



Comparing Health-Related Policies & Practices in Sports:

The NFL and Other Professional Leagues

Chapter 3

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Health-Related Benefits



In this Chapter, we summarize the various health-related benefits available to the players in each of the leagues. Specifically, for each league, we examine: (1) retirement benefits; (2) insurance benefits; (3) disability benefits; (4) workers' compensation benefits; (5) education-related benefits;^a and, (6) the existence of health-specific committees jointly run by the league and players association. Each of these domains is relevant to protecting players should they experience negative health effects during and after their playing years, and also to promoting their ability to maintain their health and well-being over the longer term. Given that a decision to play or continue to play professional sports, like many other decisions, is a matter of weighing risks and benefits, those decisions must be made against a backdrop of available benefits. It is for this reason that we spend considerable space describing and evaluating the available benefits in each league.

^a By "education-related benefits," we mean programs that assist players to obtain or complete their college degree, or to obtain training for a second career.

Before we begin our analysis of the leagues' health-related benefits, there are a few prefatory notes that should frame our analysis.

1) FINANCIAL HEALTH

Our goal is to examine all the inputs that may influence players' health, including the so-called "social determinants of health." Financial health is a major contributor to physical and mental health, and also, in turn, affected by physical and mental health.^b Indeed, many studies have shown a correlation between financial debt and poor physical health.¹ While the actual career earnings of NFL players are difficult to ascertain,^c there have been multiple studies about NFL player financial health with a variety of results.

According to a 2009 *Sports Illustrated* article, by the time NFL players have been retired for two years, 78% of them are bankrupt or in financial distress.² But other studies have somewhat different findings. According to a 2009 NFL-funded study of former NFL players by the University of Michigan, the median income of a former player between the ages of 30 and 49 is \$85,000, compared to \$55,000 for the general population. The study also found that 8.4% of former players between 30 and 49 were below the poverty level, as compared to 9.5% of the general population.³ A 2015 academic study also found different results than those arrive at in the *Sports Illustrated* article, finding that within

two years of the end of their career, only 1.9% of players were bankrupt—while also finding that one in six players was bankrupt within 12 years of leaving the NFL.⁴ Moreover, in 2012, ESPN released the documentary *Broke* detailing the financial problems of professional athletes, and exploring how they had gotten there.⁵ And in a 2014–15 survey of 763 former players by *Newsday*, 50.59% of former players interviewed said they had struggled financially since their playing career ended.⁶

There are, however, important limitations to the above-mentioned studies.

First, to support its claims *Sports Illustrated* cited "reports from . . . athletes, players' associations, agents and financial advisers"⁷ but no additional details and no information that can be independently verified.

Second, there are two potential limitations to the Michigan Study. First, the study population only included players who had vested rights under the NFL's Retirement Plan; meaning, the players generally had been on an NFL roster for at least three games in at least three seasons. However, there is likely a significant but unknown percentage of NFL players that never become vested under the Retirement Plan. Second, responders to the survey were 36.8% African-American and 61.4% White—almost a complete reversal of the NFL's population of current players. While the racial demographics of former players is likely closer to the population of the Michigan Study, *i.e.*, there were formerly more white players than in the current NFL, the Michigan Study did not provide such data on the former player population and did not adjust or account for the racial demographics of the former player population. We discussed the Michigan Study in a telephone call with Dr. David Weir, the Study's lead author. Dr. Weir explained that: (1) due to limited resources, the population of players to be studied and contacted was limited to the data and contact information available to and provided by the NFL; and, (2) the NFL did not provide racial demographics of former players and thus the study could not adjust for that factor. Weir also believes that the racial demographics of former players is substantially similar to the racial demographics of the Michigan Study's participants. Finally, Weir explained that, during the internal review process with the NFL, the study was leaked to the media, preventing the study from being amended and submitted to a peer-reviewed publication.

Finally, there are also limitations to the *Newsday* survey: (1) the survey was sent via email and text message by the NFLPA to more than 7,000 former NFL players, thus eliminating former players who were less technologically savvy

b Many experts have recognized that "financial insecurity can cause people to 'cut corners in ways that may affect their health and well-being,' like spending less on food, clothing, or prescriptions." Nadia N. Sawicki, *Modernizing Informed Consent: Expanding the Boundaries of Materiality*, Univ. Ill. L. Rev. (2016), citing Kevin R. Riggs and Peter A. Ubel, *Overcoming Barriers to Discussing Out-of-Pocket Costs With Patients*, 174 *Jama Int. Med.* 849 (2014); Peter A. Ubel, Amy P. Abernethy, and S. Yousef Zafar, *Full Disclosure—Out-of-Pocket Costs as Side Effects*, 369 *New Eng. J. Med.* 1484 (2013). Indeed, to many, "financial well-being is certainly within the boundaries of most peoples' concept of health." *Id.*, quoting Michael S. Wilkes and David L. Schriger, *Caution: The Meter is Running: Informing Patients About Health Care Costs*, 165 *Western J. Med.* 74, 78 (1996) (noting that "discussions about the cost of care are an important part of the physician-patient relationship").

c Based on an average career length of approximately three years, the NFLPA has estimated that the average career earnings of an NFL player are \$4 million after taxes. See Adam Molon, *Why So Many Ex-NFL Players Struggle With Money*, CNBC (Jan. 31, 2014, 12:29 PM), www.cnbc.com/id/101377457#, archived at <http://perma.cc/F5YN-FJE2>. Using an average salary of \$1.9 million and an average career length of 3.5 years, others have estimated NFL players earn about \$6.7 million in their careers, a figure largely on par with that of the NFLPA's. See Nick Schwartz, *The Average Career Earnings Of Athletes Across America's Major Sports Will Shock You*, USA Today, Oct. 24, 2013, <http://ftw.usatoday.com/2013/10/average-career-earnings-nfl-nba-mlb-nhl-mls>, archived at <http://perma.cc/9DFP-WPQ2>. However, the NFL has disputed the 3.5 years figure generally provided by the NFLPA, stating instead that players who actually make an NFL club have, on average, careers of about 6 years. See *What is average NFL player's career length? Longer than you might think, Commissioner Goodell says*, NFL (Apr. 18, 2011), <http://nflcommunications.com/2011/04/18/what-is-average-nfl-player%E2%80%99s-career-length-longer-than-you-might-think-commissioner-goodell-says/>, archived at <http://perma.cc/PX5U-9SFK>. Finally, it is important to point out that the average in this case does not reflect the median career earnings of NFL players, *i.e.*, the career earnings of your typical NFL player—the calculation of which would depend on how you define the typical player.

and also possibly skewing the sample towards those former players closer to the NFLPA; (2) the response rate for the survey was low (approximately 11%); and, (3) the study does not discuss the demographics of respondents, making it difficult to ascertain whether those who responded are a representative sample of all former players.

Despite these limitations, we provide the reader with the best existing data. Moreover, while there are limitations to the data collected to date as well as differences in the figures presented, it is clear that there are serious concerns about former players' financial difficulties.⁸

The relationship between physical and financial health goes in both directions. Without adequate savings and benefits during and after NFL play, players may find themselves insufficiently prepared to meet their physical and mental health needs, especially in the event of crisis. Furthermore, crises in physical and mental health are closely tied to bankruptcy, home foreclosure, and other serious financial setbacks.⁹ At its worst, these circumstances can lead to a vicious cycle—poor health outcomes lead to financial losses, which worsen the ability to combat physical and mental health impairments, which in turn further deplete financial resources.

Financial health is also in and of itself an important component of a person's health. Financial difficulties can cause stress that contributes to or exacerbates psychological and physical ailments.

For all of the above reasons, it is thus critical that we examine the financial benefits available to players, including but not limited to retirement and investment plans.

2) WORKERS' COMPENSATION

Most of the benefits discussed herein are fairly straightforward, but it is helpful to explain workers' compensation benefits more fully. "Workers' compensation laws provide protections and benefits for employees who are injured in the course of their employment. In the typical case, the workers' compensation regime grants tort immunity to employers in exchange for the regime's protections and benefits to the employee,"¹⁰ without the employee having to prove the employer was at fault, as they would have to in a typical tort lawsuit. While workers' compensation laws, systems and benefits vary widely among the states, workers' compensation generally provides two important benefits to workers: (1) monetary compensation; and, (2) coverage for medical care. We discuss each of these benefits in turn.

