable for its negligent acts, it can't be held liable for the coach's criminal acts of sexual misconduct.

The court modified the allocation of harm and ruled that the coach was 60% at fault and liable for \$3 million, and the school district was 40% at fault, or liable for \$2 million in damages. 

Labor Department Updates Overtime Rules

The U.S. Department of Labor has issued an updated set of overtime regulations that went into effect July 1. The final rule, which was issued in April, revises the salary and compensation levels for workers, such as athletic trainers, to be considered exempt from overtime eligibility. The rule doesn't change the duties provision, which is the other piece that determines overtime eligibility.

Here are six things athletic trainers need to know about the updated overtime rule:

1. To be eligible for overtime under the Fair Labor Standards Act (FLSA), certified athletic trainers now must earn less than \$844 per week (\$44,888 annually). The \$844 is an increase from the previous minimum threshold weekly salary of \$664.
2. Under the learned professionals test, ATs must satisfy three general requirements:
 1. The employee's primary duty is the performance of work requiring advanced knowledge.
 2. The advanced knowledge is in a field of science or learning.
 3. The advanced knowledge must be acquired by a prolonged course of specialized intellectual instruction.

The FLSA regulations specifically cite athletic trainers under the learned professional test:

"Athletic trainers who have successfully completed four academic years of pre-professional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education Programs and who are certified by the Board of Certification for the Athletic Trainer generally meet the duties requirements for the learned professional exemption."

It's important to note that to meet this exemption, ATs must also meet the salary threshold. Some athletic trainers may be designated as teachers, who are considered exempt and don't have to meet the salary threshold.

If an AT earns more than the threshold \$844 per week salary and qualifies as a learned professional, they aren't eligible for overtime.

3. Effective Jan. 1, 2025, the threshold salary rate to determine eligibility for overtime will go up



to \$1,128 per week, making it more likely that certain ATs will be eligible for overtime pay.

4. As before, under FLSA, nonexempt employees (those who qualify for overtime) must receive at least the federal minimum wage (unless the state minimum wage is higher) for all hours worked and overtime pay of time and a half for all hours worked over 40 hours a week.
5. Also as before, FLSA allows certain employees to be exempt (white collar exemption) from the minimum wage and overtime requirements if they work in executive, administrative, professional or outside sales duties and meet all of the following requirements:
 - Employees must be paid on a salary basis that isn't subject to reduction based on
6. Even if an AT might prefer to continue to receive overtime pay, it may not be up to them. The employer can raise an athletic trainer's salary above the threshold, and the AT would be considered exempt from the overtime requirements. \$

Additional FLSA Resources

The Department of Labor offers multiple resources on the Fair Labor Standards Act and exemptions that may affect athletic trainers. NATA has also released a fact sheet to help ATs understand the changes.

NATA Fact Sheet

www.nata.org/sites/default/files/dol_overtime_rule_fact_sheet_2024_final.pdf

DOL Resources

- Final Rule: federalregister.gov/documents/2024/04/26/2024-08038/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and
- Final Rule Webinar: www.youtube.com/watch?v=HAdisuHXkGQ
- Fact Sheet No. 17S: Higher Education Institutions and Overtime Pay Under the Fair Labor Standards Act: dol.gov/agencies/whd/fact-sheets/17s-overtime-educational-institutions
- Fact Sheet No. 17D: Exemption for Professional Employees Under the Fair Labor Standards Act: dol.gov/agencies/whd/fact-sheets/17d-overtime-professional

Preventing NATA Code of Ethics Violations

BY PAUL RUPP, MS, LAT, ATC, NATA COMMITTEE ON PROFESSIONAL ETHICS CHAIR

The NATA Code of Ethics (COE) was created to set the standards on how NATA members should practice athletic training. Along with the COE, there are Athletic Training's Shared Professional Values.¹

There are four main principles of the COE with subprinciples to help define the initial principle. These principles should be a guide on how an athletic trainer practices.¹ They are:

Principle 1. In the role of an athletic trainer, members shall practice with compassion, respecting the rights, well-being and dignity of others.

