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Revisiting Workers' Compensation Protection in the National Football League Collective Bargaining Agreement

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REVISITING WORKERS' COMPENSATION
PROTECTION IN THE NATIONAL FOOTBALL
LEAGUE COLLECTIVE BARGAINING AGREEMENT

Brooke Chronister & Joshua Winneker



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REVISITING WORKERS' COMPENSATION PROTECTION IN THE NATIONAL FOOTBALL LEAGUE COLLECTIVE BARGAINING AGREEMENT

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ABSTRACT. Workers' compensation is a lifeline for many injured workers across America, though it is not universally available to all employees. Professional Athletes, NFL players specifically, work in high injury professions, yet at times, state statutes and league policy bars them from accessing equal post injury care through the workers' compensation system. The following article outlines origins of workers' compensation, demonstrates why this system does not work for NFL players, and offer a unique solution that allows states to maintain their autonomy while building off an already-existing clause in the NFL CBA which would shift the responsibility of taking care of injured players to the teams and the NFL collectively.

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INTRODUCTION

The 2024 National Football League (NFL) Super Bowl broke records with an estimated 123.7 million viewers, with an additional 2.3 million people tuning into the Spanish broadcast, and 1.2 million watching the kid friendly Nick-at-Nite broadcast.¹ To put this in perspective, Super Bowl LVII was the second-most watched United States television broadcast ever, falling short of only the 1969 Moon landing.² Combine that with the fact that an estimated \$185.61 million³ poured into Super Bowl-related bets. A quick search of “Super Bowl bets” would reveal bets on things like the color of the Gatorade bath at the end of the game,⁴ who would score the first touchdown,^{5,6} or even a whole list of Taylor Swift themed prop bets.⁷ It is safe to say that Americans care about the NFL. We gather en masse to watch these events, bet money on their outcomes, talk about them for weeks if not months after they happen, and then rinse and repeat for the next season. Sports can bring out the best in a community.

¹ *Super Bowl LVIII draws 123.7 million average viewers, largest TV audience on record*, NIELSEN (Feb. 13, 2024), <https://www.nielsen.com/news-center/2024/super-bowl-lviii-draws-123-7-million-average-viewers-largest-tv-audience-on-record/> [<https://perma.cc/6QDP-JGFE>] (last visited Apr 19, 2024).

² Emma Saunders, *Super Bowl 2024 was most watched US TV broadcast since 1969 Moon landing*, BBC NEWS (Feb. 13, 2024), <https://www.bbc.com/news/entertainment-arts-68282519> [<https://perma.cc/S6UB-J6W5>] (last visited Apr 19, 2024).

³ Published by Statista Research Department & Feb 16, *SUPER BOWL: AMOUNT WAGERED NEVADA 2024* STATISTA (Feb. 2024), <https://www.statista.com/statistics/271778/money-wagered-in-nevada-sports-books-on-the-super-bowl/> [<https://perma.cc/LL54-74V3>] (last visited Apr 19, 2024).

⁴ Jack McKessy, *What color will the Gatorade Bath be at the end of 2024 Super Bowl? see the latest odds*, USA TODAY (Feb. 10, 2024, 2:23 PM; updated Feb. 11, 2024, 4:29 PM), <https://www.usatoday.com/story/sports/nfl/playoffs/2024/02/10/super-bowl-2024-gatorade-bath-color-prop-odds/72436562007/> [<https://perma.cc/3JYK-Q2LL>] (last visited Apr 19, 2024).

⁵ Matt McEwan, *Super Bowl 58 first touchdown scorer odds & 1st TD scorers from all Super Bowls*, SPORTS BETTING DIME (Updated Feb. 11, 2024), <https://www.sportsbettingdime.com/nfl/super-bowl-first-touchdown-scorer-odds/> [<https://perma.cc/EMG9-PPZL>](last visited Apr 19, 2024).

⁶ Christopher Feery, *NFL rushing prop betting: Super Bowl 58 yards, tds, and ...*, LSR (Updated March 11, 2024), <https://www.legalsportsreport.com/odds/nfl/rushing-props/> (last visited Apr 19, 2024).

⁷ *Taylor Swift prop bets for 2024 Super Bowl*, FOX SPORTS (Feb. 8, 2024, 2:28 PM), <https://www.foxsports.com/stories/nfl/2024-super-bowl-lviii-odds-taylor-swift-prop-bets-tracker> [<https://perma.cc/KH6A-44QH>] (last visited Apr 19, 2024).

But this comradery comes at a price. In the NFL since 2015, 2,028 players have suffered a concussion.⁸ There were 2,113 reported total injuries in the 2020 NFL season, an average of 53.5 anterior cruciate ligament (ACL) related injuries per season between 2010 and 2013, and six spinal cord injuries between 2010 and 2017. The most common injury location is the lower extremity accounting for 60% of all reported injuries, and 1 in 4 players will suffer an in-game injury during any given season.⁹ Perhaps most concerningly, a study published in 2023 found that out of 631 male brain donors that had participated in football, 45.6% of them demonstrated evidence of high-stage Chronic Traumatic Encephalopathy (CTE), 25.8% showed evidence of low-stage CTE, and only 28.5% showing no evidence of CTE.¹⁰

The price of our entertainment comes at a great physical cost to those athletes entertaining us. Though many people would argue that the athletes are both justly compensated for their risk¹¹ and willingly participated in a sport that everyone knows is dangerous, this does not negate the fact that NFL careers are short. The chance of injury for an NFL player is high, and they deserve compensation for their injuries the same as any other employee in a high risk injury industry. So, what does a NFL player do when he suffers a career-ending injury that prevents him from seeking work elsewhere? The same methods of recourse are available to most NFL players as for most injured Americans: workers' compensation payments. However, the state-based workers' compensation system does not function well for many professional athletes, thereby necessitating a change. This change should not come in the form of federal legislation or amended state legislation but instead in the form of revised language in the NFL's Collective Bargaining Agreement (CBA).

⁸ *Injury Data Since 2015*, NFL.COM (Feb. 2, 2024, 6:00 AM), <https://www.nfl.com/playerhealthandsafety/health-and-wellness/injury-data/injury-data> [https://perma.cc/3SEJ-PRSY] (last visited Apr 19, 2024).

⁹ Jannik Lindner, *Must-Know NFL Injuries Statistics [Latest Report,]* GITNEX (Dec. 16, 2023), <https://gitnux.org/nfl-injuries-statistics> [https://perma.cc/2AZV-64Z2] (last visited Apr 19, 2024).

¹⁰ Sharon Reynolds, *How football raises the risk for chronic traumatic encephalopathy*, NATIONAL INSTITUTES OF HEALTH (July 11, 2023), <https://www.nih.gov/news-events/nih-research-matters/how-football-raises-risk-chronic-traumatic-encephalopathy> [https://perma.cc/8JYE-CDPR] (last visited Apr 19, 2024).

¹¹ The minimum NFL salary for a 2024 rookie was \$795,000. See NFL minimum salaries, SPOTRAC (2024), <https://www.spotrac.com/nfl/cba/minimum/> [https://perma.cc/ERM7-FR4W] (last visited Apr 19, 2024).

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The following article will briefly explain the origins of workers' compensation in Part I. Part II will demonstrate why this system does not work well for professional athletes, especially NFL players. Part III will argue that despite the flaws demonstrated in Part II, NFL players still need and deserve access to the workers' compensation system. Part IV will refute the commonly proposed solution of making a national workers' compensation act that would apply to all athletes. Part V will offer a unique solution that allows states to maintain their autonomy while building off an already-existing clause in the NFL CBA which would shift the responsibility of taking care of injured players to the teams and the NFL collectively.

I. Workers' Compensation Basics

Workers' compensation has ancient roots with records of Sumerians paying their workers injuries sustained on the job.¹² Modern United States workers' compensation came about as a compromise between workers and employers during the industrial revolution.¹³ Terrible working conditions that lead to frequent injuries forced workers to rely on the courts in order to receive compensation for their injuries, but frequently lost due to the ample defenses available to employers at the time.¹⁴ Over time, this power imbalance between workers and employers resulted in legislation that entitled injured workers to benefits to help them recover from their injuries or compensate them for a lost ability to work. In exchange for guaranteeing these benefits, employees forfeit the right to sue their employers over any injuries received during their employment.

Starting in 1911 with Wisconsin, within thirty seven years every state passed its own workers' compensation acts.¹⁵ Though there is a great deal of variation from state to state, workers' compensation generally offers wage replacement, medical

¹² Gregory P. Guyton, *A brief history of workers' compensation*, 19 IOWA ORTHOPAEDIC JOURNAL 106-110 (1999).

¹³ Workers' Compensation History, THE HARTFORD, <https://www.thehartford.com/workers-compensation/history> [<https://perma.cc/G4UM-5N8J>] (last visited Apr 19, 2024).

¹⁴ The National Library of Medicine refers to employer defenses pre-workers' compensation as the "unholy trinity of defenses." Making up this trinity are contributory negligence (which means if the worker was responsible for the injury in any way, the employer was not considered at fault), the "Fellow Servant" rule (which held that if the injury was in any way caused by the negligence of another employee, then the employer is not considered at fault), and assumption of risk (the most far reaching of the three that claims employees were aware of the risks when they showed up for work and thereby accepted the risks). See Guyton, *supra* note 12.