Workers' compensation payments typically depend on the employee's level of injury or disability and the extent to which the injury or disability affects the employee's ability to continue working. Generally, workers receive "around one-half to two-thirds of the employee's average weekly wage."¹¹ In addition, the amount of benefits is subject to maximums which are usually tied to the state's average weekly wage,¹² and are generally between \$500 and \$1,000.¹³ The benefits continue so long as the employee is disabled or unable to work. Additionally, the amount a player receives in workers' compensation often reduces the amount a club is obligated to pay the player for certain other CBA-provided benefits.¹⁴ Again, it is important to bear in mind that these benefits and schemes can vary widely among the states.

Medical care coverage is an important benefit available to players through workers' compensation. Often, if a player is injured during the season, he is entitled to medical care from the club during the season of injury only.¹⁵ Consequently, if a player suffers an injury that causes him to have ongoing or recurring healthcare needs (such as surgeries) well beyond the season of injury (and for perhaps the rest of his life), the club will have no obligation to pay for such care. Workers' compensation fills that gap. Workers' compensation statutes generally require the employer (in practice, usually the employer's insurance carrier) to pay for reasonable and necessary medical expenses that are the result of an injury suffered in the workplace in perpetuity. More importantly, the worker does not have to pay for any part of the care.

3) AVAILABILITY OF PLAN DOCUMENTS

Although we analyze the leagues' various benefit programs, many of the actual plan documents—to the extent they exist—are not publicly available.¹⁶ Typical plan documents for these kinds of benefits are dozens or hundreds of pages long, detailing a variety of intricacies and nuances in the plans. Without the ability to review those plans in detail, we rely on the summaries provided in the CBAs (which vary in detail) and other publicly available information. Consequently, readers should not consider these summaries as definitive statements concerning the leagues' various benefit programs, but instead as informed general explanations.

4) COMPARING THE PLANS

In Tables 3-J and 3-K below, we provide our best estimates of the Big Four Leagues' retirement/pension plans. While we do our best to summarize the amounts potentially available to players under all of the various plans, we stress

caution in extrapolating data from our analyses and summaries. The benefit plans contain intricate legal, financial, and actuarial components that determine a player's ultimate entitlement. For example, many of the plans contain offsets concerning other benefits, such that if a player is receiving payments under a retirement plan, any amounts he could receive for disability benefits are likely to be decreased. The eligibility criteria for the various benefits also vary within and across the leagues. Consequently, it is difficult to determine in generalities the amounts to which a former player might be entitled.

5) OTHER BENEFITS

In considering the scope of health-related benefits available to players, it is important also know that the degree to which players are able to collect the full balance of their contracts varies depending on the league and the player's individual contract. In Chapter 5: Compensation, we examine the degree to which player compensation is guaranteed. For our purposes here, we are focused on those benefits available to protect and promote player health other than the compensation available as part of a player's contract.

In addition, while this Chapter focuses on those benefits that are agreed to as part of the CBA, many if not all of the leagues—and the corresponding unions—have other programs and benefits available to players that are not a part of the CBA. For example, the NFL's Player Engagement Department operates many programs designed to help future, current, and former NFL players, with particular focus on transitioning to a life after football.¹⁷ Similarly, the NFLPA offers a variety of internships and educational programs for players.^{18,d} Other leagues and unions likely have similar programs, but they are not well-publicized and publicly-available details can be sparse. Consequently, while we focus on the benefits for which more information is available, readers should understand that the leagues likely offer additional benefits to the players.

* * *

With those prefatory and explanatory notes in mind, we turn to our analysis of the leagues' various benefit plans.

A) NFL Health-Related Benefits

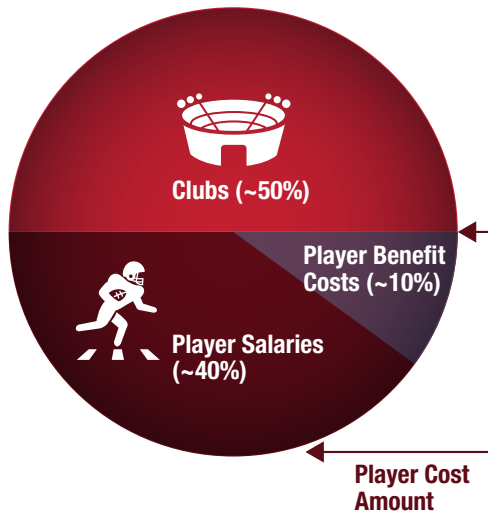


As a preliminary matter, NFL player eligibility for many of the collectively-bargained benefits discussed below depends on the number of "Credited Seasons" a player has earned. Generally, a player earns a Credited Season when he is entitled to be paid for at least three regular season games.¹⁹

Additionally, it is important to understand the relationship between player benefits and player salaries. In the NFL, the players' share of revenues is referred to as the Player Cost Amount.²⁰ The Player Cost Amount is one of two essential components for calculating the Salary Cap, which is the "absolute maximum amount of Salary that each club may pay or be obligated to pay or provide to players . . . at any time during a particular League Year."²¹ The other essential component of the Salary Cap calculation is Player Benefit Costs. Player Benefit Costs are the total amounts the NFL and its clubs spend on all the programs and benefits described herein, in addition to the costs of providing medical care to NFL players.²² The Salary Cap is determined by subtracting Player Benefit Costs from the Player Cost Amount and dividing by the number of clubs in the NFL.²³ In other words, the Salary Cap equals Player Cost Amount minus Player Benefit Costs divided by 32. *Thus, the more that is paid to NFL players—including retired players—in the form of benefits and medical care, i.e., Player Benefits Cost, the less they are able to receive in the form of salary.* Indeed, in 2015, when the Salary Cap was \$143,280,000 per club, each club was charged \$37,550,000 in Player Benefit Costs. Thus, out of a possible \$180,830,000 that could have been spent on player salaries by each club, 26.2% was allocated to player benefits.

It is important to clarify these numbers. As Figure 3-A shows on the next page, about 50% of a club's revenue is allocated toward the players. The club keeps the other 50%. Of the 50% allocated for the players (the Player Cost Amount), in 2015, 26.2% of that was used on player benefits. Thus, in 2015, we can estimate that each club had approximately \$361,660,000 in revenue, \$180,830,000 of which would be available for players. \$37,550,000 was spent on player benefits. The \$37,550,000 is 26.2% of the Player Cost Amount and 10.4% of the club's revenue.

d These programs are discussed in Appendices D and E of our Report, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*.

Figure 3-A: Division of All Revenue

1) RETIREMENT BENEFITS

The NFL provides four retirement-focused benefits: (a) the Severance Pay Plan; (b) the Bert Bell/Pete Rozelle NFL Player Retirement Plan (“Retirement Plan”); (c) the Player Annuity Plan; and, (d) the Second Career Savings Plan.

a) Severance Pay Plan²⁴

The Severance Pay Plan, first created in 1982, entitles eligible players to severance pay for each Credited Season. To be eligible, a player must have at least two Credited Seasons, at least one of which was in 1993 or later. A player becomes eligible for the lump sum severance payment 12 months after his last contract expired or was terminated. Table 3-A below summarizes the amount of benefits available to players under the Severance Pay Plan.

For example, a player who played from 1998 through 2009 would be entitled to a severance payment of \$147,500: \$10,000 for each of his two seasons between 1998 and 1999 (\$20,000); \$12,500 for each of his nine seasons between 2000 and 2008 (\$112,500); and, \$15,000 for 2009.

**Table 3-A:
Severance Pay Benefits^e**

Seasons	Amount for Each Credited Season
1989–92	\$5,000
1993–99	\$10,000
2000–08	\$12,500
2009	\$15,000
2010	0
2011	\$15,000
2012–13	\$17,500
2014–16	\$20,000
2017–20	\$22,500

b) Retirement Plan²⁵

The NFL’s Retirement Plan, first created in 1968, provides eligible players with retirement benefits, and offers survivor benefits for players’ wives and family. Generally, only “Vested Players” are eligible for retirement benefits. A Vested Player is a player who fits one of the following criteria: (1) has three or more Credited Seasons, including at least one Credited Season after 1992; (2) has four or more Credited Seasons, including at least one Credited Season after 1973; or, (3) has five or more Credited Seasons.

Vested Players can receive monthly retirement benefits for life beginning at age 55. Players with a Credited Season before 1993 can receive reduced monthly benefits as early as age 45. A player can elect to receive retirement benefits until his death or defer some of the benefits to his family upon death. In order to begin receiving his retirement benefits at age 55, a player must file for them. If a player has not filed for them, he will automatically begin receiving the benefits at age 65. Table 3-B on the next page shows the monthly benefits per credit season of the Retirement Plan. These benefits are additive, meaning the player’s monthly benefits are the sum of the monthly benefits to which he is entitled for each Credited Season.