Principle 2. Members shall comply with the laws and regulations governing the practice of athletic training, NATA membership standards and the NATA Code of Ethics.

Principle 3. Members shall maintain and promote high standards in their provisions of services.

Principle 4. Members shall not engage in conduct that could be construed as a conflict of interest, reflects negatively on the athletic training profession or jeopardizes a patient's health and well-being.¹

Principle 1 basically states to treat people with respect and compassion. Principle 2 refers to obeying state practice acts, the NATA COE and your local jurisdiction's practice policy and procedures. Principle 3 has to do with the AT continuing their education and being a lifelong learner while staying within their skill set. Principle 4 is about how the AT represents the profession and respects the profession (aka professionalism).

There are varying consequences of violating the COE, depending on the severity of the actions within the violation. Those consequences could be a private reprimand, public censure, educational requirements, probation, loss of committee service, membership suspension, membership expulsion or denial of eligibility. The goal of this article is to show examples of COE violations and how to avoid making decisions that could lead to a COE violation.

Most often, COE violations are either boundary violations, conflicts of interest, patient care and confidentiality violations, discrimination/bias or inappropriate social media use. As an AT, the hope as professionals is that ethics align



with morals. When they don't, the AT must be proactive and have a plan of action.

An example of this would be if the most recent concussion research shows early exercise and no contact activities promote recovery; however, the district concussion protocols don't allow for any exercise or return to play until the patient has fully returned to learn. Those two standards are in conflict with one another. The AT must know the research and policies to be able to create the best plan of action to provide the best care for the patient.

When an AT has an intimate relationship with their patient, conflicts of interest, and likely boundary violations, occur. It can be a challenge to be friendly without being a friend or more. It's very difficult to keep those relationships appropriate and professional, especially if that patient is a minor. When texting, connecting through social media and other informal communications with a patient, a harmless greeting can grow into something unintended and could possibly lead to inappropriate relations. They can also lead to a HIPAA/FERPA violation should the AT get a subpoena to search their phone or computer for information pertaining to a legal case and another patient's medical information can be viewed because it's not labeled and protected. These kinds of relationships can lead to a conflict of interest when it comes to the decision-making

about the patient's rehabilitation plans and return to work/participation.

ATs must be lifelong learners. Technologies, skill sets and tools are ever evolving and it's imperative to keep skills and knowledge up to educational standards. CAATE standards on the educational process will continue to evolve, and so must the AT to keep up. Without that evolution, a patient has every right to ask if they are getting the best care available. If the AT isn't providing the best care possible, that could lead to an ethical violation.

Social media, being one of those tools, can be incredibly useful in gaining knowledge, receiving advice and getting and giving support. One of the many challenges of using a limited number of characters when posting a message is that sometimes that message gets lost in translation. Sometimes those messages show who you really are. Communication has so much context represented through more than just the words. Body language, vocal inflection and eye contact all get lost in the written word. Thus, if using social media to communicate, an AT should reread what was written and think about how that is going to be perceived before they hit send. Remember to treat others the way you would want to be treated, especially when you disagree about a topic.

There are soft skills that are as important as the hands-on skills of doing a knee evaluation

and the medical skills ATs use daily. Continuing to improve and learn leadership skills, communication skills, empathy and compassion is difficult. A good leader is humble, curious, compassionate, passionate, loyal and ethical. If an AT can possess those qualities, the chances of committing an ethical violation go down significantly.

By being humble, an AT knows they don't have all the answers and are willing to learn. Curiosity causes the AT to find different answers to different questions and expand their skills. All ATs should be compassionate when treating their patients and working with their peers going through challenges in their lives. Passion is what leads one to be the best AT they can and make the profession better than they found it. Loyalty to the patient's mental and physical well-being are paramount. All of that leads an AT to practice ethically.

Much of burnout comes from conflict among the AT, other ATs, administration, coaches, athletes, patients and parents. When all those people know the AT will do their best for patient safety

and well-being, no matter what, they try to push the boundaries less, causing less stress on the AT.