¹⁵ THE HARTFORD, *supra* note 13.

treatment, and vocational rehabilitation.¹⁶ Just like the coverage varies, so do the regulations. However, most states have similar definitions and metrics for which workers are covered, what qualifies as an injury, injury reporting, where the injured party receives care, how compensation is determined, and the statutes of limitations for bringing a claim. The following chart demonstrates the differences in workers compensation rules between every state that hosts an NFL team (for practice or official games). This variation, the amount of interstate travel, and the specific types of injuries that NFL players face are what causes the average workers' compensation insurance not to function well for many NFL players.

| State | Statute of Limitations | When does statute of limitations begin for cumulative injuries? | Maximum Weekly Payment | Waiting Period | Are NFL Players excluded? |
|---------|------------------------|--|------------------------|----------------------|---------------------------|
| Arizona | 1 year ¹⁷ | When the claimant should have known they had a compensable injury. ¹⁸ | \$871.24 ¹⁹ | 7 days ²⁰ | No |

¹⁶ *Workers' compensation*, DOL (2024), <https://www.dol.gov/general/topic/workcomp> [<https://perma.cc/L6H3-U3C3>] (last visited Apr 19, 2024).

¹⁷ ARIZ. REV. STAT. § 23-1061(A) (2023).

¹⁸ *Id.*

¹⁹ SOCIAL SECURITY ADMINISTRATION, PROGRAM OPERATIONS MANUAL SYSTEMS: DI 523150.045 CHART OF STATES' MAXIMUM WORKERS' COMPENSATION (WC) BENEFITS, <https://secure.ssa.gov/poms.nsf/lnx/0452150045#c4> [<https://perma.cc/BAD8-MP3R>] (last visited Apr 19, 2024).

²⁰ Victoria Munoz, *When Does Workers' Comp Start Paying: How Long You'll Wait By State*, ATTICUS (Feb. 28, 2023), <https://www.atticus.com/advice/workers-compensation/workers-comp-waiting-periods-how-long-youll-wait-in-every-state> [(last visited Apr 19, 2024).

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|------------|-----------------------|---|--------------------------|----------------------|----|
| California | 1 year ²¹ | The date the claimant has knowledge of their injury. ²² | \$1,619.15 ²³ | 3 days ²⁴ | No |
| Colorado | 2 years ²⁵ | Once the injury is reasonably discoverable. ²⁶ | \$1293.00 ²⁷ | 3 days ²⁸ | No |
| D.C. | 1 year ²⁹ | When the claimant should have been aware of their injury. ³⁰ | \$1,761.11 ³¹ | 3 days ³² | No |

²¹ *What is the Statute of Limitations in California for Workers' Compensation?*, LAW OFFICE OF MATTHEW RUSSELL, <https://workerscomplawsd.com/workers-comp-statute-of-limitations> [<https://perma.cc/8DZF-2GEL>] (last visited Apr 19, 2024).

²² *Cumulative Trauma Injury for California Workers' Compensation*, CWILC, <https://cwilc.com/workers-compensation/occupational-injury/cumulative-trauma> [<https://perma.cc/4SJD-8W39>] (last visited Apr 19, 2024).

²³ SSA, *supra* note 19.

²⁴ SSA, *supra* note 20.

²⁵ Injured Workers, COLORADO DEPARTMENT OF LABOR & EMPLOYMENT, <https://cdle.colorado.gov/dwc/injured-workers> [<https://perma.cc/WFG4-DPYR>] (last visited Apr 19, 2024).

²⁶ J. Todd Tenge, *What you need to know about Colorado Personal Injury Statute of Limitations*, TENGE LAW FIRM (Nov. 24, 2023), <https://tengelaw.com/blog/colorado-statute-of-limitations-personal-injury> [<https://perma.cc/7P82-3ZXX>] (last visited Apr 19, 2024).

²⁷ SSA, *supra* note 19.

²⁸ SSA, *supra* note 20.

²⁹ *Office of Workers' Compensation*, WASHINGTON, D.C. DEPARTMENT OF EMPLOYMENT SERVICES LABOR STANDARDS BUREAU, https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/sOWC_FAQs.pdf [<https://perma.cc/5TF2-W5GK>] (last visited Apr 19, 2024).

³⁰ *District of Columbia Overview of Workers' Compensation Law*, FANDPNET, <https://www.fandpnet.com/wp-content/uploads/2015/12/DC-Workers-Comp-Overview.pdf> [<https://perma.cc/JZV7-JCEV>] (last visited Apr 19, 2024).

³¹ SSA, *supra* note 19.

³² *Workers... What You Need to Know!*, WASHINGTON, D.C. DEPARTMENT OF EMPLOYMENT SERVICES LABOR STANDARDS BUREAU, https://does.dc.gov/sites/default/files/dc/sites/does/page_content/

| | | | | | |
|----------|-----------------------|---|-------------------------|----------------------------------|-------------------|
| Florida | 2 years ³³ | When the claimant should have been aware of their injury. ³⁴ | \$1260.00 ³⁵ | 7 days ³⁶ | Yes ³⁷ |
| Georgia | 1 year ³⁸ | Not mentioned. | \$800.00 ³⁹ | 7 days ⁴⁰ | No |
| Illinois | 3 years ⁴¹ | Not mentioned. | \$1897.92 ⁴² | 3 <i>work</i> days ⁴³ | No |
| Indiana | 2 years ⁴⁴ | Not mentioned. | \$804.00 ⁴⁵ | 7 days ⁴⁶ | No |

attachments/OWC%20Workers%20brochure_v2.pdf [https://perma.cc/UZV3-C9M9] (last visited Apr 19, 2024).

³³ FLA. STAT. § 440.19(1) (2024).

³⁴ *Id.*

³⁵ SSA, *supra* note 19.

³⁶ SSA, *supra* note 20.

³⁷ Robert Laur, *Professional Athletes and the Exception to Workers' Compensation*, ERACLIDES GELMAN (Mar. 22, 2019), <https://eraclides.com/professional-athletes-and-the-exception-to-workers-compensation/> [https://perma.cc/AWL9-PVCA] (last visited Apr 19, 2024).

³⁸ GEORGIA STATE BOARD OF WORKERS' COMPENSATION, Employee Handbook 11 (July 2013), https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/related_files/site_page/employee_handbook.pdf [https://perma.cc/GP5F-WS66] (last visited Apr 19, 2024).

³⁹ SSA, *supra* note 19.

⁴⁰ SSA, *supra* note 20.

⁴¹ 820 ILL. COMP. STAT. 305/6 Ch. 48, par. 138.1(d).

⁴² SSA, *supra* note 19.

⁴³ SSA, *supra* note 20.

⁴⁴ *Who Is Eligible*, INDIANA WORKERS' COMPENSATION BOARD, <https://www.in.gov/wcb/employees/who-is-eligible> [https://perma.cc/96FB-CRJ2] (last visited Apr 19, 2024).

⁴⁵ SSA, *supra* note 19.

⁴⁶ SSA, *supra* note 20.

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|---------------|-----------------------|---|--------------------------|----------------------|--|
| Louisiana | 1 year ⁴⁷ | When the injury develops. ⁴⁸ | \$816.00 ⁴⁹ | 7 days ⁵⁰ | No |
| Maryland | 2 years ⁵¹ | Not mentioned. | \$1,456.00 ⁵² | 3 days ⁵³ | No |
| Massachusetts | 4 years ⁵⁴ | Not mentioned. | \$1,796.72 ⁵⁵ | 5 days ⁵⁶ | Yes ⁵⁷ |
| Michigan | 2 years ⁵⁸ | The date the injury manifests itself. ⁵⁹ | \$1,134.00 ⁶⁰ | 7 days ⁶¹ | Yes, if the player is under contract by an out-of- |

⁴⁷ LA. STAT. ANN. § 23:1209A(1).

⁴⁸ LA. STAT. ANN. § 23:1209A(3).

⁴⁹ SSA, *supra* note 19.

⁵⁰ SSA, *supra* note 20.

⁵¹ *Maryland's Workers' Compensation Timeline*, TROLLINGER LAW LLC (2023), <https://www.trollingerlaw.com/workers-compensation-lawyer/claim-timeline> [https://perma.cc/EN62-ZDNP] (last visited Apr 20, 2024).

⁵² SSA, *supra* note 19.

⁵³ SSA, *supra* note 20.

⁵⁴ MASS. GEN. LAWS ch. 152, § 41 (2024).

⁵⁵ SSA, *supra* note 19.

⁵⁶ SSA, *supra* note 20.

⁵⁷ MASS. GEN. LAWS ch. 152, § 1(4) (2014).

⁵⁸ *A Summary of Your Rights and Responsibilities Under Michigan Workers' Compensation*, MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY, https://www.michigan.gov/-/media/Project/Websites/leo/Documents/WDCA-RESOURCES-AND-REPORTS/Publications/wca_WCPUB001.pdf?rev=8a607896bdd8453b9a161e828d55ede9 [https://perma.cc/L7UN-PN76] (last visited Apr 20, 2024).

⁵⁹ *Id.*

⁶⁰ SSA, *supra* note 19.

⁶¹ SSA, *supra* note 20.

| | | | | | |
|------------|-----------------------|--|--------------------------|---|-------------------------------|
| | | | | | state employer. ⁶² |
| Minnesota | 6 years ⁶³ | Not mentioned. | \$1,363.74 ⁶⁴ | 3 days ⁶⁵ | No |
| Missouri | 2 years ⁶⁶ | Not mentioned. | \$1,186.51 ⁶⁷ | 3 days ⁶⁸ | No |
| Nevada | 90 days ⁶⁹ | When the injured person received a diagnosis of injury or illness. ⁷⁰ | \$1,173.27 ⁷¹ | 5 days within a 20-day period ⁷² | No |
| New Jersey | 2 years ⁷³ | From the date of the injury. ⁷⁴ | \$1,131.00 ⁷⁵ | 7 days ⁷⁶ | No |

⁶² MICH. COMP. LAWS ANN. § 418.360(2)

⁶³ MINN. STAT. § 176.151(a)..

⁶⁴ SSA, *supra* note 19.

⁶⁵ SSA, *supra* note 20.

⁶⁶ *File a Claim*, MISSOURI DEPARTMENT OF LABOR, <https://labor.mo.gov/dwc/injured-workers/file-claim> [<https://perma.cc/Q4P2-L7HA>] (last visited Apr 20, 2024).