^e Pursuant to the terms of the 2006 CBA, the NFL was not required to fund several benefit plans, including the Severance Pay Plan in 2010 if the 2010 season was not played with a Salary Cap — a situation which would only exist if the NFL and NFLPA were unable to agree to an extension of the CBA, which is what actually transpired. See 2006 CBA, Art. L; Art. LVI.

Table 3-B:
NFL Retirement Plan Benefits (If Taken after Age 55):

Credited Season	Monthly Benefit Credit per Credited Season
Before 1982	\$250
1982 through 1992	\$255
1993 through 1994	\$265
1995 through 1996	\$315
1997	\$365
1998 through 2011	\$470
2012 through 2014	\$560
2015 through 2017	\$660
2018 through 2020	\$760

In addition, the Retirement Plan includes \$620 million in Legacy Benefits created as part of the 2011 CBA for players who played before 1993. The Legacy Benefits listed in Table 3-C below are in addition to the Retirement Benefits listed above.

Table 3-C:
NFL Retirement Plan Legacy Benefits

Credited Season	Monthly Benefit Credit per Credited Season
Before 1975	\$124
1975 through 1992	\$108

According to the NFL, as of 2015, 3,641 former players receive an average monthly retirement benefit of \$1,656,²⁶ for a total of approximately \$72,353,952 annually. In addition, about 90% of those former players also received Legacy Benefit payments, with an average monthly payment of \$723.85,²⁷ for a total of approximately \$28,464,677 in Legacy Benefit payments. Thus, in 2015, the NFL Retirement Plan paid a little over \$100 million to former NFL players.

The Retirement Plan—which until 2011 also covered disability benefits—historically has been viewed negatively by former players. The filing process has been considered complex and lengthy,²⁸ resulting in many former players suing the Retirement Plan concerning their benefits.²⁹ During a 2007 hearing before the United States Senate Committee on Commerce, Science, and Transportation, it was revealed that only 317 former players were receiving disability benefits, out of the thousands that were eligible.³⁰

Of additional concern, in recent years the NFLPA has been warning players that the Retirement Plan is underfunded.³¹ Currently, the Plan only takes in enough money to cover about 54.5% of what it pays out,³² jeopardizing its ability to pay retirement benefits in the future.

Tables 3-J and 3-K at the conclusion of this Chapter put these numbers in context, comparing monthly payments under the leagues' various retirement/pension plans.

c) Player Annuity Plan³³

The Player Annuity Plan, first created in 1998, provides deferred compensation to players.³⁴ Players automatically contribute to the Annuity Plan through payroll deductions, which are then invested. The Annuity Plan is divided between a Qualified Account and a Nonqualified Account. The Qualified Account includes the maximum amount of compensation that can be deferred on a pre-tax basis pursuant to IRS rules. The maximum amount that could be deferred on a pre-tax basis in 2016 was \$53,000.³⁵ The amount contributed to the Annuity Plan above this amount is the Nonqualified Account portion and must be taxed before being invested as part of the Annuity Plan.

To be eligible for the Annuity Plan, a current or former player must have at least one Credited Season. So long as the player is active, compensation will be deducted from his pay to fund his Annuity Plan account. A player does not vest^f in his Qualified Account until he has earned at least three Credited Seasons, but a player is always vested in his Nonqualified Account.

A player can elect to receive a distribution at any time after he is done playing, provided the player is at least 45, or is at least 35 and five years have elapsed since the player last earned a Credited Season. Distributions must begin no later than the first day of the month after the player turns 65. Players can also elect different forms of distribution for each of their accounts and different dates for payments to begin. Payment forms include: (1) annual installments until the player reaches 45; (2) an annuity for life; (3) a reduced annuity for life, with a survivor annuity beginning after the player's death; (4) a lump sum, if the former player is at least 45 when the lump sum is to be paid; and, (5) a partial lump sum, if the player is at least 45 when the partial lump sum is paid, with the remainder paid in one of the other payment forms. Table 3-D on the next page provides details on this program.

^f "Vest" means "[t]o give (a person) an immediate, fixed right of present or future enjoyment." Black's Law Dictionary (9th ed. 2009). In essence, "vesting" in a benefit or retirement plan generally means the individual has earned the right to the benefit or retirement plan, typically by meeting a minimum number of years of employment.

Table 3-D:
NFL Player Annuity Plan Deferred Compensation
Amounts (2016 Season)

Credited Seasons	Total Amount Allocated to Annuity Plan for That Season
1	\$0
2	\$5,000
3	\$5,000
4	\$70,000
5 or more	\$80,000

The reason for the large increase in allocation from the third to fourth Credited Season is likely due to the vesting requirements. As stated earlier, a player is not vested in his Qualified Account—which represents the bulk of the Annuity Plan contribution—until after his third Credited Season. If he does not vest in the Qualified Account, it is forfeited. Thus, by minimizing the amounts allocated before players vest in the Annuity Plan, the Annuity Plan minimizes the amount of deferred compensation that might be forfeited.

d) Second Career Savings Plan³⁶

The Second Career Savings Plan, first created in 1993, is a 401(k)³⁷ plan that helps players save for retirement in a tax-favored manner. All NFL players are eligible for the Plan, regardless of the number of Credited Seasons.

To fund the Plan, the player's club is required to contribute a minimum of: \$1,000 if the player has exactly one Credited Season; \$7,200 if the player has exactly two Credited Seasons; and, \$3,600 if the player has three or more Credited Seasons. In addition, the club will contribute \$2 for every \$1 contributed by a player during a year in which the player earned a Credited Season, provided the player already has at least one Credited Season, up to a maximum of \$26,000 between 2015 and 2018, and \$28,000 between 2019 and 2020. Players are automatically enrolled in the plan, with 10% of their pre-tax salary going towards the plan. Players can change the amount of their contributions or opt out of the plan at any time.

A player can receive benefits after he is 45 provided the player is not employed by a club,³⁸ or after the player is 59½. The player can receive the benefits in a variety of forms: (1) a single lump sum payment; (2) installments over ten years; (3) an annuity for the player's life; or, (4) an annuity for the player's life and surviving spouse's life.

According to the NFLPA, 99% of NFL players are enrolled in the Second Career Savings Plan.³⁹

2) INSURANCE BENEFITS

The NFL provides four insurance-related benefits: (a) the Player Insurance Plan; (b) the Health Reimbursement Account Plan; (c) the Long Term Care Insurance Plan; and, (d) the Former Player Life Improvement Plan.

a) Player Insurance Plan⁴⁰

The NFL Player Insurance Plan, first created in 1968, provides players and their immediate family with life insurance, accidental death and dismemberment insurance, medical coverage, dental coverage, and wellness benefits. The wellness benefits include access to clinicians for mental health, alcoholism, and substance abuse, child and parenting support services, elder care support services, pet care services, legal services, and identity theft services.

Any player in the NFL, including a practice squad player, is eligible for the Player Insurance Plan. Players who are vested under the Retirement Plan continue to receive coverage for five years after their career ends. Players who are not vested are only covered through the end of the plan year in which they play their last game.

After their career has ended, players have the option of continuing coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA")⁴¹ for a period of 18, 29, or 36 months. Players are required to pay the full cost of coverage plus 2% for administrative costs.

It is important to note that COBRA is an extension of healthcare coverage that employers are required to provide as a matter of law. Thus, NFL clubs are not unique in providing COBRA coverage, and all of the American clubs in the leagues discussed herein are also obligated to provide COBRA coverage to their former players. In contrast, former players who are residents of Canada can generally obtain healthcare through government-funded plans at any time during or after their playing career.

b) Health Reimbursement Account ("HRA") Plan⁴²

The HRA Plan, first created in 2006, helps to pay out-of-pocket healthcare expenses after players are no longer employed by an NFL club and after the period of extended medical coverage under the Player Insurance Plan that is paid by the NFL has ended.⁴³ To be eligible, players whose last Credited Season was in 2004 or 2005 must have at least eight Credited Seasons, or, players whose last Credited Season was in 2006 or later must have at least three Credited Seasons.

A player is eligible to withdraw amounts from his HRA Plan account for medical expenses incurred provided he files for reimbursement within 24 months of receiving the medical bill to be reimbursed.

To fund the players' HRA Plan accounts, clubs contribute the amounts to each player's Health Account. Players do not contribute their own money to their Health Account. Details on the HRA plan contribution scheme can be found in Table 3-E.