With loyalty and compassion, appropriate and professional relationships are created. It's vital to have great mentors who are available anytime to ask questions and pose scenarios. These mentors will help guide their mentees to the best outcomes. Mentors in a similar environment can help understand local jurisdiction laws and regulations and guide others through moral-versus-ethical challenges before they occur.

Always remember to take care of yourself. If the you are frustrated to the point that you don't enjoy your role, that's when questionable decisions are made. Short cuts are taken, and the lack of passion can be seen by the patient and peers. Know when to say "no," and do things for you, without compromising the care and safety that you're contracted to provide.

NATA has different resources available to its members. Through Gather (gather.nata.org), members can access the Mentor Match Program, volunteer and clinical immersion opportunities, network and hear from other members in The

Den.² These resources help make connections and make the AT's life a little easier.

The NATA website also has various resources to take to your supervisor to provide research and tools to verify and support your stance on the safety and well-being of your patients. There are also educational materials on NATA EducATE (educate.nata.org) and information on At Your Own Risk (www.atyourownrisk.org), all to support the NATA member practicing ethically and in the best interest of their patient. Practicing ethically is a learned skill that must be practiced and practiced consistently. Use these tools and mentors to guide you through challenging times and take care of you. 

References

1. National Athletic Trainers Association Code of Ethics https://www.nata.org/sites/default/files/nata_code_of_ethics_2022.pdf
2. Gather https://gather.nata.org/home?code=aPrxPGj_8oB.iQG6s3I4.bVO9lgfQv0BAw0e1aKHLbs3URSM1vv2trPeJcikevPh819ERuog%3D%3D&sfdc_community_url=https%3A%2F%2Faccount.nata.org&sfdc_community_id=0DB6A000000kML9WAM

CASE SUMMARY

U.S. College Athletes May Be Employees Under New Test, Court Rules

BY DANIEL WIESSNER (REUTERS)

Editor's note: To ensure readers have access to unbiased, valuable content, real-life case summaries are published in Sports Medicine Legal Digest for educational purposes to provide insight into legal proceedings and lawsuits relevant to athletic trainers as health care providers.

In July, a U.S. appeals court created a test for courts to determine when college athletes are the employees of their schools and the governing body for American intercollegiate sports, making them eligible for the minimum wage.

In the first ruling of its kind, a panel of the Philadelphia-based 3rd U.S. Circuit Court of Appeals said athletes may be regarded as employees under federal wage laws if they primarily perform services for their schools' benefit "in return for express or implied compensation or in-kind benefits."

The ruling allows a group of former college athletes to pursue a proposed class action against the National Collegiate Athletic Association and their former schools.

It follows a landmark \$2.8 billion settlement by the NCAA in May to resolve class-action lawsuits claiming it had violated antitrust law by restricting the compensation and benefits to students for their athletic service. In March, Dartmouth College men's basketball players became the first U.S. college athletes to vote to join a union, a move that is being challenged by the New Hampshire school.

The 3rd Circuit didn't directly answer the question of whether college athletes are employees of schools and the NCAA under federal wage laws, but set out a blueprint for deciding when they are.

The court sharply rejected the NCAA's persistent claim that student athletes can't be employees by virtue of their amateur status.

"The argument that colleges may decline to pay student athletes because the defining feature of college sports is that the student athletes are not paid is circular, unpersuasive and increasingly untrue," Circuit Judge Luis Restrepo wrote for the court.

The panel sent the lawsuit back to a trial-level judge to decide under the new test whether the plaintiffs were employees and should have been paid the minimum wage.

The lawyer for the plaintiffs, said he was pleased that the decision "affirmed the core tenet ... that the NCAA is not above the law and student athletes may be employees entitled to the protections of" U.S. employment laws.

The few courts that have addressed the issue had said that college athletes aren't employees because they're primarily students and playing sports was part of their educational experience. But those rulings came before the U.S. Supreme Court in 2021 threw out limits the NCAA had set on compensating student athletes. 