⁶⁷ SSA, *supra* note 19.

⁶⁸ SSA, *supra* note 20.

⁶⁹ Nevada Statute of Limitations for Workers' Compensation Claims, DAM FIRM NEVADA (Dec. 3, 2023), <https://www.damfirm.com/nevada/nevada-statute-of-limitations-for-workers-comp-claims/> [<https://perma.cc/484G-6XBJ>] (last visited Apr 20, 2024).

⁷⁰ *Id.*

⁷¹ SSA, *supra* note 19.

⁷² SSA, *supra* note 20.

⁷³ SSA, *supra* note 19.

⁷⁴ *Frequently Asked Questions for Workers*, NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, WORKERS' COMPENSATION, <https://www.nj.gov/labor/workerscompensation/get-support/faqs/workerfaqs.shtm> [<https://perma.cc/3WZC-2UCM>] (last visited May 28, 2024).

⁷⁵ SSA, *supra* note 19.

⁷⁶ SSA, *supra* note 20.

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|----------------|-----------------------|---|--------------------------|----------------------|----|
| New York | 2 years ⁷⁷ | When the claimant knew or should have known about the injury. ⁷⁸ | \$1,145.43 ⁷⁹ | 7 days ⁸⁰ | No |
| North Carolina | 2 years ⁸¹ | When a claimant starts experiencing symptoms. ⁸² | \$1,330.00 ⁸³ | 7 days ⁸⁴ | No |
| Ohio | 1 year ⁸⁵ | When the claimant learns of their injury. ⁸⁶ | \$1,195.00 ⁸⁷ | 7 days ⁸⁸ | No |

⁷⁷ N.Y. WORKERS' COMP. LAW § 28 (consol. 2024).

⁷⁸ *Id.*

⁷⁹ SSA, *supra* note 19.

⁸⁰ SSA, *supra* note 20.

⁸¹ N.C. GEN. STAT. §97-58(c).

⁸² *How Long Do You Have to File a Workers' Comp Claim in North Carolina?*, RALEIGH PERSONAL INJURY LAWYER, <https://whitleylawfirm.com/blog/workers'-comp-claim-time-limit/> [<https://perma.cc/88Q4-4BV8>] (last visited Apr 20, 2024).

⁸³ SSA, *supra* note 19.

⁸⁴ SSA, *supra* note 20.

⁸⁵ Workers' compensation statute of limitations, KWHDW, <https://www.ohattorneys.com/workers-compensation/statute-of-limitations/> [<https://perma.cc/226J-3DWL>] (last visited Apr 20, 2024).

⁸⁶ *Id.*

⁸⁷ SSA, *supra* note 19.

⁸⁸ SSA, *supra* note 20.

| | | | | | |
|--------------|-----------------------|---|---------------------------|-----------------------|-------------------------|
| Pennsylvania | 3 years ⁸⁹ | Not mentioned. | \$1,325.00 ⁹⁰ | 7 days ⁹¹ | Partially ⁹² |
| Tennessee | 1 year ⁹³ | Not mentioned. | \$1,313.40 ⁹⁴ | 7 days ⁹⁵ | No |
| Texas | 1 year ⁹⁶ | When the claimant knew or should have known about their injury. ⁹⁷ | \$1,174.00 ⁹⁸ | 7 days ⁹⁹ | No |
| Washington | 1 year ¹⁰⁰ | Not mentioned. | \$2,104.18 ¹⁰¹ | 3 days ¹⁰² | No |

⁸⁹ *What is the Statute of Limitations for Filing a Workers' Compensation Claim?*, POND LEHOCKY GIORDANO LLP, <https://www.pondlehocky.com/faqs/workers-compensation-faq/what-is-the-statute-of-limitations-for-filing-a-workers-compensation-claim> [https://perma.cc/9ZG8-EJTU] (last visited Apr 20, 2024).

⁹⁰ SSA, *supra* note 19.

⁹¹ SSA, *supra* note 20.

⁹² 77 PA. CONS. STAT. § 565(e).

⁹³ *A Beginner's Guide to TN Workers' Comp*, TN DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, <https://www.tn.gov/workforce/injuries-at-work/available-resources/redirecr-available-resources/a-beginner-s-guide-to-tn-workers-comp.html> [https://perma.cc/67UQ-VLMV] (last visited Apr 20, 2024).

⁹⁴ SSA, *supra* note 19.

⁹⁵ SSA, *supra* note 20.

⁹⁶ TEX. LABOR CODE ANN. § 409.003.

⁹⁷ *Id.*

⁹⁸ SSA, *supra* note 19.

⁹⁹ SSA, *supra* note 20.

¹⁰⁰ Larry A. Lehmbecker, *How to File a Workers' Comp Claim in Washington State*, LEHMBECKER LAW (May 18, 2023), <https://lehmlaw.com/blog/file-washington-workers-compensation-claim> [https://perma.cc/KWD8-49UY] (last visited Apr 21, 2024).

¹⁰¹ SSA, *supra* note 19.

¹⁰² SSA, *supra* note 20.

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| | | | | | |
|-----------|------------------------|----------------|---------------------------|-----------------------|----|
| Wisconsin | 6 years ¹⁰³ | Not mentioned. | \$1,296.00 ¹⁰⁴ | 3 days ¹⁰⁵ | No |
|-----------|------------------------|----------------|---------------------------|-----------------------|----|

II. The Issue with Workers' Compensation and the NFL

One must first be an employee to collect workers' compensation.¹⁰⁶ While it is generally settled that NFL players are employees of their teams, the definition of employee can be complex.¹⁰⁷ For all intents and purposes, we will assume NFL players are employees of their teams and thus satisfy the basic requirement of being an employee.

The next major criterion is sustaining a work-place injury in the course of normal employment.¹⁰⁸ The NFL, as mentioned above, has no shortage of injuries. This criterion is thus frequently satisfied. Proof that this injury occurred at work, which can at times serve as an obstacle in workers' compensation claims, is also fairly easy to produce. Broadcasting networks record and televise NFL games, so anything that happens during a game is easy to prove. NFL teams have a great deal of support staff that attend every practice and could provide ample testimony in the event an injury occurred at practice.

Additionally, to be able to collect workers' compensation benefits, an injured employee's employer must have workers' compensation insurance.¹⁰⁹ If an employer is not legally required to carry workers' compensation insurance or is barred from carrying insurance, then an employee cannot collect benefits.

Finally, to have a successful workers' compensation claim, one needs to abide by all of the logistical stipulations and deadlines imposed by statute.¹¹⁰ This means

¹⁰³ WIS. STAT. § 102.17(4)(a).

¹⁰⁴ SSA, *supra* note 19.

¹⁰⁵ Munoz, *supra* note 53.

¹⁰⁶ Amy DelPo, *Are You Eligible for Workers' Compensation Benefits?*, NOLO (2024), <https://www.nolo.com/legal-encyclopedia/are-you-eligible-workers-compensation-32963.html> [<https://perma.cc/UJ2G-GBQN>] (last visited Apr. 21, 2024).

¹⁰⁷ Jessica Mah, *These 3 Factors Distinguish Employees From Contractors*, INC. (Sept. 15, 2015), <https://www.inc.com/jessica-mah/the-3-factors-that-distinguish-employees-from-contractors.html> [<https://perma.cc/8VD5-HAPY>] (last visited Apr 21, 2024).

¹⁰⁸ DelPo, *supra* note 106.

¹⁰⁹ *Id.*

¹¹⁰ DelPo, *supra* note 106.

reporting the injury, seeing an approved medical professional, and filing any accompanying paperwork before the statute of limitations expires. This poses a problem for NFL players because, as clearly demonstrated in the above chart, every state has different regulations.

Cumulative injuries present an additional problem when it comes to the statute of limitations. Cumulative injuries are the result of repeated exposure to workplace conditions which compound over time.¹¹¹ For most workers, this may be a repetitive use injury like carpal tunnel syndrome from typing. For NFL players, such an injury could be degenerative mental disorders caused by CTE due to multiple concussions.¹¹² Proving cumulative injuries were a direct result of workplace injury years, or decades in the future is a challenge.¹¹³

Additionally, not every state allows for the statute of limitations to begin once a person is aware of their injury or all of its consequences. Instead, the clock begins as soon as the injury happens. For example, in North Carolina, the statute of limitations begins when a person begins experiencing symptoms when dealing with cumulative injuries.¹¹⁴ This could be a simple headache due to a concussion when it comes to the type of injuries that later lead to CTE for NFL players, the full repercussions of which they may not be aware of for decades.

A final major problem with NFL players and workers' compensation is a social one. Rookie minimum salaries start at over three quarters of a million dollars as of the 2024 season with steady increases for every season a player participates. Minimum salaries reach their highest at \$1.125 million annually for years four through six.¹¹⁵ Considering this, several states have enacted or tried to enact legislation that would limit players' ability to draw on the workers' compensation system¹¹⁶ because allowing

¹¹¹ Michael J. Doyle, *What Should I Do If I've Suffered A Cumulative Injury At Work?*, MICHAEL J. DOYLE, ATTORNEY AT LAW (2023), <https://www.michaeljdoylelaw.com/legal-blog/2023/march/what-should-i-do-if-i-ve-suffered-a-cumulative-i/> [<https://perma.cc/WPC9-5JAF>] (last visited Apr 21, 2024).

¹¹² *Chronic Traumatic Encephalopathy*, NHS CHOICES, <https://www.nhs.uk/conditions/chronic-traumatic-encephalopathy/> [<https://perma.cc/9D8D-7URB>] (last visited Apr 21, 2024).

¹¹³ Smolich & Smolich, *How Do You Prove a Cumulative Trauma Injury is Work Related?*, SMOLICH & SMOLICH LAW FIRM (2020), <https://www.smolichlaw.com/blog/2020/september/how-do-you-prove-a-cumulative-trauma-injury-is-w/> [<https://perma.cc/V3GB-66EH>] (last visited Apr 21, 2024).

