



Protecting and Promoting the
Health of NFL Players:
Legal and Ethical Analysis and Recommendations

Chapter 11

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Equipment Managers



Each NFL club employs three to four equipment managers. While equipment managers assist players in a variety of ways, their principal job is to help outfit players in equipment that will maximize their safety on the field, a crucial component of player health.

Before we begin our analysis, it is important to point out that throughout this chapter we emphasize that the practice of equipment managers is likely heterogeneous from club to club at least to some extent. Nevertheless, we were unable to interview equipment managers as part of this Report to gain a better understanding of their work. In November 2014, we notified the NFL that we intended to seek interviews with club personnel, including general managers, coaches, doctors, and athletic trainers. The NFL subsequently advised us that it was “unable to consent” to the interviews on the grounds that the “information sought could directly impact several

lawsuits currently pending against the league.” Without the consent of the NFL, we did not believe that the interviews would be successful and thus did not pursue the interviews at that time; instead, we have provided these stakeholders the opportunity to review draft chapters of the Report. We again requested to interview club personnel in July 2016 but the NFL did not respond to that request. The NFL was otherwise cooperative—it reviewed our Report and facilitated its review by club doctors and athletic trainers. The NFL also provided information relevant to this Report, including but not limited to copies of the NFL’s Medical Sponsorship Policy (discussed in Chapter 2: Club Doctors) and other information about the relationships between clubs and doctors.

Nevertheless, the NFL did not facilitate review of this chapter by any equipment managers. On the other hand, the American Equipment Managers Association (AEMA) did review the Report and provide comments.

(A) Background

Equipment managers are responsible for million dollar or more budgets and for ordering and constantly stocking hundreds of items players want and need in every conceivable variety, from their helmets and cleats to gum, washcloths, and toothpaste.¹ Equipment managers take pride in being responsive to the players’ every need to make sure they are maximally comfortable and prepared to play.² Perhaps most importantly, equipment managers help players select equipment and make sure the equipment fits according to the manufacturer’s guidelines.³

Equipment managers are also a critical link between equipment manufacturers (discussed in Chapter 16) and players. Equipment managers deal directly with equipment manufacturers and attend two NFL-organized seminars a year to keep up to date on the latest equipment so that they can provide the players the best available options.⁴

In summary, players rely on the equipment managers to help prepare and protect them. Not surprisingly, players and equipment managers sometimes develop close, personal relationships during their tenures with a club.⁵

The AEMA, a voluntary organization, provides certification to equipment managers working in sports across the country.⁶ The certification process requires: (1) a four-year college degree; (2) at least two years of experience working in athletics; and, (3) passing a written examination.⁷ The written examination covers management, administration, professional development, procurement, accountability, maintenance, and fitting and safety.⁸

The AEMA has a limited role in the NFL, in part because the AEMA’s limited resources prevent the AEMA from engaging with the NFL and other leagues as robustly as it would like.⁹ Approximately 60 to 70 percent of NFL equipment managers are AEMA-certified but neither the CBA nor the NFL independently requires any certification for equipment managers.¹⁰ Nevertheless, in recent years, the NFL has increasingly shown an interest in the AEMA’s work and the importance of qualified, well-trained equipment managers.¹¹

(B) Current Legal Obligations^a

The CBA contains no provisions specifically relevant to equipment managers or equipment. The NFL does have detailed policies on what equipment is mandatory for players, but these rules are directed at players, not equipment managers.

Employers have a common law non-delegable obligation to provide safe equipment to their employees.¹² A non-delegable duty is one whereby the employer cannot escape liability by having passed along the task to an employee; the employer will generally be held vicariously liable for the employee’s conduct concerning the provision of equipment regardless.¹³ In the context of NFL equipment managers, the law thus imposes the obligation to provide safe equipment to the players on the club, rather than the equipment managers.