Table 3-E:
NFL HRA Plan Account Contributions

Credited Seasons	Health Account Contribution per Credited Season
2009 and prior	\$25,000
2010	\$0
2011 through 2015	\$25,000
2016 through 2020	\$30,000

c) Long Term Care Insurance Plan

The Long Term Care Insurance Plan, first created in 2011, provides medical insurance to cover the costs of long-term care for NFL players (but not their family members). Players are eligible for the Long Term Care Insurance Plan if they are: (1) vested players under the Retirement Plan; (2) between the ages of 50 and 76; and, (3) have been certified by a licensed healthcare provider as requiring critical supervision, or requiring the presence of another person within arm's reach due to inability to perform a required number of defined activities of daily living. The Plan provides benefits of \$150 a day for a maximum of four years.^g

Players are not required to contribute to the funding of the Plan. In addition, the Plan provides benefits to all former players who are eligible.

d) Former Player Life Improvement Plan⁴⁴

The Former Player Life Improvement Plan, first created in 2007, permits qualifying former players (and in some cases their dependents) not otherwise covered by health insurance to receive reimbursement for medical costs for "joint replacements, prescription drugs, assisted living, Medicare supplemental insurance, spinal treatment, and neurological treatment." Former NFL players who are vested under the

Retirement Plan are eligible for the plan. However there are many benefits under this plan, some of which have additional eligibility requirements, so not every player is eligible for every benefit.

3) DISABILITY BENEFITS

The NFL provides two disability-related benefits: (a) the Disability & Neurocognitive Benefit Plan; and, (b) the 88 Plan.

a) Disability & Neurocognitive Benefit Plan⁴⁵

The Disability & Neurocognitive Benefit Plan provides eligible players with disability benefits, including benefits based on neurocognitive disability. The Plan provides four types of benefits: (1) Total and Permanent Disability Benefits; (2) Line-of-Duty Disability Benefits; (3) Mild Neurocognitive Disability Benefits; and, (4) Moderate Neurocognitive Disability Benefits.

A player is eligible for "Total and Permanent Disability Benefits" if the Initial Claims Committee⁴⁶ or Disability Board⁴⁷ determines "(1) that he has become totally disabled to the extent that he is substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit . . . , and (2) that such condition is permanent."

A player is awarded Total and Permanent Disability Benefits pursuant to one of four categories: (1) Active Football: the player is an active player and the disability results from NFL activities;⁴⁸ (2) Active Nonfootball: the player is an active player but the disability does not result from NFL activities; (3) Inactive A: the player is a former player who filed for disability benefits within 15 years of his last Credited Season; or, (4) Inactive B: the player is a former player who filed for disability benefits more than 15 years after his last Credited Season. Inactive A and Inactive B disability benefits do not have an eligibility requirement that the disability resulted from NFL activities.

A player is eligible for Line-of-Duty Disability Benefits if the Initial Claims Committee or Disability Board determines that the player "incurred a substantial disablement . . . arising out of [NFL] football activities." Line-of-Duty Disability Benefits address those injuries or disabilities that are not considered permanent.

A player is eligible for Neurocognitive Disability Benefits if: (1) the player is vested under the Retirement Plan; (2) the player is under age 55; (3) the player had at least one Credited Season after 1994; (4) the player does not receive retirement benefits; (5) the player does not receive total

^g For comparison, according to the U.S. Department of Health and Human Services, the average cost of long-term care in a semi-private room in a nursing home is \$205 per day, and \$229 per day for a private room. *Costs of Care*, U.S. Dep't of Health and Human Services (last visited Aug. 25, 2016), <http://longtermcare.gov/costs-how-to-pay/costs-of-care>, archived at <https://perma.cc/RZ4N-BFHB>.

and permanent disability benefits; (6) the player executes a release releasing the NFL and clubs from any liability for head or brain injuries; and, (7) the player is determined to have mild or moderate neurocognitive impairment.

A player has “mild neurocognitive impairment if he has problems with one or more domains of cognitive functioning which reflect acquired brain dysfunction but are not severe enough to cause marked interference in day-to-day activities.”

A player has “moderate neurocognitive impairment if he has problems with one or more domains of cognitive functioning which reflect acquired brain dysfunction resulting in marked interference with everyday life activities, but not severe enough to prevent the Player from working.”

A player must submit to a medical examination by a doctor of the Disability Board’s choosing to determine if the player has neurocognitive impairment.

Details on the disability and neurocognitive benefits can be found in Table 3-F.

Table 3-F:
NFL Disability and Neurocognitive Benefits

Type of Disability	Monthly Benefit
Total & Permanent: Active Football	\$22,084
Total & Permanent: Active Nonfootball	\$13,750
Total & Permanent: Inactive A	\$11,250
Total & Permanent: Inactive B	\$5,000
Line-of-Duty	\$3,000
Mild Neurocognitive	\$2,250

A player can only receive one of the above benefits at any one time.

According to a 2010 analysis of the NFLPA’s disability claims database, disability benefit applications had never exceeded 200 applications in a year until 2008 and 2009, when there were more than 400 claims in both years.⁴⁹ As of 2010, NFL disability benefit claims were approved approximately 38% of the time.⁵⁰ Importantly, the benefits criteria changed after the 2011 CBA, so current data would not be comparable. Moreover, according to the same analysis, of the players who filed for disability benefits, the mean age at which they retired from the NFL was 30.2 years.⁵¹ Additionally, the mean age at which the player filed for disability benefits was 38.1 years.⁵²

Finally, through the year 2009, there had been a total of 2,670 disability benefit claims, with 2,423 (90.7%) for orthopedic conditions, 52 (1.9%) for neurological conditions, 18 (0.7%) for psychological conditions, 18 (0.7%) for cardiovascular conditions, and 159 for other unspecified conditions (6.0%).⁵³

b) The 88 Plan⁵⁴

The 88 Plan, first created in 2006, provides former players suffering from dementia, ALS, or Parkinson’s disease with benefits. The 88 Plan is named for John Mackey, a Hall of Fame tight end for the Baltimore Colts and San Diego Chargers from 1963–72, who wore number 88 during his career. Mackey suffered from dementia later in life and died in 2011 at the age of 69.

Vested Players under the Retirement Plan and players who have received Total and Permanent Disability Benefits under the Disability & Neurocognitive Benefit Plan who have been diagnosed with dementia, ALS, or Parkinson’s disease are eligible. The 88 Committee, consisting of an NFL designee and an NFLPA designee, determines whether the player qualifies for the benefit.

The 88 Plan will reimburse or pay the following costs for medical care that are related to a player’s Dementia, ALS, or Parkinson’s disease: (1) institutional care; (2) home custodial care provided by an unrelated third party; physician services; (3) durable medical equipment; and, (4) prescription medication. The maximum benefits are \$130,000 per year so long as the player continues to suffer from Dementia, ALS or Parkinson’s disease. Finally, there is no requirement that the player prove that his condition is related to his NFL career.

4) WORKERS’ COMPENSATION BENEFITS

The NFL CBA requires clubs to provide workers’ compensation coverage or comparable benefits, including clubs that are “in any state where workers’ compensation coverage is not compulsory or . . . [are] excluded from a state’s workers’ compensation coverage[.]”⁵⁵ The second part of the preceding sentence is important. Florida, for example, does not require employers to provide workers’ compensation coverage.⁵⁶ Consequently, players with the Miami Dolphins, Tampa Bay Buccaneers, and Jacksonville Jaguars would not have workers’ compensation coverage without this provision. Nevertheless, workers’ compensation benefits and statutes have been contentious issues in the NFL. In recent years, the NFL and its clubs have reportedly sponsored legislation in several states, including California, Illinois and Louisiana, to restrict players’ workers’ compensation benefits.⁵⁷

5) EDUCATION-RELATED BENEFITS

The NFL's Tuition Assistance Plan, first created in 2002, reimburses players for tuition, fees, and book costs associated with attending an eligible educational institution. All current NFL players with at least one Credited Season are eligible for the plan. In addition, former players with at least five Credited Seasons are also eligible, provided that the costs are incurred within four years of the player's last season.

For any course in which players seek to use this benefit for reimbursement, the player must have received a "C" or better in the course and submit his claim for reimbursement within six months of when the final grade is issued. The maximum reimbursement is \$20,000 per year.^h A former player with at least five Credited Seasons is eligible for up to \$60,000 in reimbursements total.

In recent years, the NFL and its clubs have reportedly sponsored legislation in several states, including California, Illinois and Louisiana, to restrict players' workers' compensation benefits.