¹¹⁴ SPOTRAC, *supra* note 82.

¹¹⁵ RALEIGH PERSONAL INJURY LAWYER, *supra* note 11.

¹¹⁶ Bobbi N. Roquemore, *Creating a Level Playing Field: The Case for Bringing Workers' Compensation for Professional Athletes into a Single Federal System by Extending the Longshore Act*, 57 LOY. L.

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REV. 793 (2011); see also ARIZ. REV. STAT. ANN. §§ 23-901 to -1104 (2014); COLO. REV. STAT. §§ 8-40-101 to -47-209 (2014); GA. CODE ANN. §§ 34-9-1 to -421 (2014); 820 ILL. COMP. STAT. 305/1-/30 (2014); IND. CODE §§ 22-3-1-1 to -12- 5 (2013); LA. REV. STAT. ANN. §§ 23:1021-:1415 (2014); MD. CODE ANN. LAB. & EMPL. §§ 9- 101 to -1201 (West 2014); Minn. Stat. §§ 176.001-.862 (2014); N.J. STAT. ANN. §§ 34:15-1 to -142 (2014); N.Y. WORKERS' COMP. LAW §§ 1-444.3 (Consol. 2014); N.C. GEN. STAT. §§ 97-1 to -101.1 (2014); TENN. CODE ANN. §§ 50-6-101 to -921 (2014); WASH. REV. CODE §§ 51.04.010-98.080 (2014); WIS. STAT. §§ 102.01-.89 (2012).

Arizona, Colorado, Georgia, Illinois, Louisiana, North Carolina, Tennessee, Washington, and Wisconsin do not mention professional athletes that play in any league in their statutes.

Arizona enacted a law in 2013 that limited an athlete's ability to file claims in other states even if they previously played for teams there and were injured. See *Arizona Workers' Comp for NFL Players & Other Professional Athletes*, LAW OFFICES OF ROBERT WISNIEWSKI, <https://www.azhurtonthejob.com/workers-compensation/injured-athletes-workers-comp/> [https://perma.cc/8ZBD-KU46] (last visited Apr 21, 2024).

Illinois proposed legislation in 2017 that would have prohibited athletes from collecting workers' compensation after they turned 35. This legislation was supported by the Chicago Bears owners and the NFL but was heavily opposed by the NFLPA. See Tom Goldman, *NFL Players Union Works to Block Illinois Workers' Comp Bill*, NPR (Feb. 15, 2017, 4:29 PM), <https://www.npr.org/2017/02/15/515441719/nfl-players-union-works-to-block-illinois-workers-comp-bill> [https://perma.cc/UFJ8-MCJP] (last visited Apr 21, 2024).

The NFLPA successfully fought off an attempt to limit workers' compensation in Louisiana in 2014. The proposed bill would have calculated benefits based on when in the 17-week season a player was injured, resulting in uncertainty as to whether pre- or post-season injuries would be covered as well. This legislation was also supported by Saints leadership and the NFL. See John J. Sheehan, *A dilemma in the NFL and Workers' Compensation*, LAW OFFICE OF JOHN J. SHEEHAN, <https://attorneysheehan.com/dilemma-national-football-league/> [https://perma.cc/3CJP-MGND] (last visited Apr 21, 2024).

Wisconsin caps the maximum weekly payment for former professional athletes at \$1,281. See Jay Causey, *Pro Athletes Need Worker's Compensation Too*, WASHINGTON WORKERS' ADVISOR (July 9, 2013), <https://workersadvisor.com/2012/07/09/pro-athletes-need-workers-compensation-too/> [https://perma.cc/38TB-K9MB] (last visited Apr 21, 2024).

California and Washington D.C. implicitly include athletes in their workers' compensation statutes. In California, any player who could demonstrate their injury was caused or contributed to while playing in California used to be able to file claim. See John M. Sadler, *Workers' Comp Abuse by Pro Athletes*, SADLER SPORTS & RECREATION INSURANCE, <https://www.sadlersports.com/blog/california-moves-close-loophole-workers-compensation-abuse-pro-athletes/> [https://perma.cc/FMQ6-LVUF] (last visited Apr 21, 2024).

Now players need to be able to prove that they played 20 percent of their careers in California or two full seasons with a California team. See Ian Kea, *Professional Athletes and Workers' Compensation Eligibility*, FULL SERVICE WORKERS' COMPENSATION PHARMACY, <https://www.iwpharmacy.com/blog/professional-athletes-and-workers-compensation-eligibility> [https://perma.cc/KSQ8-MZZF] (last visited Apr 21, 2024).

them to do so equates to a welfare for the rich.¹¹⁷ At face value, this makes intuitive sense taking into account that is substantially more money than the average American will see with a national average of \$59,428 annually as of 2023.¹¹⁸ Coupled with the fact that states adopted workers' compensation legislation out of a desire to protect the "little man" from being abused by large corporations, and NFL players are by no means a typical "little man," it is easy to see how this viewpoint has gained traction in various states over the last several decades.

Considering everything above, it is clear that workers' compensation and the NFL are not as compatible with one another as one might think. However, NFL players are still employees who routinely get injured, and state legislation should not punish them simply because their line of work is public and well-compensated. Players can end up in dire circumstances easily where workers' compensation, or a similar program, serves as a lifeline. The following section will demonstrate this.

Washington D.C. caps the length of time a player can collect benefits to whatever the expected length of their career would have been if they were not injured. D.C. CODE § 32-1508(3)(W) (2012).

Florida explicitly bars professional athletes from its workers' compensation systems since they are not classified as employees. FLA. STAT. § 440.02(17)(c)(3) (2014).

Massachusetts also excludes professional athletes from the definition of employee, effectively barring them from the workers' compensation system. Massachusetts differs from Florida in that this statute only applies while the athlete is still on the payroll of their team while injured. See MASS. GEN. LAWS ch. 152, § 1(4) (2014).

Michigan and Pennsylvania functionally exclude fair consideration of professional athletes. Michigan only allows coverage if the athlete's preinjury salary is less than 200% of the state's average weekly wage. See MICH. COMP. LAWS ANN. § 418.360(1). Michigan also bars all out of state athletes or those temporarily in the state from filing for benefits. MICH. COMP. LAWS ANN. § 418.360(2), (3) (West 2014). Pennsylvania restricts professional athletes by barring them if they make more twice the state average weekly wage. See 77 PA. STAT. ANN. § 565(e).

¹¹⁷ *Injured Pro Athletes Can File Workers' Comp Claims in Ohio*, MONAST LAW OFFICE, <https://www.monastlaw.com/blog/professional-athletes-and-ohio-workers-compensation.cfm> [https://perma.cc/5WR3-MP3C] (last visited Apr 21, 2024).

¹¹⁸ Belle Wong, *Average Salary By State In 2024*, FORBES (May 1, 2024, 7:22 PM), <https://www.forbes.com/advisor/business/average-salary-by-state/> [https://perma.cc/HF4F-JH3F] (last visited Apr 21, 2024).

III. Why Professional Athletes Still Need Protection Against Workplace Injuries

a. Alapati Noga

Alapati Noga was born in American Samoa in 1965.¹¹⁹ He played football for Farrington High School before going on to the University of Hawaii (UH) as a defensive lineman. At UH, he earned the nickname “The Samoan Sack Man” because he set the record for the most sacks at UH with 16 sacks in one season.¹²⁰ Noga was drafted by the Minnesota Vikings as a 71st pick in the 3rd round in 1988. He would go on to play seven cumulative NFL seasons split between the Vikings, Washington Commanders, and Indianapolis Colts.¹²¹ Noga also played four seasons with the Arena Football League’s San Jose SaberCats and Portland Forest Dragons.¹²² He played professionally for 11 years between the two leagues.¹²³

While playing for the Vikings, Noga experienced head injuries and subsequent headaches.¹²⁴ Team physicians administered Tylenol and to manage his headaches.¹²⁵ In 2001, Noga filed his first workers’ compensation claim against the Vikings due to various orthopedic injuries he sustained while playing for the Vikings. A medical examination report from 2004 detailed that Noga received 10 different orthopedic injuries and had two separate neurological issues, including blackout episodes. Noga and the Vikings settle this claim.¹²⁶

In 2011, medical professionals diagnosed Noga with dementia while demonstrating “a general decline with extremely low verbal memory and problem

¹¹⁹ *Alapati Noga*, NOGA BROTHERS, <https://nogabrothers.weebly.com/al-noga.html> [https://perma.cc/5C78-SHSS] (last visited Apr 21, 2024).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Al Noga*, STATS CREW, <https://www.statscrew.com/football/stats/p-nogaaloo1> [https://perma.cc/8XLR-NTJG] (last visited Apr 21, 2024).

¹²³ *Id.*

¹²⁴ *Noga v. Minnesota Vikings Football Club*, 931 N.W.2d 801, 804 (Minn. 2019).

¹²⁵ Brad R. Kolling, *Minnesota Vikings Score a Win on Player’s Dementia-Related Workers’ Comp Claim*, FELHABER LARSON (Aug. 6, 2019), <https://www.felhaber.com/minnesota-vikings-score-a-win-on-players-dementia-related-workers-comp-claim/> [https://perma.cc/FWQ8-8VE6] (last visited Apr 21, 2024).