Lastly, it is plausible that NFL players and equipment managers have a fiduciary relationship. Nevertheless, there are no known cases in which a player has alleged an equipment manager owed or breached a fiduciary duty and enforcing an alleged fiduciary relationship poses legal problems discussed below.^b

(C) Current Ethical Codes

The AEMA has a Code of Ethics for equipment managers.¹⁴ Of relevance, the fifth objective of the AEMA Code of Ethics is: “[t]o work as a group to bring about equipment improvements for greater safety of participants in all

a The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

b Generally speaking, a fiduciary is “a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor.” “Duty,” Black’s Law Dictionary (9th ed. 2009). Whether a fiduciary relationship exists is a fact-based inquiry into the nature of the relationship. *Ritani, LLC v. Aghjayan*, 880 F. Supp. 2d 425, 455 (S.D.N.Y. 2012) (applying New York law); *Carcano v. JBSS, LLC*, 684 S.E.2d 41, 53 (N.C. Ct. App. 2009); *L.C. v. R.P.*, 563 N.W.2d 799, 802 (N.D. 1997); *Allen Realty Corp. v. Holbert*, 318 S.E.2d 592, 595 (Va. 1984); *Murphy v. Country House, Inc.*, 240 N.W.2d 507, 511 (Minn. 1976). An argument could exist that the relationship of trust and confidence between a player and the equipment managers rises to that of a fiduciary relationship.

sports.” The AEMA Code of Ethics describes equipment manager’s obligations to players as follows:

Each and every member of an athletic squad should be treated conscientiously without discrimination or partiality. An athletic equipment manager can wield a great amount of influence on members of athletic squads by proper conduct and the use of good judgment in dealing with various personalities and temperaments.

In the care of equipment, the athletic equipment manager must be thorough in carrying out the accepted procedures and instructions. Any carelessness or laxity on the part of the athletic equipment manager in following through his responsibilities to players is a breach of ethical conduct (sic).¹⁵

(D) Current Practices

Equipment managers’ responsibilities have not changed much over time. As discussed above, they are focused on providing players not only their equipment, but also all the little things that make it easier for players to succeed. They are important but not particularly powerful employees in the NFL club hierarchy. Current players we interviewed had only good things to say about equipment managers:

- **Current Player 1:** *“I would say [they] are really good. Any time I need something, they’ve always taken care of it for me. And even for certain injury specific equipment, maybe it’s like an extra pad, shoulder pads or shin guards, something like that, or something you need done to your helmet, they’ve always been good about that – done whatever I’ve asked of them.”*
- **Current Player 2:** *“They do play a big role. Especially when it comes to helmets . . . , making sure that our helmets fit properly, that we’re in technology that’s up to date . . . I know that our guy here does a great job of that. He goes above and beyond to make sure everything that we wear . . . are up-to-date and fitting us properly.”*
- **Current Player 4:** *“I think they do a great job of getting players the equipment they want/or need.”*

Today, equipment managers seem to take serious their responsibility to help players understand the different helmet options and to choose one that fits best for that player. The New York Giants maintain two racks of possible helmet options for players to try on and consider.¹⁶ There, Joe Skiba, the Giants’ equipment director and a member of the NFL’s Subcommittee on Safety Equipment and Playing Rules, can explain to the players “the intricacies of helmet technology.”¹⁷

The equipment manager’s assistance in helping a player finding the right helmet is crucial. According to the American Academy of Neurology, “[t]here is moderate evidence indicating that use of a helmet (when well fitted, with approved design) effectively reduces, but does not eliminate, risk of concussion and more-serious head trauma in hockey and rugby; [and] similar effectiveness is inferred for football.”¹⁸

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To assist equipment managers help players with their helmet decisions, in 2015, the Engineering Subcommittee of the NFL’s Head, Neck and Spine Committee completed a study evaluating the ability of 17 different helmets to absorb impacts, including accounting for rotational velocity and rotational acceleration.¹⁹ Based on the test results, the NFL created a poster listing the helmets in order of performance for equipment managers to display for the players’ review.²⁰ The study was repeated in 2016, and again presented to the players in both a memorandum and as a poster.²¹ Similarly, according to the NFL, the NFL and NFLPA have also commissioned studies concerning cleats and shoes, and have created posters warning players about certain shoes and cleats that are not recommended for use.²² More information on player equipment can be found in Chapter 16: Equipment Manufacturers.