6) JOINT HEALTH-SPECIFIC COMMITTEES

There are two health-related committees provided for in the NFL CBA: (a) the Joint Committee on Player Safety and Welfare ("Joint Committee"); and, (b) the Accountability and Care Committee ("ACC").

a) Joint Committee on Player Safety and Welfare

The Joint Committee, first established in 1977, consists of three representatives chosen by the NFL and three chosen by the NFLPA.⁵⁸ The Joint Committee's purpose is to "discuss[] the player safety and welfare aspects of playing equipment, playing surfaces, stadium facilities, playing rules, player-coach relationships, drug abuse prevention

programs and other relevant subjects."⁵⁹ In addition, the NFLPA has "the right to commence an investigation before the Joint Committee if the NFLPA believes that the medical care of a team is inadequate."⁶⁰

While a complaint to the Joint Committee results in a review by neutral physicians, the definition of the scope of that review process' authority is vague. The Joint Committee is obligated to act upon the recommendations of the neutral physicians, but it is unclear what it means for the Joint Committee to act and there is nothing obligating the NFL or any club to abide by the neutral physicians' or Joint Committee's recommendations. Moreover, there is no indication that the neutral physicians or Joint Committee could award damages to an injured player.⁶¹

In 2012, the NFLPA commenced the first and only Joint Committee investigation.⁶² The nature and results of that investigation are confidential per an agreement between the NFL and NFLPA.⁶³

b) Accountability and Care Committee

The ACC, created in 2011, consists of the NFL Commissioner or his designee; the NFLPA Executive Director or his designee; and six additional members "experienced in fields relevant to healthcare for professional athletes," three appointed by the Commissioner and three by the NFLPA Executive Director.⁶⁴ The CBA dictates that the ACC is to: (1) encourage and support programs for outstanding professional training by club medical staffs; (2) develop a standardized pre-season and postseason physical examination and education protocol to inform players of the risks associated with playing football; (3) conduct research into prevention and treatment of illness and injury commonly experienced by professional athletes; (4) conduct a confidential player survey at least once every two years to solicit the players' input and opinion regarding the adequacy of medical care; (5) assist in the development and maintenance of injury surveillance and medical record systems; and, (6) undertake such other duties as the Commissioner and Executive Director may assign.⁶⁵ Additionally, players can make complaints about their medical care to the ACC—but the ACC then refers those complaints to the NFL and club involved.⁶⁶

* * *

With an understanding of the NFL's health-related benefits, we now turn to our analysis of the other leagues' health-related benefits.

^h According to the College Board, the average tuition at a public four-year university for an in-state student is \$9,410; the average tuition at a public four-year university for an out-of-state student is \$23,893; and, the average tuition at a private four-year university is \$32,405. See *Average Published Undergraduate Charges by Sector, 2015-16*, CollegeBoard, <http://trends.collegeboard.org/college-pricing/figures-tables/average-published-undergraduate-charges-sector-2015-16> (last visited Mar. 17, 2016), archived at <https://perma.cc/HNWX-FBKG>.



B) MLB Health-Related Benefits

As explained in the Introduction, Section C: Collective Bargaining Agreements, in the fall of 2016, MLB and the MLBPA agreed to and ratified the terms of a new CBA. However, as of the date this Report went to press, the parties had not yet published the new CBA. Thus, this Section principally relies on information contained in the 2012 CBA and other documents that existed prior to the new CBA. Specifically, most of MLB's health-related benefits are contained in the Major League Baseball Players Benefit Plan ("Benefit Plan")⁶⁷ includes many of the benefits in which we are interested.ⁱ In addition to these documents, we rely on a joint press release issued by the parties summarizing the changes agreed to in 2016. Nevertheless, the press release does not provide specifics of the changes to the Benefit Plan and other benefits, *i.e.*, it generally does not provide the amounts by which certain benefits increased. In discussing certain benefits below, we will indicate those that we understand to have been changed as part of the 2016 CBA negotiations, but caution the reader that important additional details, nuance or context are likely to be contained in the full length CBA and a revised Benefit Plan when they are complete.

1) RETIREMENT BENEFITS

The Benefit Plan includes a Pension Plan and an Investment Plan.

a) Pension Plan

The Pension Plan provides monthly payments to eligible former players based on the time period during which the player played, the player's retirement age, years of service, and annual compensation.⁶⁸ In 2016, MLB and the MLBPA agreed that pension benefits for certain but unspecified classes of retired players would be increased.⁶⁹ However, as discussed above, the specific amounts by which the benefits increased is not yet publicly known. Thus, what follows is a summary of the Pension Plan prior to the 2016 CBA negotiations.

Fixed monthly payments range from a low of \$85.10 to a high of \$13,666, with higher payments for players in more recent eras, players who retire at an older age, players with more years of service, and—where applicable—players with higher average annual salaries.⁷⁰ Players also receive variable monthly pension payments determined by a base monthly rate (calculated using the same factors as a player's fixed monthly payment) weighted by the investment performance of a fund for the variable benefits relative to a baseline interest rate.⁷¹ Variable monthly payments range from a low of \$82 to a high of \$3,000.⁷²

Players who played in 1980 or later are eligible for the Pension Plan on the first day they are on an MLB club's roster.⁷³ Players who played prior to 1980 are eligible for the Pension Plan in three ways: (1) they have four years of service;⁷⁴ (2) if they played prior to 1970, they reached the age of 65 prior to April 1, 1980;⁷⁵ and, (3) if they played in 1970 or later, they reached the age of 62 prior to April 1, 1980.⁷⁶ Players with fractional years of credited service receive an adjusted benefit amount.⁷⁷

Table 3-G on the next page provides an abbreviated review of the Pension Plan benefits available to MLB players who played after 1991 and earned a mean of at least \$68,212 during the three years of their career during which their salary was the highest. At the end of this Chapter, Tables 3-J and 3-K compare the monthly payments of the Big Four leagues' retirement/pension plans.

In reviewing the Tables below, it is important to understand that the "Retirement Age" is not the age at which a player retired from MLB. Instead, it is a term used in the Pension Plan to indicate the age at which a player begins to receive Pension Plan benefits. A player may "retire" for Benefit Plan purposes at any time between his 45th and 70½th birthday.⁷⁸ It is unclear whether a player will receive any Pension Plan benefits if they do not file for them. Finally, it is also important to note that the maximum annual pension amounts for players who played after 1991 are generally adjusted annually to equal the limitations on such plans set by the Internal Revenue Service.⁷⁹ In 2016, the limitation on the annual contributions to pension plans was \$210,000.⁸⁰

ⁱ Although there is one Canadian MLB club (Toronto Blue Jays), the Benefit Plan does not include any special provisions for providing benefits under Canadian law.

Table 3-G:**MLB Player Combined Fixed and Variable Monthly Pension Payments for Players after 1991 (Abbreviated)**

Years of Credited Service							
Retirement Age	1	2	3		8	9	10+
45	\$525	\$1,050	\$1,575	***	\$4,200	\$4,725	\$5,250
46	\$557	\$1,115	\$1,673		\$4,462	\$5,020	\$5,578
47	\$593	\$1,186	\$1,779		\$4,744	\$5,337	\$5,930

60	\$1,427	\$2,855	\$4,283		\$11,422	\$12,850	\$14,278
61	\$1,541	\$3,082	\$4,624		\$12,330	\$13,872	\$15,413
62	\$1,666	\$3,333	\$5,000		\$13,333	\$15,000	\$16,666

b) Investment Plan

The Investment Plan is a 401(k) plan. Under the Investment Plan, players have the option of having a portion of their compensation for any given year placed into the Investment Plan before taxes are withheld. The player can determine the amount to be placed into the Plan, subject to maximums set by the Internal Revenue Service.⁸¹ Generally speaking, if the player does not elect to place any money into the Plan, an amount equal to the Internal Revenue Service maximum (\$18,000 in 2016) will automatically be placed into the Plan for the player.⁸² Although the clubs are not obligated to contribute anything to the Plan,⁸³ according to MLB, the clubs contribute millions of dollars each year to the players' accounts.⁸⁴ Additionally, all players are fully vested in their accounts at all times.⁸⁵ The NFL also offers a 401(k) plan.

2) INSURANCE BENEFITS

In 2016, MLB and the MLBPA agreed that players' medical and dental benefits for players would be "improved in a variety of areas."⁸⁶ However, as discussed above, the specific ways in which the benefits improvement is not yet publicly known. Thus, what follows is a summary of disability benefits prior to the 2016 CBA negotiations.