¹²⁶ *Id.*

solving/organization.”¹²⁷ The diagnosis report did not identify a specific cause of the dementia but did indicate multiple head traumas were an important factor.¹²⁸ A later 2014 report indicated that several factors, such as untreated sleep apnea, drug use, chronic physical pain, and ADHD were contributing factors to Noga’s mental decline but affirmed that the multitude of traumatic head injuries were a major factor.¹²⁹

In 2015, Noga filed his second workers’ compensation claim, this time for a “Gillette” injury¹³⁰ for his dementia claiming it was caused by the injuries he received while playing for the Vikings.¹³¹ The Vikings denied that Noga received a Gillette injury and further argued that two Minnesota laws dealing with statute of limitations barred Noga’s claims from proceeding.¹³² The Minnesota’s Workers Compensation Act states that injured employees must provide notice to their employers within 180 days of the injury,¹³³ and that workers’ compensation claims must be filed within three years after the employer has made a written report of the injury and not more than six years from the date of the injury.¹³⁴

A workers’ compensation judge initially found that Noga had sustained a Gillette injury and that his claims were not barred by failure to provide notice and did not violate the statute of limitations.¹³⁵ The Vikings appealed this decision, and upon appeal the Minnesota workers’ compensation appeals judge affirmed the lower court’s assertion that Noga had sustained a Gillette injury.¹³⁶ The appeals judge vacated the original decision that Noga’s claims were not barred from moving forward due to failure to provide notice or abide by the statute of limitations and remanded this

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ A Gillette injury is a concept in Minnesota workers’ compensation which refers to an injury which occurs over time due to multiple minute repetitive traumas that are serious enough to disable an employee. *Workers’ compensation cumulative trauma injuries: Gillette injuries in Minnesota*, MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY, https://www.dli.mn.gov/sites/default/files/pdf/infosheet_cumulative_trauma_gillette.pdf [<https://perma.cc/2E2X-J3R6>] (last visited Apr 21, 2024).

¹³¹ Kolling, *supra* note 125.

¹³² *Id.*

¹³³ MINN. STAT. § 176.141.

¹³⁴ MINN. STAT. § 176.151.

¹³⁵ Kolling, *supra* note 125.

¹³⁶ *Id.*

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particular issue back to the workers compensation judge.¹³⁷ The workers' compensation judge found that the Vikings received proper notice of the Gillette injury in the form of the 2004 neuropsychological report that was part of the settlement of Noga's first workers' compensation claim, and that providing Advil and Tylenol to Noga while he was a player constituted medical care to toll the statute of limitations.¹³⁸ The Vikings appealed again, taking the case to the Minnesota Supreme Court.¹³⁹

The Supreme Court sought to answer three questions: (1) whether Noga received a compensable Gillette injury, (2) whether the Vikings received adequate notice of Noga's injury, and (3) whether Noga satisfied the statute of limitations.¹⁴⁰ The Minnesota Supreme Court agreed with the Vikings and held that Noga's claim was barred due to the statute of limitations defined in Minn. Stat. § 176.15 in answer to question three.¹⁴¹ Since failure to satisfy the statute of limitations renders the type of injury moot, the Court declined to address whether Noga's injuries constituted a *Gillette* injury in answer to question one.¹⁴² When considering question two, the court held that "nothing in the record suggests that the Vikings knew or should have known that Noga was at... risk of developing... a Gillette injury."¹⁴³

This case clearly demonstrates the issues with the statute of limitations previously described in Section II of this paper. Furthermore, Noga suffered debilitating neurological injuries that multiple medical reports confirmed were in large part caused by his numerous traumatic head injuries while playing professional football, and yet, he was left unable to claim any recourse.

¹³⁷ *Id.*

¹³⁸ The judge cited a series of decisions that showed an "employer's act in assuming responsibility for providing medical care to the employee with suspend the running of statute of limitations." Kolling, *supra* note 125.

¹³⁹ Kolling, *supra* note 125.

¹⁴⁰ *Noga*, 931 N.W.2d at 803.

¹⁴¹ *Id.* at 809.

¹⁴² *Id.*

¹⁴³ *Id.* at 813..

b. Mitchell Loewen

Mitchell Loewen was born in Lahaina, Hawaii in 1993.¹⁴⁴ In 2011, he worked with the University of Arkansas scout team while redshirting. He went on to participate in 36 contest games and play six different positions during his career at Arkansas.¹⁴⁵ During his time at Arkansas, he suffered two ACL tears in his left knee which resulted in two surgeries in addition to a broken foot at the end of his college career that needed surgical intervention as well.¹⁴⁶ Loewen signed as an undrafted free agent with the New Orleans Saints after the 2016 draft.¹⁴⁷ His rookie season ended early when he was placed on the reserve/non-football injury list due to prior injuries.¹⁴⁸ In 2017, he suffered a high-ankle sprain during a regular season game and was placed on the injured reserve list in September.¹⁴⁹ Loewen was released by the Saints in December 2018, but then ended up back with the Saints on their practice squad in 2019.¹⁵⁰ While on the practice squad, Loewen injured his knee but continued to practice.¹⁵¹ The Saints promoted him to the active roster in 2019,¹⁵² but moved him

¹⁴⁴ Mitchell Loewen, ARKANSAS RAZORBACKS (2019), <https://arkansasrazorbacks.com/roster/mitchell-loewen/> [https://perma.cc/9HXM-MY87] (last visited Apr 21, 2024).

¹⁴⁵ *Id.*

¹⁴⁶ Loewen v. The New Orleans La. Saints LLC, 367 So. 3d 846, 849 (La. Ct. App. 2023).

¹⁴⁷ Otis Kirk, *Former Razorbacks Heading to NFL as Undrafted Free Agents*, 247SPORTS (Apr. 30, 2015 4:14 PM), <https://247sports.com/college/arkansas/Article/Former-Razorbacks-heading-to-NFL-as-undrafted-free-agents-4511120/> [https://perma.cc/QW5B-TAKM] (last visited Apr 21, 2024).

¹⁴⁸ New Orleans Saints Announce Roster Moves, NEW ORLEANS SAINTS (June 6, 2016, 9:33 AM), <https://www.neworleanssaints.com/news/new-orleans-saints-announce-roster-moves-17227752> [https://perma.cc/9UU3-Q3VU] (last visited Apr 21, 2024).

¹⁴⁹ Charean Williams, *Saints promote David Parry, re-sign Darryl Tapp*, NBC SPORTS (Sept. 20, 2017, 1:33 PM), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/saints-promote-david-parry-re-sign-darryl-tapp> [https://perma.cc/ESK9-8SFN] (last visited Apr 22, 2024).

¹⁵⁰ *New Orleans Saints Announce Roster Moves*, NEW ORLEANS SAINTS (Sept. 1, 2019, 3:17 PM), <https://www.neworleanssaints.com/news/new-orleans-saints-announce-roster-moves-x2504> [https://perma.cc/EC7Y-QHNU] (last visited Apr 22, 2024).

¹⁵¹ *Id.*

¹⁵² Josh Alper, *Saints Promote Mitchell Loewen, Cut Wes Horton*, NBC SPORTS (Sept. 9, 2019, 1:22 PM), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/saints-promote-mitchell-loewen-cut-wes-horton> [https://perma.cc/K8J7-33PX] (last visited Apr 22, 2024).

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right back to the practice squad¹⁵³ before ultimately waiving him in 2020.¹⁵⁴ He claimed he suffered from knee and ankle pain during most of his NFL career but did not report it due to believing it would affect his chances of moving from the practice squad and onto the active roster.¹⁵⁵

Once it was clear that his NFL career was over, Loewen moved back to Hawaii and started farming, an occupation he explained earns him a measly \$350 a week.¹⁵⁶ Due to continued pain in his knee, Loewen filed a Louisiana workers' compensation claim in 2020 seeking disability status, medical treatment, and penalties and attorney's fees for the injuries he suffered while with the Saints.¹⁵⁷ He filed a second claim for pain due to his ankle injury, seeking wage benefits, disability status, medical treatment, penalties and attorney's fees.¹⁵⁸ The workers' compensation court ruled that Loewen was injured in the normal scope of his employment, thus entitling him to ongoing reasonable medical care for the knee and ankle injury; however, his arguments failed to provide sufficient proof that the injuries resulted in disability, thus denying him disability status and wage benefits.¹⁵⁹

Loewen appealed this decision, claiming he was entitled to supplemental earning benefits because he lost significant wage-earning potential¹⁶⁰ due to his injuries.¹⁶¹ In June of 2023, the appellate court ruled against Loewen on the matter of lost wage-earning potential, but sided with Loewen on the matter of disability status. The appellate judge ruled the workers' compensation judge improperly addressed the

¹⁵³ Deuce Windham, *Saints Sign 9 Players to Reserve/Future Deals*, CANAL STREET CHRONICLES (Jan. 7 2020, 12:15 PM), <https://www.canalstreetchronicles.com/2020/1/7/21055143/saints-sign-9-players-to-reserve-future-deals> [https://perma.cc/JQW6-LVX] (last visited Apr 22, 2024).

¹⁵⁴ *Saints Announce Roster Moves*, NEW ORLEANS SAINTS (May 15, 2020, 3:25 PM), <https://www.neworleanssaints.com/news/saints-announce-roster-moves-051520> [https://perma.cc/V5ZT-AFXH] (last visited Apr 22, 2024).

¹⁵⁵ *Loewen*, 367 So. 3d at 850.

¹⁵⁶ *Id.* at 851.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 852.

¹⁶⁰ *Id.* at 850, 851. In 2019 while on practice squad with the Saints, Loewen earned a \$136,000 salary. His reported income as of 2020 was \$350 a week.

¹⁶¹ *Supra* 146

issue of disability, and the case was remanded to the workers' compensation judge to decide if Loewen is entitled to permanent partial disability benefits.¹⁶²

Mitchell Loewen was not a big-ticket player. He made more money than the average American for a very short time during his limited career before being sent back into the world with minimal support from institutions that profited from the activities that caused his injuries. While it appears as though Loewen will succeed in getting some compensation in the form of continued medical care, he has yet to claim anything beyond that which would serve as recompense for the perpetual pain he now endures.

IV. The Typical But Incorrect Solution

Much has been written about state-based workers' compensation systems not being friendly to professional athletes. The typical proposed solution creates a federal workers' compensation system which guarantees equal coverage for all professional athletes.¹⁶³ While their methods of implementing a national standard differ slightly

¹⁶² *Id.* at 855.