The difficulty equipment managers sometimes face is player cooperation. Linebacker Keith Rivers admitted that appearance generally mattered more than safety: “a lot of guys go looks first.”²³ Additionally, many players are reluctant to change helmets from the ones they have been playing with for their entire NFL career, if not since college.²⁴ This

practice may stand in the way of adopting safer helmets or other equipment by players. Nevertheless, while some players might choose their helmet based on looks, what is important is that they are choosing among helmets that have met threshold requirements for safety. What is essential is that equipment managers help players find the best helmet for them.

(E) Enforcement of Legal and Ethical Obligations^c

Any claim brought by a player against an equipment manager would likely be barred by workers' compensation laws. Workers' compensation statutes provide compensation for workers injured at work and thus generally preclude lawsuits against co-workers (such as NFL players and equipment managers) based on the co-workers' negligence.²⁵

The CBA also presents a potential obstacle for claims against an equipment manager. This is because the Labor Management Relations Act (LMRA)²⁶ bars or "preempts" state common law^d claims, such as negligence, where the claim is "substantially dependent upon analysis of the terms" of a CBA, *i.e.*, where the claim is "inextricably intertwined with consideration of the terms of the" CBA."²⁷ In these cases, player complaints must be resolved through the enforcement provisions provided by the CBA itself (*i.e.*, a Non-Injury Grievance against the Club), rather than litigation. In the case of equipment managers, the CBA is generally silent as to the provision of equipment and thus it is not certain that claims concerning equipment against either the club or equipment manager would be preempted by the LMRA. Nevertheless, as discussed in several chapters of this Report, the NFL has successfully asserted the preemption defense in many lawsuits concerning the health of NFL players.

Instead of attempting a lawsuit, players who believe they have been harmed by the actions of their equipment managers could likely commence a Non-Injury Grievance.^e The 2011 CBA directs certain disputes to designated arbitration mechanisms^f and directs the remainder of any disputes involving the CBA, a player contract, NFL rules, or generally the terms and conditions of employment to the Non-Injury Grievance arbitration process.²⁸

However, there are several impediments to pursuing a Non-Injury Grievance against an equipment manager. First and foremost, club employees are not parties to the CBA and thus likely cannot be sued for violations of the CBA.²⁹ Instead, the player could seek to hold the club responsible for the equipment manager's violation of the CBA.³⁰ Second, as discussed above, the player's claim might be barred by workers' compensation statutes. Third, Non-Injury Grievances must be filed within 50 days "from the date of the occurrence or non-occurrence upon which the grievance is based,"³¹ a timeframe that is much shorter than your typical statute of limitations. And fourth, players likely fear that pursuing a grievance against an equipment manager could result in the club terminating him.^g

The AEMA is empowered to investigate possible breaches of its Code of Ethics but its remedial authority is limited to a "letter or censorship, letter of censorship with a period of probation, or cancellation of membership."

c Appendix K is a summary of players' options to enforce legal and ethical obligations against the stakeholders discussed in this Report. In addition, for rights articulated under either the CBA or other NFL policy, the NFLPA and the NFL can also seek to enforce them on players' behalves.

d Common law refers to "[t]he body of law derived from judicial decisions, rather than from statutes or constitutions." Black's Law Dictionary (9th ed. 2009). The concept of "preemption" is "[t]he principle (derived from the Supremacy Clause [of the Constitution]) that a federal law can supersede or supplant any inconsistent state law or regulation." *Id.*

e The term "Non-Injury Grievance" is something of a misnomer. The CBA differentiates between an "Injury Grievance" and a "Non-Injury Grievance." An Injury Grievance is exclusively "a claim or complaint that, at the time a player's NFL Player Contract or Practice Squad Player Contract was terminated by a Club, the player was physically unable to perform the services required of him by that contract because of an injury incurred in the performance of his services under that contract." 2011 CBA, Art. 44, § 1. Generally, all other disputes (except System Arbitrations, *see* 2011 CBA, Art. 15) concerning the CBA or a player's terms and conditions of employment are Non-Injury Grievances. 2011 CBA, Art. 43, § 1. Thus, there can be disputes concerning a player's injury or medical care which are considered Non-Injury Grievances because they do not fit within the limited confines of an Injury Grievance.