Like the NFL's Player Insurance Plan, MLB's Benefit Plan provides players and their families with life insurance, accidental death and dismemberment insurance, medical coverage, and dental coverage. A player and his dependents become eligible for health insurance as soon as the player is listed on a club's 40-man roster.⁸⁷ Disabled players and their dependents are also eligible for health insurance.⁸⁸ Additionally, former players may continue coverage through COBRA or by enrolling in the inactive health benefits program.⁸⁹ In 2016, according to MLB, "MLB spent over

\$13 million to subsidize health care for retired (inactive) MLB players."⁹⁰ MLB expects this amount "to grow in the coming years."⁹¹ Both the active and inactive player health care programs cover hospitalizations, visits to physicians, standard preventative care, and prescription drug costs through the use of preferred provider organizations.⁹²

MLB's Benefit Plan also provides some wellness benefits, including access to clinicians for mental health and treatment for alcohol or drug abuse. However, the plan does not include other benefits included in the NFL Player Insurance Plan, including child and parenting support services, elder care support services, pet care services, legal services, and identity theft services.

3) DISABILITY BENEFITS

Before a player is old enough to begin receiving a pension, he may be eligible for disability benefits under the Pension Plan. In 2016, MLB and the MLBPA agreed that disability benefits for players would be "improved."⁹³ However, as discussed above, the specific amounts by which the benefits increased is not yet publicly known. Thus, what follows is a summary of disability benefits prior to the 2016 CBA negotiations.

Former players with at least four years of service who become totally and permanently disabled and all active players who become totally and permanently disabled are eligible for disability benefits.⁹⁴ Disability payments range from \$2,500 to \$5,000 a month for the player and \$300 to \$600 for dependents, depending on whether the player is active or inactive when he is disabled, the player's salary the year before his disability, and whether the player, if inactive, can show by clear and convincing evidence that he became disabled as a result of his baseball career.⁹⁵ Players

may receive a stabilizing disability supplement if, once they begin receiving their pension, their pension is less than their disability payment.⁹⁶

MLB's disability benefits are significantly less than those provided by the NFL. NFL benefits for total and permanent disability range from \$5,000 to \$22,084 per month depending on the cause of the disability. In addition, the NFL offers benefits for disabilities which are less than total and permanent disabilities, and also offers neurocognitive disability benefits. MLB does not offer either of these benefits, although there is likely much less of a need for neurocognitive disability benefits in MLB than in the NFL.

4) WORKERS' COMPENSATION BENEFITS

Although not explicitly provided for in the CBA, MLB clubs, like NFL clubs, pay workers' compensation benefits to their players.⁹⁷ However, unlike the NFL, there is no provision in the MLB CBA that requires clubs to provide comparable benefits in states where workers' compensation coverage is not required. Consequently, it appears that players in states that do not require coverage, like those for the Tampa Bay Rays and Miami Marlins in Florida, are not automatically covered.⁹⁸ Nevertheless research suggests that the clubs generally do choose to provide coverage.

5) EDUCATION-RELATED BENEFITS

MLB offers a "College Scholarship Plan" to its players.⁹⁹ As part of the 2016 CBA negotiations, the parties agreed to "[i]mprovements to the College Scholarship Plan, particularly for players living outside of the U.S."¹⁰⁰ In October 2016, we asked MLB for more information about the College Scholarship Plan, including the criteria for receiving benefits under the Plan and the actual benefits received under the Plan. MLB responded only by directing us to the description of the College Scholarship Plan in the 2012 CBA, which does not clearly set forth the information we requested.

6) JOINT HEALTH-SPECIFIC COMMITTEES

MLB has a Safety and Health Advisory Committee ("SHAC"), comprised of representatives of both the clubs and the MLBPA, to "deal with emergency safety and health problems" and to review player working conditions.¹⁰¹ The SHAC has advisory authority only,¹⁰² but the parties have agreed to make "every reasonable effort" to utilize the SHAC before pursuing safety- and health-related grievances through the CBA's arbitration procedures.¹⁰³

C) NBA Health-Related Benefits



As a preliminary matter, it is important to point out that in the NBA, like the NFL, the amounts paid to players (current and former) in the form of benefits in most instances decreases the amounts available to current players in salary.¹⁰⁴

1) RETIREMENT BENEFITS

The NBA offers three retirement programs: (a) the Players' Pension Plan; (b) the 401(k) Savings Plan; and, (c) the Post-Career Income Plan.^j

a) Players' Pension Plan

The NBA Players' Pension Plan allows for full vesting rights after three years of service in the league,¹⁰⁵ the same vesting requirement as the NFL's Retirement Plan for players who played after 1991. Players can begin drawing their pension at age 45.¹⁰⁶ Under the 2017 CBA, beginning at age 50, the Pension Plan pays players \$572.13 per month for each year of credited NBA service,¹⁰⁷ with the possibility of annual increases to that figure based on actuarial calculations.¹⁰⁸ According to the NBA, the pension benefits per year of service are the same for all players that played after 1965, regardless of when they played. The NBA also indicated that players automatically receive Pension Plan payments if they do not file for them. Lastly, the Pension Plan is funded by the clubs.¹⁰⁹

b) 401(k) Savings Plan

Under the 401(k) Savings Plan, players can contribute a portion of their salary, subject to the maximum amounts permitted by the Internal Revenue Service (\$18,000 in 2016¹¹⁰), into a 401(k) plan.¹¹¹ Clubs match 140% of players' allowed contributions.¹¹² This is similar to the NFL, which also offers a 401(k) plan. However, NFL clubs contribute 200% of a player's contribution. NBA players' contributions are automatic, unless the player affirmatively opts out.

c) Post-Career Income Plan

The Post-Career Income Plan (formerly called the Post-Employment Annuity Benefit Plan) is a retirement plan that

^j The NBA CBA also provides that players employed by the Toronto Raptors are required to receive comparable benefits as those described in this Section as permitted under Canadian Law.

purchases annuities for players to provide a source of post-employment income.¹¹³ To fund the Plan, the NBA contributes 1% of Basketball Related Income,^{114,k} and players have the option of contributing up to 10% of their post-tax income into the plan.¹¹⁵ Annuities under the Plan are payable to a player a year after his retirement from the NBA or six months after his 30th birthday, whichever is later.¹¹⁶ The benefit is paid in the form of installment payments until the player reaches 50 years old or a joint life annuity paid over the player's life and his surviving spouse's life.¹¹⁷ This is similar to the NFL, which also offers an annuity plan.

2) INSURANCE BENEFITS

The NBA offers three different health insurance or benefit programs through a Voluntary Employees' Beneficiary Association ("VEBA"): (a) a standard health insurance program; (b) a health reimbursement account ("HRA Benefit"); and, (c) a Retiree Medical Plan. VEBAs, created pursuant to Section 501(c)(9) of the Internal Revenue Code, traditionally provide "life, sick, accident, or similar benefits [for] members or their dependents, or designated beneficiaries."¹¹⁸ The VEBA is described in the CBA as providing for at least some of the benefits discussed in this Section, but its full scope is unclear. By comparison, the NFL does not have a VEBA.

In addition, the 2017 CBA provides that the NBA and National Basketball Players Association ("NBPA") are to "meet and confer to discuss the establishment of a long-term care insurance benefit."¹¹⁹ In contrast, the NFL already offers a long-term care insurance plan.

a) Health Insurance

The NBA provides players and their families with life insurance, accidental death and dismemberment insurance, medical coverage, vision coverage, dental coverage, and prescription drug insurance benefits.¹²⁰ The 2017 CBA also states that the parties will "establish a mental wellness program for current players."¹²¹ The extent of the NBA's intended mental wellness program is unclear, but, by comparison, the NFL does offer a variety of wellness benefits, including: access to clinicians for mental health, alcoholism, and substance abuse; child and parenting support services; elder care support services; pet care services; legal services; and, identity theft services.

b) HRA Benefit

The HRA Benefit (formerly known as the Supplemental Medical Benefits Program) covers healthcare costs not otherwise covered by players' primary insurers, such as costs incurred in connection with the payment of premiums for health insurance.¹²² The benefit is available during players' careers or after.

HRA plans can help to pay out-of-pocket healthcare expenses after players' careers have ended. The 2017 CBA provides for an HRA Benefit to be created for each player in the amount equal to "the lesser of: (A) \$30,000 and (B) the difference between \$150,000 and the sum of all contributions previously made to fund an HRA Benefit for such player in respect of prior Salary Cap Years . . . or, if such difference is \$0 or a negative number, then \$0."¹²³ However, the plan is only available to players who played in the NBA during and/or after the 2000–01 season, and also appears limited to current players.¹²⁴ By comparison, the NFL offers a health reimbursement account and Former Player Life Improvement Plan to help former players with medical costs not covered by insurance.