¹⁶³ See Rachel Schaffer, *Grabbing Them by the Balls: Legislatures, Courts, and Team Owners Bar Non-Elite Professional Athletes from Workers' Compensation*, 8 AM. U. J. GENDER SSOC. POL'Y & L. 623 (2000). After an extensive study showing that most professional athletes make substantially less than a million dollars a year and make a lifetime equivalent salary in just a few years, Schaffer claims that there should be mandatory inclusion of professional athletes in already-existing state statutes. She attributes exclusion to the misconception that all professional athletes are paid millions of dollars and thus can handle their own medical bills or mitigate whatever disabilities they have due to their participation in professional sports.

See also; Bobbi N. Roquemore, *Creating a Level Playing Field: The Case for Bringing Workers' Compensation for Professional Athletes into a Single Federal System by Extending the Longshore Act*, 57 LOY. L. REV. 793 (2011). As the title implies, Roquemore explores many of the same problems as does this paper, but offers a very specific solution of a federal "Professional Athletes Workers' Compensation Act" by building off the already-existing structure of the Longshore Act. The Longshore Act came about as a congressional response to the Supreme Court's decision in *Southern Pacific Co. v. Jensen*. The Longshore Act was designed to extend the applicability of workers' compensation to non-maritime workers who work in navigable waters. Maritime workers had specific federal workers' compensation protection which protected them while outside of any state's jurisdiction, while other employees, such as dock workers (who could reasonably find themselves in navigable waters) were left without protection. Congress expanded the Longshore Act to protect all kinds of employees and at one time the Act even applied to the Washington Commanders.

See also; Friede, Matthew (2015) *Professional Athletes are 'Seeing Stars': How Athletes are 'Knocked-Out' of States' Workers' Compensation Systems*, 38 HAMLINE L. REV. 519 (2015). Friede's article details the history of workers' compensation and elaborates on the complex relationship between state-

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and the authors justify them in marginally different ways, their general solution suffers from three critical flaws: (1) it ignores the political reality; (2) it does not grant a fix for cumulative injuries; and (3) it does nothing to address the social issues associated with athletes collecting workers' compensation. We address each flaw in turn.

a. Ignores Political Reality

Firstly, arguing that the best solution is to implement a federal system ignores the political difficulties of accomplishing something politically complex. Considering the previously mentioned team owner-backed restrictions that legislators have tried in Illinois, Louisiana, and California in the last few decades, there would be lobbying efforts made by the team owners, state officials, and probably the NFL itself to stop such legislation.¹⁶⁴ The NFL is well on its way to its goal of \$25 billion a year in revenue by 2027, pulling in \$19 billion in 2023 and a new lucrative media deal with YouTube that is anticipated to net the NFL \$2 billion per year.¹⁶⁵ Suffice it to say, the NFL will have the cash necessary to fight any national legislation that would take money out of its pockets. The cooperation between NFL team owners and state legislators also demonstrates that a federal professional athletes workers' compensation act would have built-in opposition that has already spent time refining its arguments and garnering support. While the NFLPA has successfully fought off restrictions in the past, no state has put forward any legislation that would make applying for or collecting workers' compensation benefits easier for professional athletes. Legislators that may find themselves arguing for a national act would be several steps behind their opposition. This is obviously not an insurmountable problem, but it does pose a challenge.

Additionally, if a national act did pass, it would have to cater to at least some of the desires of the team owners and the NFL considering their substantial soft power and ability to spend money to further their causes. This means that the athletes currently working in professional-athlete-friendly states like California would likely see a lessening in coverage to try to appease legislators from professional-athlete-hostile states like Florida or Michigan willing to support the legislation. A national act

based systems and professional athletes. His proposed solution is an entirely new workers' compensation act that would apply nationally and equitably.

¹⁶⁴ Roquemore et al, *supra* note 116.

¹⁶⁵ Eben Novy-Williams, *Booming NFL Looks Ahead With "Healthy Paranoia" After Media Deals*, SPORTICO.COM (Feb. 6, 2023), <https://www.sportico.com/leagues/football/2023/nfl-revenue-whats-next-1234708609/> [<https://perma.cc/T7KT-5TAH>] (last visited Apr 22, 2024).

would make athlete coverage across states equal, but it would come at the cost of reducing some benefits from athletes just because they lived in a certain state.

b. Does not Guarantee a Fix for Cumulative Injuries

A national act does not inherently solve the cumulative injuries issues that many athletes face. This will only become more of a problem for NFL players in the coming decades. Despite the NFL making various rule changes in the last 10 years to make playing the game safer for players,¹⁶⁶ there has been no decline in the average

¹⁶⁶ The NFL has made 10 notable changes according to the Health and Safety Related Rules Changes:

2009:

- (1) It is an illegal "blindside" block if the blocker is moving toward his own endline and approaches the opponent from behind or from the side, and the initial force of the contact by the blocker's helmet, forearm or shoulder is to the head or neck area of an opponent.
- (2) It is an illegal hit on a defenseless receiver if the initial force of the contact by the defender's helmet, forearm or shoulder is to the head or neck area of the receiver.

2010:

- (3) A player who has just completed a catch is protected from blows to the head or neck by an opponent who launches. (4) All "defenseless players" are protected from blows to the head delivered by an opponent's helmet, forearm or shoulder. (5) Kickers and punters during the kick and return, and quarterbacks after a change of possession, are protected from blows to the head delivered by an opponent's helmet, forearm or shoulder, instead of just helmet-to-helmet contact.

2011:

- (6) The list of "defenseless players" is expanded to include: a kicker/punter during the kick or during the return; a quarterback at any time after a change of possession; and a player who receives a "blindside" block when the blocker is moving toward his own endline and approaches the opponent from behind or from the side. Previously, these players were protected against blows to the head, but not against blows delivered by an opponent with the top/crown or forehead/"hairline" parts of the helmet against other parts of the body.
- (7) A receiver who has completed a catch is a "defenseless player" until he has had time to protect himself or has clearly become a runner. A receiver/runner is no longer defenseless if he is able to avoid or ward off the impending contact of an opponent. Previously, the receiver who had completed a catch was protected against an opponent who launched and delivered a blow to the receiver's head.

2012:

- (8) The list of "defenseless players" is expanded to include defensive players on crackback blocks, making it illegal to hit them in the head or neck area.

2018:

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annual number [or rate] of head, neck, or back.¹⁶⁷ This lack of improved safety is painting a bleak future for many NFL players. In 2017, a study of 202 former players of U.S.-style tackle football found CTE in 87% of participants. The number jumped to 99% of participants if one considered only those that played in the NFL.¹⁶⁸ A 2023 study by Boston University Medical School corroborated these results. It found CTE in 345 of the 376 former NFL player participants, a terrifying 91.7 percent.¹⁶⁹ For some perspective, a 2018 BU study of 164 random brains donated found only one case of CTE. Not surprisingly, that single participant was a former college football player.¹⁷⁰ The link between CTE and the NFL has become so apparent that the NFL has been

(9) It is a foul if a player lowers his head to initiate and make contact with his helmet against an opponent. It is a penalty that will result in the loss of 15 yards. If the foul is by the defense, it is also an automatic first down. The player may be disqualified.

2023:

(10) Expands Impermissible Use of the Helmet, making it a foul for players to use their helmet to "butt, ram, spear" or make forcible contact to opponents' head or neck area in any way. This builds on the existing Impermissible Use of the Helmet rules which prohibits a player from lowering his head to initiate and make contact with his helmet against an opponent.

NFL Health and Safety Related Rules Changes Since 2002, NFL (Mar. 29, 2024), <https://www.nfl.com/playerhealthandsafety/equipment-and-innovation/rules-changes/nfl-health-and-safety-related-rules-changes-since-2002> [<https://perma.cc/W2MG-2KYV>] (last visited Apr 22, 2024).

¹⁶⁷ Suril B Sheth et al., *ORTHOPAEDIC AND BRAIN INJURIES OVER LAST 10 SEASONS IN THE NATIONAL FOOTBALL LEAGUE (NFL): NUMBER AND EFFECT ON MISSED PLAYING TIME* *BMJ* (2020), <https://bmjopensem.bmj.com/content/bmjosem/6/1/e000711.full.pdf> (last visited Apr 22, 2024).

¹⁶⁸ Meredith Wadman, *Ninety-nine percent of ailing NFL player brains show hallmarks of neurodegenerative disease, autopsy study finds*, *SCIENCE* (2017), <https://www.science.org/content/article/ninety-nine-percent-ailing-nfl-player-brains-show-hallmarks-neurodegenerative-disease> [<https://perma.cc/H3XM-WBCA>] (last visited Mar 22, 2024).

¹⁶⁹ Richard Pink & Andrew Thurston, *BU Finds CTE in Nearly 92 Percent of Ex-NFL Players Studied*, *BOSTON UNIVERSITY* (Feb 7, 2023), <https://www.bu.edu/articles/2023/bu-finds-cte-in-nearly-92-percent-of-former-nfl-players-studied/> [<https://perma.cc/LA2Y-H8XF>] (last visited Apr 22, 2024).

¹⁷⁰ *Id.*

forced to acknowledge the connection¹⁷¹ despite years of trying to downplay the risks.¹⁷²

All this begs the question “why should players care about CTE?” There is a wealth of scholarly articles to answer this question.¹⁷³ In short, CTE can cause memory loss, confusion, impaired judgment, impulse control problems, aggression, depression, anxiety, suicidality, parkinsonism, and, eventually, progressive dementia.¹⁷⁴ CTE has no cure and can take years or even decades to fully develop.¹⁷⁵ Due to the nature of its cause - multiple traumas to the head over a length of time¹⁷⁶ - early symptoms are consistent with the same symptoms as a concussion. For many states, the statute of limitations for cumulative injuries begins whenever the claimant should have reasonably known about their injury.¹⁷⁷ Proving exactly when a player should have known about their injury becomes complex quickly. Early symptoms of

¹⁷¹ Scott Polacek, *NFL Acknowledges Link Between Football and CTE: Latest Details and Comments*, BLEACHER REPORT (2017), <https://bleacherreport.com/articles/2624762-nfl-acknowledges-link-between-football-and-cte-latest-details-comments> [<https://perma.cc/2MTN-CGAQ>] (last visited Apr 22, 2024).