f For example, Injury Grievances—which occur when at the time a player's contract was terminated the player claims he was physically unable to perform the services required of him because of a football-related injury—are heard by a specified Arbitration Panel. 2011 CBA, Art. 44. Additionally, issues concerning certain Sections of the CBA related to labor and antitrust issues, such as free agency and the Salary Cap, are within the exclusive scope of the System Arbitrator, 2011 CBA, Art. 15, currently University of Pennsylvania Law School Professor Stephen B. Burbank.

g Current Player 8: "You don't have the gall to stand against your franchise and say 'They mistreated me.' . . . I, still today, going into my eighth year, am afraid to file a grievance, or do anything like that[.]" While it is illegal for an employer to retaliate against an employee for filing a grievance pursuant to a CBA, *N.L.R.B. v. City Disposal Systems Inc.*, 465 U.S. 822, 835–36 (1984), such litigation would involve substantial time and money for an uncertain outcome.



(F) Recommendations Concerning Equipment Managers

As a preliminary matter, we recommend equipment managers continue to act as they have. Reports indicate that equipment managers work diligently and take seriously their role in providing players with equipment that will minimize the health and safety risks of playing football. Equipment managers do not appear to have any incentive to make decisions which might jeopardize player health, *e.g.*, such as pressuring a player to play with an injury, like other club employees, such as coaches or medical staff. Additionally, the twice-annual meetings for equipment managers and manufacturers seem like an appropriate way for the equipment managers to remain current and educated on the latest equipment. Minimal other recommendations are needed concerning equipment managers.

Goal 1: To ensure that players are served by the best possible equipment managers.

Principles Advanced: Respect; Health Primacy; and, Collaboration and Engagement.

Recommendation 11:1-A: The CBA should require that all equipment managers be certified by the AEMA.

As discussed above, the AEMA's certification program sets reasonable minimum education and experience requirements and requires equipment managers to pass a test certifying their competence in a variety of issues pertinent to the equipment industry, including fitting and safety. In addition, the AEMA requires its members to attend continuing education courses. Requiring NFL equipment managers to be AEMA-certified is a meaningful way of ensuring that the equipment managers working with NFL players are among the most qualified and educated in the industry. The requirement is meaningful enough that it should be codified in the CBA. Ensuring highly-qualified equipment managers will help ensure that players are using the best, well-fitting, and safest equipment possible.