Players who play for the Toronto Raptors are not eligible for the HRA Benefit for the period of time during which the player is a resident of Canada (instead, they receive an alternative benefit).¹²⁵

c) Retiree Medical Plan

The 2017 CBA established medical benefits for former players for the first time.¹²⁶ According to the NBPA, under the new program:

- Retired players with between three and six years of NBA service time but who are not yet eligible for Medicare would be offered a plan that includes medical, hospital, and prescription drug coverage with modest out-of-pocket costs for deductibles and co-pays.
- Those with between seven and nine years of service who are not eligible for Medicare would be offered the same coverage as the three-to-six-year players with lower out-of-pocket costs.
- Retired players with at least 10 years of service who are not eligible for Medicare would be offered the same coverage as the seven-to-nine-year players, as well as coverage for their families.
- Retired players who are eligible for Medicare who have three to nine years of service would be offered a \$0 deductible and \$0 co-pay plan along with a low-cost prescription drug plan; those with 10+ years of service would receive this coverage for themselves and their spouse.¹²⁷

k Basketball Related Income, generally speaking, "means the aggregate operating revenues" of the NBA and NBA clubs. 2017 NBA CBA, Art. VII, § 1(a)(1).

According to the NBA, eligible former players are not required to pay any premiums for coverage for themselves. The players can add their family to the insurance by paying premiums at varying amounts depending on the player's years of credited service.¹²⁸

3) DISABILITY BENEFITS

NBA players are entitled to disability insurance benefits.¹²⁹ The CBA does not specify the benefit amounts available to the players.

4) WORKERS' COMPENSATION BENEFITS

The 2017 NBA CBA provides that players are entitled to workers' compensation benefits "in accordance with applicable statutes."¹³⁰ In reviewing this Report, the NBA explained that the CBA provision is meant to indicate the clubs' compliance with workers' compensation statutes. In practice, the NBA operates a league-wide workers' compensation program in which all clubs are required to participate with two exceptions. The Cleveland Cavaliers and Toronto Raptors play in what are known as "monopolistic" jurisdictions, Ohio and Ontario respectively, where employers are required to obtain workers' compensation insurance from a state fund or qualify as a self-insurer. According to the NBA, the NBA's workers' compensation program is long-standing but not negotiated with the NBPA. Thus, while unlikely, the NBA could unilaterally decide to dissolve the program and clubs that play in states where workers' compensation is not required, such as Florida and Texas, would no longer be required to provide workers' compensation benefits to its players. Nevertheless, in current practice, all NBA players can receive workers' compensation benefits.

5) EDUCATION-RELATED BENEFITS

Beginning with the 2017 CBA, the VEBA provides for "reimbursement of eligible tuition and career transition expenses."¹³¹ Players are entitled to a maximum reimbursement of \$33,654 per year, and \$101,000 over their lifetime.¹³² These benefits are available to players while playing and when their playing career is over.

Similarly, the NFL's Tuition Assistance Plan reimburses players for tuition, up to a maximum reimbursement of \$20,000 per year.

6) JOINT HEALTH-SPECIFIC COMMITTEES

The NBA and NBPA have a Labor-Management Cooperation and Education Trust ("Education Trust"). While the Education Trust's role is unclear, it seems that could address player health issues.

According to the CBA, the Education Trust is designed to provide "(i) health education programs and (ii) education and career counseling programs designed to assist the NBA, NBA Teams and NBA players in solving problems of mutual concern not susceptible to resolution within the collective bargaining process and to enhance the involvement of NBA players in making decisions that affect their working lives."¹³³ The 2017 CBA states that the parties will "meet and confer to discuss the Education Trust establishing a modified financial education program."¹³⁴

In addition to the Education Trust, there are other committees that have some health-related duties.

First, there is a Committee of Team Physicians with which NBPA representatives meet in order to discuss "matters related to the medical care and treatment of players,"¹³⁵ but this group is not a joint committee in and of itself and has limited authority of any kind under the CBA. The Committee of Team Physicians is responsible for periodically reviewing the NBA's Concussion Policy "in order to keep it current and consistent with the evolving science of concussion management,"¹³⁶ and must consult with NBPA representatives before making any changes to the Concussion Policy.^{137,1}

Second, there is a Prohibited Substances Committee that consists of one NBA representative, one NBPA representative, and three jointly selected representatives who are "experts in the field of testing and treatment for drugs of abuse and performance-enhancing substances."¹³⁸ The Prohibited Substances Committee advises the NBA and NBPA on its anti-drug policy.¹³⁹

In contrast, the NFL's Joint Committee and Accountability and Care Committee are principally focused on player health and safety issues.

1 In reviewing a draft of this Report, the NBA also highlighted that it and the NBPA have a Wearables Committee for the purpose of reviewing and approving wearable devices for use by players. 2017 NBA CBA, Art. XXII, § 13. We know from our research that the NFL and NFLPA have also collaborated on this issue. It is possible other leagues too have also considered this issue. However, because it is a rapidly evolving issue with questionable ties to player health, we have not endeavored to cover this issue across the leagues and thus do not include additional information here. For more information on potential legal concerns with wearable technologies, see our law review article, Jessica L. Roberts, et al., *Evaluating NFL Player Health and Performance: Legal and Ethical Issues*, 165 U. Penn. L. Rev. 227 (2017).



D) NHL Health-Related Benefits

As a preliminary matter, it is important to point out that in the NHL, like the NFL and NBA, the amounts paid to players (current and former) in the form of benefits decreases the amounts available to current players in salary.¹⁴⁰

1) RETIREMENT BENEFITS

The NHL has two retirement plans available to its players: (1) the Retirement Plan, which is a defined benefit plan; and, (2) a 401(k) plan.

The NHL's Retirement Plan provides pension payments to players beginning on their 62nd birthday, except the player may receive actuarially equivalent¹⁴¹ pension benefits as early as one month after his 45th birthday.¹⁴² A player becomes eligible for participation in the Retirement Plan as of the date of his first NHL regular season game,¹⁴³ and he accrues fractional credited service¹⁴⁴ for each regular season game during which he is on a club's roster.¹⁴⁵ The NHL contributes \$38 million each year to fund the Retirement Plan.¹⁴⁶ The application of the NHL's Retirement Plan to players who played prior to the 2013 CBA is unclear.

To determine the pension payment amounts, the NHL uses a player with ten years of credited service as its baseline. A player with ten or more years of credited service is eligible to receive the maximum pension payment permitted under the Internal Revenue Code, which was \$210,000 in 2016¹⁴⁷ (\$17,500/month). A player with less than ten years of credited service will receive a proportional share of the maximum payment permitted.¹⁴⁸ Thus, if a player played only seven years, he would be eligible to receive pension payments up to 70% of \$210,000 (\$147,000).

It is unclear whether players automatically receive Retirement Plan payments or if they must file for them.

In addition to the Retirement Plan, as part of the 2005 CBA, the NHL and NHLPA established the Fund for Senior Retired Players.¹⁴⁹ The Fund provides money to approximately 350 former players over the age of 65 or their widows depending on how many seasons the player played.¹⁵⁰ Both the NHL and NHLPA contribute \$3 million annually toward the Fund.¹⁵¹

We turn now to the NHL's 401(k) plan. The 401(k) plan was created as part of the 2012 CBA, replacing a prior pension plan. A 401(k) plan is a retirement plan created pursuant to section 401(k) of the United States Internal Revenue Code. There are, however, seven Canadian clubs in the NHL for whom the United States Internal Revenue Code would not apply. Nevertheless, Canadian tax law does provide for a retirement plan substantially similar to an American 401(k). Consequently, the NHL has two separate 401(k)-type plans—one for players on American clubs, and one for players on Canadian clubs. To avoid confusion, for our purposes here, we refer to both of these plans as the NHL's 401(k) plan.

The 401(k) plan allows players to contribute pre-tax and post-tax portions of their pay into an investment account up to the limits set by the IRS. In 2016, the maximum pre-tax contribution was \$18,000 and the maximum post-tax contribution was \$53,000.¹⁵² While clubs formerly contributed to the old pension plan, the new 401(k) plan is funded entirely by the players. Additionally, players must voluntarily enroll in the plan. In contrast, under the NFL's 401(k) plan, clubs contribute \$2 for every \$1 contributed by a player and players are automatically enrolled in the plan.