¹⁷² *The NFL Tried to Intimidate Scientists Studying the Link Between Pro Football and Traumatic Brain Injury*, UNION OF CONCERNED SCIENTISTS (Oct. 11, 2017), <https://www.ucsusa.org/resources/nfl-tried-intimidate-scientists-studying-link-between-pro-football-and-traumatic-brain> [<https://perma.cc/N9NZ-RAP7>] (last visited Apr 22, 2024).

¹⁷³ See Daniel Antonius et al., BEHAVIORAL HEALTH SYMPTOMS ASSOCIATED WITH CHRONIC TRAUMATIC ENCEPHALOPATHY: A CRITICAL REVIEW OF THE LITERATURE AND RECOMMENDATIONS FOR TREATMENT AND RESEARCH, 26 JOURNAL OF NEUROPSYCHIATRY AND CLINICAL NEUROSCIENCES 313-322 (2014);

See also Marcos A Abreu, Fred J Cromartie & Brandon D. Spradley, Chronic Traumatic Encephalopathy (CTE) and Former National Football League Player Suicides, THE SPORT JOURNAL (Jan. 29, 2016), <https://thesportjournal.org/article/chronic-traumatic-encephalopathy-cte-and-former-national-football-league-player-suicides/> [<https://perma.cc/M4GK-3GHK>] (last visited Apr 22, 2024).

See also Aaron E. Washington-Childs, *The NFL's Problem with off-Field Violence: How CTE Exposes Athletes to Criminality and CTE's Potential as a Criminal Defense*, 17 VA. SPORTS & ENT. L.J. 244 (2018).

¹⁷⁴ *Frequently Asked Questions*, BU RESEARCH CTE CENTER, <https://www.bu.edu/cte/about/frequently-asked-questions/> [<https://perma.cc/UW2U-347J>] (last visited Apr 22, 2024).

¹⁷⁵ *Id.*

¹⁷⁶ *Chronic Traumatic Encephalopathy*, MAYO CLINIC (2023), <https://www.mayoclinic.org/diseases-conditions/chronic-traumatic-encephalopathy/symptoms-causes/syc-20370921> [<https://perma.cc/FB48-K6NE>] (last visited Apr 22, 2024).

¹⁷⁷ See *supra*, chart in Section I.

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CTE being consistent with that of concussions makes filing a claim for CTE that satisfies the statute of limitations in any given state complicated. Together, this creates a problem for players who are at high risk for CTE in terms of their health and their ability to get a legal remedy for their injuries.

Therefore, it is imperative that any workers' compensation legislation that applies to NFL players has provisions that allow for longer statutes of limitations, or even have special exceptions for players who are likely to develop cumulative injuries that display symptoms early on but can take decades to fully develop. Considering this would likely be more lenient than any existing workers' compensation law, it would be very difficult to create a national workers' compensation act that would address the specific concerns of NFL players since they do not apply to the masses. Because provisions to protect players from future CTE complications should be non-negotiable, this makes a national act insufficient.

c. Does Not Address Social Issues

In a survey of 3,000 U.S. adults, 78% thought that professional athletes are "very or somewhat overpaid."¹⁷⁸ Professional athletes tied for first in this overpaid category with politicians.¹⁷⁹ If politicians and leagues start working together to make more funds available to a class of people the public believes are already overpaid, the public is not likely to approve. Educating a population on why these perceived millionaires not only deserve access to workers compensation funds, but that their care later in life may be dependent on it, is not going to be an easy task. Any type of public information campaign is most successful when the issue is simple, has a strong negative or positive message, and organizers can target a relevant subgroup.¹⁸⁰ None of these criteria are met in the case of campaigning for a national workers' compensation act for professional athletes.

If politicians are thus unlikely to bring legislation forth on their own, and there is unlikely to be large public support to generate a national professional athletes workers' compensation act, then such an act would not be viable. The players would

¹⁷⁸ *Overpaid: The Professionals Americans Think Earn Too Much*, CHARTR, <https://www.chartr.co/stories/2023-07-21-3-the-professions-americans-think-are-overpaid> [<https://perma.cc/F5B8-72UJ>] (last visited Apr 22, 2024).

¹⁷⁹ *Id.*

¹⁸⁰ See, e.g., Caitlin McColloch & Stephen Watts, *Evaluating the Effectiveness of Public Communication Campaigns and Their Implications for Strategic Competition with Russia*, RAND (Nov. 8, 2021), https://www.rand.org/pubs/research_reports/RRA412-2.html [<https://perma.cc/X2W5-F9CA>] (last visited Apr 22, 2024).

be better off fighting for a solution in a realm that they have some control over. Building off pre-existing provisions in their CBA is the best path towards making sure NFL players have equitable and reasonable workers' compensation coverage.

V. Revisiting Article 41 of the 2020 NFL CBA: Workers' compensation

a. Setting a New Standard of Compensation based on Washington State

The NFL and the NFLPA ratified their most recent CBA in 2020.¹⁸¹ The provisions in the 2020 CBA will be active through 2030 when the agreement expires and negotiations begin again.¹⁸² Article 41 of the 2020 CBA, entitled "Workers' Compensation," is particularly relevant to our proposed solution to the problems that NFL players face when trying to seek sufficient compensation for work-related injuries.

That solution is as follows: a higher standard of guaranteed minimum coverage consistent across all teams and states should be established. Players and the NFLPA should argue for the inclusion of such a standard in the next CBA. Furthermore, the standard should be based on a state that both hosts an NFL team and provides the best workers' compensation benefits. Metrics such as the maximum weekly payment,¹⁸³ waiting periods,¹⁸⁴ and statutes of limitations¹⁸⁵ should be considered when selecting this baseline state. When seeking coverage, players should first go through their respective states. Whatever the difference between the monetary value of what a player receives in his home state the new league standard would be the responsibility of his team to pay. So, the teams would then cover any gap between the benefits a player receives in their home state and the new standard of coverage.

¹⁸¹ Grant Gordon, *NFL Player Vote Ratifies New CBA Through 2030 Season*, NFL (Mar. 15, 2023, 3:14 AM), <https://www.nfl.com/news/nfl-player-vote-ratifies-new-cba-through-2030-season-oap3000001106246> [<https://perma.cc/ZR7Z-4MQ2>] (last visited Apr 22, 2024).

¹⁸² *Id.*

¹⁸³ With a maximum weekly payment of \$2,104.18, Washington has the largest weekly payment out of all the states that host an NFL team. See SSA, *supra* note 19.

¹⁸⁴ Several states have three days waiting periods, the shortest waiting period among all the states that host an NFL team. See SSA, *supra* note 20.

¹⁸⁵ With a statute of limitations of six years, Wisconsin has the longest statute of limitations among all the states which host an NFL team. See WIS. STAT § 102.17(4)(a).

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The state that best meets these conditions is Washington. When compared with all other states that host NFL teams, it has the largest maximum weekly workers' compensation payment, is tied for the shortest waiting period, and has no anti-NFL legislation. Washington should therefore serve as the baseline coverage for all NFL players. The maximum weekly payments available to any given person is unique to every state and determined by state legislatures. In Washington, workers compensation laws dictates that benefits be calculated based on a person's pre-injury wages.¹⁸⁶ Depending on a person's marital status and the number of dependents they have, injured employees in Washington can receive anywhere from 60% to 75% of their pre-injury income.¹⁸⁷ However, Washington caps benefits at 120% of the statewide average income resulting in a maximum payment of \$8,416.70 per month.¹⁸⁸ Most NFL players would fall into this category. Since Washington has the highest maximum payment of any state that hosts and NFL team, it provides injured players with the best possibility to collect the most money. Washington is also among the states with the shortest waiting period to file a claim with a waiting period of only 3 days.¹⁸⁹

By comparison, the next-best option would be Illinois. In Illinois, workers are only eligible to collect 66.6% of their preinjury income,¹⁹⁰ and state law caps benefits at \$8,236.97 per month.¹⁹¹ If the new standard used Illinois rather than Washington as a baseline, injured players would have the opportunity to collect less money. The waiting period to file a claim in Washington is only three days after your injury, but in Illinois, it is three *working* days after your injury.¹⁹²

For further perspective, the worst option among states that host an NFL team would be Georgia. Georgia only allows its residents to collect up to 60% of their pre-

¹⁸⁶ DelPo, *supra* note 106.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ SSA, *supra* note 20.

¹⁹⁰ *Types of Workers Comp Benefits in Illinois*, MCHARGUE & JONES, LLC (Feb. 10, 2023), <https://www.mcharguelaw.com/blog/2023/february/types-of-workers-comp-benefits-in-illinois/index.html> [<https://perma.cc/LF3Z-M7WP>] (last visited Apr 22, 2024).

¹⁹¹ This number was determined by multiplying the weekly maximum in Illinois (\$1897.92) by the average number of weeks in a month (4.34). *See* SSA, *supra* note 19.