Endnotes

- 1 See Bill Pennington, *A Full-Gear Operation*, N.Y. Times, Aug. 17, 2013, <http://www.nytimes.com/2013/08/17/sports/football/for-the-giants-a-full-gear-operation.html> archived at <http://perma.cc/2SQB-LUSR>; Kevin Baxter, *NFL: Gearing Up for the Game, a Whole Laundry List*, L.A. Times, Nov. 6, 2012, available at 2012 WLNR 23540542; Craig K. Paskoski, *Lit-tlestown Resident Helps the Ravens Look Good, Play Well*, Evening Sun (Hanover, PA), Oct. 16, 2011, available at 2011 WLNR 21180003; Danny Woodward, *All the Right Equipment: Cowboys Staff Makes Sure Team Has Everything It Needs*, Dall. Morning News, Nov. 21, 2001, available at 2001 WLNR 11689243; Rob Huizenga, M.D., You're Okay, It's Just a Bruise 13 (1994) (discussing Los Angeles Raiders players "stealing various toiletries").
- 2 See *id.*
- 3 Interview with Kelly Jones, Certification Steering Committee Chair, AEMA, and Equipment Manager, Gettysburg College, and Mike Royster, Executive Director, AEMA, and Equipment Manager, University of Tennessee Chattanooga (Oct. 27, 2014).
- 4 See Sam Borden, *Despite Risks, N.F.L. Leaves Helmet Choices in Players' Hands*, N.Y. Times, Sept. 20, 2012, <http://www.nytimes.com/2012/09/21/sports/football/despite-risks-nfl-leaves-helmet-choices-in-players-hands.html>, archived at <https://perma.cc/K4YB-PBT7?type=pdf>. Research did not reveal the details about the nature of these seminars, *e.g.*, whether they are more like trade shows than informational seminars.
- 5 See, *e.g.*, Paskoski *supra* note 1 (discussing Baltimore Ravens Pro Bowl defensive end Terrell Suggs referring to Ravens' equipment manager Ed Carroll as "dad").
- 6 For more information on the AEMA, see its website at <http://equipmentmanagers.org>.
- 7 Interview with Jones and Royster, *supra* note 3.
- 8 *Certification*, Athletic Equipment Managers Ass'n, <http://equipmentmanagers.org/certification> (last visited Aug. 7, 2015), archived at <http://perma.cc/2SSQ-9JGS>.
- 9 Interview with Jones and Royster, *supra* note 3.
- 10 *Id.* By comparison, approximately 90 percent of NCAA Division I equipment managers are AEMA members.
- 11 *Id.*
- 12 *Suburban Hospital, Inc. v. Kirson*, 763 A.2d 185, 205 (Md. 2000); *Gerrish v. Savard*, 739 A.2d 1195, 1199 (Vt. 1999); *Johansen v. Anderson*, 555 N.W.2d 588, 593 (N.D. 1996); *Smith v. Massey-Ferguson, Inc.*, 883 P.2d 1120, 1131 (Kan. 1994); *Kennemer v. McFann*, 470 So.2d 1113, 1116 (Ala. 1985); *Gerger v. Campbell*, 297 N.W.2d 183, 186 (Wis. 1980).
- 13 See *id.*
- 14 The AMEA Code of Ethics is on file with the authors.
- 15 *Id.*
- 16 Borden, *supra* note 4.
- 17 *Id.*
- 18 *Update: Evaluation and Management of Concussion in Sports—2013*, Am. Acad. Neurology, https://www.aan.com/uploadedFiles/Website_Library_Assets/Documents/3Practice_Management/5Patient_Resources/1For_Your_Patient/6_Sports_Concussion_Toolkit/evaluation.pdf (last visited Aug. 7, 2015), archived at <https://perma.cc/7943-3EXG?type=pdf>.
- 19 Nat'l Football League, 2015 Player Health & Safety Report 12 (2015), <http://static.nfl.com/static/content/public/photo/2015/08/05/0ap3000000506671.pdf>, archived at <https://perma.cc/Y4BN-TUP7?type=pdf>.
- 20 *Id.*
- 21 NFL Comments and Corrections (June 24, 2016).
- 22 *Id.*
- 23 Borden, *supra* note 4.
- 24 *Id.* (Giants center David Baas, who is in his eighth NFL season, said veterans can be hesitant to change anything related to their equipment. "Some guys don't want to switch because they're comfortable in the same one they've had since college or whatever," he said.)
- 25 See Alexander Cornwell, *Trapped; Missouri Legislature Seeks to Close Workers' Compensation Loophole with Some Co-Employees Still Inside*, 77 Mo. L. Rev. 235, 235 (2012); David J. Krco, *Case Note: Torts – Narrowing the Window: Refining the Personal Duty Requirement for Coemployee Liability Under Minnesota's Workers' Compensation System – Stringer v. Minnesota Vikings Football Club, LLC*, 33 Wm. Mitchell L. Rev. 739, 739 (2007); John T. Burnett, *The Enigma of Workers' Compensation Immunity: A Call to the Legislature for a Statutorily Defined Intentional Tort Exception*, 28 Fla. St. U. L. Rev. 491, 497 (2001).
- 26 U.S.C. § 185.
- 27 *Allis-Chambers Corp. v. Lueck*, 471 U.S. 202, 213, 200 (1985).
- 28 See 2011 CBA, Art. 43, § 1.
- 29 See *Jackson v. Kimel*, 992 F.2d 1318, 1325 n.4 (4th Cir. 1993) (collecting cases holding that employees that are not signatories to the CBA cannot be sued for violations of the CBA).
- 30 See 2011 CBA, Art. 2, § 2 (generally discussing CBA's binding effect on NFL, NFLPA, players and clubs but no other party).
- 31 CBA, Art. 43, § 2.