¹⁹² SSA, *supra* note 20.

injury income.¹⁹³ However, Georgia caps its benefits much lower than either Washington or Illinois at only \$800 per week¹⁹⁴ or roughly \$3,472 a month.¹⁹⁵ Setting the standard of compensation at Washington would allow players in states like Georgia to recover significantly more for their injuries. Georgia's waiting period is also among the longest of any state that host an NFL team, coming in at 7 days.¹⁹⁶

For example, if a player for the Chicago Bears were injured and applied for workers compensation through the team's state-based insurer, the maximum monthly benefit they could receive would be roughly \$8,236.97 per month.¹⁹⁷ In the event that this hypothetical Bears player receives the maximum award, the Chicago Bears would then be on the hook to pay the difference between the \$8,236.97 and the new league standard of \$8,416.70 per month. For the Bears, this is a relatively small payment of \$179.73 per month. If the same player played for the Atlanta Falcons, the maximum they could receive would only be \$3,472 per month.¹⁹⁸ The Falcons would subsequently be responsible for a much larger payout of \$4,944.70 per month.

b. Addressing Statute of Limitations

Establishing a new standard of compensation based on any state that hosts an NFL team will not solve the issues many NFL players will face with the stature of limitations for workers compensation claims. Therefore, additional measures must be taken to address this problem. To address the statute of limitations problems that many players are likely to face in coming years as more of them begin to experience symptoms of CTE, an additional provision must be added to the workers' compensation section of the CBA. Players should insist on a longer statute of limitations for traumatic head injuries and their associated cognitive disorders. As demonstrated in Part II, successfully proving cumulative injuries inhibits players'

¹⁹³ *Georgia Workers' Compensation Benefits Guide*, GERBER & HOLDER (2024), <https://www.gerberholderlaw.com/atlanta-workers'-compensation/benefits/> [https://perma.cc/R9TA-GRD8] (last visited Apr 22, 2024).

¹⁹⁴ SSA, *supra* note 19.

¹⁹⁵ This number was determined by multiplying the weekly maximum in Georgia (\$800) by the average number of weeks in a month (4.34). *See* SSA, *supra* note 19.

¹⁹⁶ SSA, *supra* note 20.

¹⁹⁷ This number was determined by multiplying the weekly maximum in Illinois (\$1897.92) by the average number of weeks in a month (4.34). *See* SSA, *supra* note 19.

¹⁹⁸ This number was determined by multiplying the weekly maximum in Georgia (\$800) by the average number of weeks in a month (4.34). *See* SSA, *supra* note 19.

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ability to collect benefits. A similar internal approach should be taken to address the statute of limitations issues. In the already existing workers' compensation article in the CBA, players and the NFLPA should work together to develop language that would allow for a lifetime statute of limitations when dealing with cumulative head trauma claims. The players should still be expected to attempt to procure benefits from their home states before applying for benefits through the league, but if they are denied coverage due the statute of limitation, the NFL's new internal system should review their claim as though no statute of limitation exists and provide them benefits accordingly.

c. Existing Precedent for Setting a New Standard of Compensation

While this proposed solution is novel, there are already provisions in the NFL CBA that require teams to provide workers' compensation benefits in certain circumstances. For example, Article 41, section 1 of the NFL CBA ensures that in states where teams are not under a legal obligation to obtain workers' compensation insurance for their players but state law does not preclude them from obtaining coverage, the teams shall either obtain coverage or guarantee benefits equivalent to those offered by the team's home state.¹⁹⁹ Additionally, if a team is located in a state that statutorily excludes them from acquiring workers' compensation insurance, the team must provide benefits equivalent to those in its home state.²⁰⁰ Requiring teams to provide coverage in situations where state laws prevent them from obtaining workers' compensation benefits is already a practice in the NFL. Instead of limiting this provision to players who are not eligible for *any* benefits, it should be strengthened to ensure that *all* NFL players are eligible to receive the *best* benefits possible.

¹⁹⁹ *Article 41 Section 1: Benefits* reads:

In any state where workers' compensation coverage is not compulsory or where a Club is excluded from a state's workers' compensation coverage, a Club will either voluntarily obtain coverage under the compensation laws of that state or otherwise guarantee equivalent benefits to its players. In the event that a player qualifies for benefits under this section, such benefits will be equivalent to those benefits paid under the compensation law of the state in which his Club is located.

Collective Bargaining Agreement, NFLPA & NFL (Mar. 15, 2020), <https://nflpaweb.blob.core.windows.net/website/PDFs/CBA/March-15-2020-NFL-NFLPA-Collective-Bargaining-Agreement-Final-Executed-Copy.pdf> [<https://perma.cc/ATB2-A2JW>] (last visited Apr 22, 2024).

²⁰⁰ *Id.*

Furthermore, arguing that teams should pay the difference between benefits players receive elsewhere, and a universal standard also has a basis in the CBA. The workers' compensation article in the CBA goes into detail not only about how teams should treat players with no access to workers' compensation, but also how teams should handle offsets and credits.²⁰¹ Offsets and credits are often points of contention in workers' compensation cases since they take a fraction of the award and give it to the employer. State workers compensation courts determine offsets and credits during the adjudication process. If the state court arrives at a conclusion about offsets or credits that is not consistent with what the CBA has set out, then the player is entitled to whatever difference there may be between the court's decisions and what the CBA states.²⁰² A player only has to file a claim with the Management Council demonstrating that he is entitled to more compensation through the CBA than what he was awarded by the courts, and he must provide a copy of the claim to his team within 45 days of the judgments.²⁰³

The current CBA contains provisions for processes by which players with no coverage can go about obtaining it through their teams. A new standard could easily expand these procedures to include all players seeking the difference between their state-awarded benefits and the universal standard. Section three of the CBA declares that the teams are to use an arbitration process to determine the benefits that their

²⁰¹ A credit or offset is due to an employer if they pay for any medical treatment or wage replacement while a claim is pending. Since final workers' compensation awards include money for medical treatment and wage replacements, once the claim is settled, the employer can claim portion of that award to cover what they already paid towards the employee's care. See Jessica Bell, *Worker's Compensation: A Primer on Credits*, NATIONAL LAW REVIEW (2023), <https://natlawreview.com/article/worker-s-compensation-primer-credits> [<https://perma.cc/NM57-ALRX>] (last visited Apr 22, 2024).

²⁰² Article 41 section 4 subsection iii reads:

If, despite the terms of this Article, a state court or other competent authority nevertheless renders a decision or other determination with an outcome inconsistent with the terms of this Section 4, then the player shall have a right to immediate payment from the Club for the amount of any difference between such outcome and the outcome specified in Subsections (i)-(ii) above. A player may initiate a claim under this Section by filing a written notice by certified mail, fax, or electronically via .pdf with the Management Council and furnishing a copy to the Club involved. The claim shall set forth the name of the matter and jurisdiction in which the improper award was made, the amount of payment requested and the basis for the calculation. The claim must be initiated within 45 days of either the date of execution of this Agreement or the date of any adverse order (whichever is later); provided, however, that in the event the player files an appeal of any adverse order, the time for the player to notify the Club will begin to run from the date the appeal is decided.

NFLPA & NFL *Collective Bargaining Agreement*, *supra* note 199, Art. 41, Sec. 4(iii).

²⁰³ *Id.*

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players receive if the team either opts out of state-based coverage or if state statutes exclude them from acquiring it.²⁰⁴ Article 43 of the CBA give's further details of this process. The player will be responsible for initiating a grievance within 50 days from the date of the occurrence or within 50 days from the time in which the facts of the matter should have been reasonably known, and he need not be an active member of the team at the time of filing the grievance.²⁰⁵

To reiterate, the CBA currently uses these provisions if a player has *no* access to state-based coverage, but the mechanisms could easily be adapted to set a higher universal standard of benefits applicable to every player across the league.

d. Setting a New Standard of Compensation in the CBA does not Require State or National Politics

By shifting the emphasis away from changing state laws and instead focusing on NFL policy, setting a new standard of compensation in the CBA avoids dealing with a potentially unfriendly political environment. The NFLPA and the NFL will not have to deal with state politicians in an attempt to change individual state statutes or national politicians to try and pass national legislation. This solution also prevents either the NFL or the NFLPA from having to conduct lobbying campaigns that pit them against each other and eat up resources.

e. Setting a New Standard of Compensation in the CBA does not Require Public Support

Finally, setting a new standard of compensation in the CBA does not require any type of public support. In the same way that this internal solution avoids having

²⁰⁴Article 41 Section 3: *Arbitration* reads:

In any state where a Club (e.g., Florida) has legally elected not to be covered by the workers' compensation laws of that state, the equivalent benefit, if any, to which a player may be entitled under this Article will be determined under the grievance procedure of Article 43 or, where applicable, a separate method of alternative dispute resolution negotiated by the parties. (e.g., Miami Dolphins/Implementation Agreement).

NFLPA & NFL *Collective Bargaining Agreement*, *supra* note 199.

²⁰⁵ Article 43 Section 2 reads:

A grievance may be initiated by a player, a Club, the Management Council, or the NFLPA. A grievance must be initiated within fifty (50) days from the date of the occurrence or non-occurrence upon which the grievance is based, or within fifty (50) days from the date on which the facts of the matter became known or reasonably should have been known to the party initiating the grievance, whichever is later. A player need not be under contract to a Club at the time a grievance relating to him arises or at the time such grievance is initiated or processed.

NFLPA & NFL *Collective Bargaining Agreement*, *supra* note 199.

to work with politicians, it also avoids the need to generate public support for a legislative change. Dealing with everything internally means the NFL and the NFLPA only needs to focus on implementing a solution to serve their players better.

Conclusion

Football is a dangerous sport that has a high potential to leave its player debilitated. NFL players are under served by state workers compensation systems but implementing a national workers compensation act that would cover NFL players faces a multitude of challenges. Therefore, players and the NFLPA should negotiate to implement a new league standard of compensation, based on Washington's system, in their next CBA to guarantee better compensation and provide more flexibility when it comes to the statute of limitations. This solution avoids the pitfalls that a national act would encounter, equalizes workers compensation benefits across the NFL, and addresses the statute of limitations issues that many players likely face as they develop CTE and other neurological disorders later in their lives from cumulative trauma during their NFL careers.