2) INSURANCE BENEFITS

The NHL provides insurance benefits for players that include medical coverage, dental coverage, life insurance, and accidental death insurance.¹⁵³ While not a part of its insurance coverage, the NHL, through its Substance Abuse and Behavioral Health Program, offers players substance abuse and mental health treatment free of charge. This program is discussed further in Chapter 4: Drug and Performance-Enhancing Drug Policies. However, there is no indication that the NHL offers other wellness benefits provided by the NFL, including: child and parenting support services, elder care support services, pet care services, legal services, and, identity theft services.

Former players who played at least 160 games in the NHL can continue to receive the above benefits for life provided they apply for coverage within 120 days of the date the player was last covered under the plan.¹⁵⁴ The former players have to contribute to the costs of their health insurance in amounts that had not yet been agreed upon in the 2013 CBA.¹⁵⁵ In contrast, former NFL players are only entitled to health insurance for five years after they are done playing. Finally, for Canadian residents, the health insurance plan provides coverage for treatment that is not covered by the player's provincial Canadian health plan.¹⁵⁶

3) DISABILITY BENEFITS

The NHL offers a variety of disability benefits.

First, under the Retirement Plan, a player who has at least five years of credited service and becomes totally and permanently disabled is entitled “to receive disability pension benefits from the Retirement Plan equal to the value of his accrued pension benefits, actuarially reduced to the age of commencement.”¹⁵⁷

Second, the NHL provides a “career ending disability policy” providing for a one-time benefit, subject to the player signing a release, ranging in amount from \$200,000 to \$1,000,000.¹⁵⁸ To obtain the payment, the player must release “the Club, the League, the NHLPA, all other Clubs, the insurance carrier, and the servants, employees, officers and agents of each of the above from any and every additional obligation, liability, claim or demand[.]”¹⁵⁹ The NFL’s Neurocognitive Disability Benefit also requires players to execute a release of liability. The NFL’s disability benefits differ in that they are paid monthly, rather than in a lump sum.

Third, the NHL offers a “serious disability policy” that provides a one-time benefit for the player in the event he suffers a serious disability, contingent on execution of the above-described release.¹⁶⁰ Table 3-H below lists the potential serious disabilities and the related benefit amounts:

Table 3-H:
NHL Serious Disability Benefits

Disability	Benefit Amount
Loss of Brain Function	\$5,000,000
Paralysis	\$5,000,000
Organ Failure	\$3,000,000
Diagnosis of Terminal Illness	\$3,000,000
Loss of a Limb*	\$2,500,000
Loss of Two (2) Limbs*	\$4,000,000
Loss of Sight in Both Eyes	\$4,000,000
Loss of Sight in One (1) Eye	\$2,000,000
Loss of Hearing or Speech	\$750,000
Loss of Hearing and Speech	\$1,000,000
Loss of One Hand or One Foot*	\$750,000
Loss of Both Hands or Both Feet or One Hand and One Foot ^a	\$1,000,000

* Loss includes loss of use.

There is an important difference between the disability benefits offered by the NFL and the NHL. NHL disability benefits are only available to players currently on a club’s roster.¹⁶¹ In contrast, NFL players can and generally do apply for disability benefits after their career has ended. In particular, the NFL offers several neurocognitive disability benefits to former players, while the NHL only provides disability payments for loss of brain function if the player is currently playing.

4) WORKERS’ COMPENSATION BENEFITS

NHL players are entitled to workers’ compensation benefits.¹⁶² In addition, like the NFL CBA, the NHL CBA requires clubs located in states where workers’ compensation coverage is not required for professional athletes to provide equivalent benefits to the players.¹⁶³ Thus, players for the Tampa Bay Lightning and Florida Panthers are able to receive workers’ compensation benefits despite the fact that Florida does not require employers to obtain workers’ compensation coverage.

5) EDUCATION-RELATED BENEFITS

The CBA contemplates the creation or expansion of education-related benefits. Although there is no formal program, the 2011 CBA states that “[t]he League and the NHLPA shall work together on developing and improving career counseling and continuing education programs[.]”¹⁶⁴ Indeed, in 2015, the NHL and NHLPA announced plans to

launch a program that would pay for players' tuition at colleges and trade schools.¹⁶⁵ The NHL and NHLPA each have committed approximately \$1.5 million to the program, which will begin with current players and hopes to expand to former players.¹⁶⁶

6) JOINT HEALTH-SPECIFIC COMMITTEES

The NHL and NHLPA have formed the Joint Health and Safety Committee, which consists of five members from each side.¹⁶⁷ The Committee is responsible for “mak[ing] recommendations to the NHL and the NHLPA for consideration and approval regarding all issues related to Player health and regarding the safety of the playing environment.”¹⁶⁸ To do so, the Committee is empowered to create working groups and subcommittees as necessary.¹⁶⁹ The Committee is also responsible for resolving issues concerning whether club doctors have violated their obligations to the players,¹⁷⁰ monitoring the electronic medical record system,¹⁷¹ and creating a list of second opinion doctors.¹⁷²

dental coverage and disability” if there is sufficient surplus from the amounts paid by the clubs.¹⁷⁷

In contrast, the NFL provides dental benefits as well as a variety of wellness benefits, including access to clinicians for mental health, alcoholism, and substance abuse; child and parenting support services; elder care support services; pet care services; legal services; and, identity theft services.

Also unlike the NFL, the CFL offers no health insurance benefits for former players. However, as long as the players are residents of Canada, they can obtain healthcare through government-sponsored plans.

3) DISABILITY BENEFITS

As explained above, disability benefits are not guaranteed under the CFL CBA, but are possible if funding exists. In contrast, the NFL provides many different types of disability benefits for current and former players.

4) WORKERS' COMPENSATION BENEFITS

Some provincial statutes prohibit professional athletes, such as CFL players, from receiving workers' compensation benefits.¹⁷⁸ However, in 2016, the CFLPA submitted an application for players to be eligible for workers' compensation benefits in the province of Alberta,¹⁷⁹ where two CFL clubs play. If successful, the CFLPA reportedly plans to try and expand coverage for workers' compensation benefits to other provinces.¹⁸⁰ By contrast, although workers' compensation payments have been a controversial issue, all NFL players are currently entitled to such benefits.

5) EDUCATION-RELATED BENEFITS

The CFL does not offer any education-related benefits, unlike the NFL's Tuition Assistance Plan.

6) JOINT HEALTH-SPECIFIC COMMITTEES

The CFL and CFLPA have a Joint Committee on Players' Safety and Welfare.¹⁸¹ The Committee's purpose is to discuss player safety and welfare aspects of playing equipment, playing surfaces, stadium facilities, playing rules, player-coach relationships, drug abuse prevention programs, and any other relevant subjects.¹⁸² Any proposed change in a playing rule must be referred to the Committee for consideration and a recommendation.¹⁸³ However, the Committee has no authority to bind either the CFL or CFLPA on any issue.¹⁸⁴



E) CFL Health-Related Benefits

1) RETIREMENT BENEFITS

The CFL provides a pension plan for players. The CFL pension plan is a defined contribution plan, with clubs and players paying matching amounts.¹⁷³ In 2016, for example, each party contributed \$3,900 (CAD).¹⁷⁴ However, clubs will only contribute the amounts for players who are on the club's roster for nine or more games in that season.¹⁷⁵ As a defined benefit plan, the players seemingly are vested in the pension plan as soon as any money is contributed to their account.

2) INSURANCE BENEFITS

The CFL medical plan provides medical coverage,^m life insurance, and accidental death and dismemberment insurance coverage.¹⁷⁶ Dental benefits are not included in the medical plan but a “Benefit Plan Advisory Committee may agree to change the benefits, including the addition of

^m The relationship between the CFL's medical plan and the Canadian healthcare system, under which the government pays for the majority of healthcare expenses, is unclear. The Canadian healthcare system is described in more detail in Chapter 1: Club Medical Personnel.



F) MLS Health-Related Benefits

1) RETIREMENT BENEFITS

MLS offers a 401(k) plan to its players.¹⁸⁵ Regardless of whether a player contributes, MLS makes employer contributions equivalent to 3.75% of a player's base salary.¹⁸⁶ Contributions vest immediately.¹⁸⁷

2) INSURANCE BENEFITS

MLS provides players and their family members with medical insurance, dental insurance, and life insurance.¹⁸⁸

In contrast, the NFL provides a variety of wellness benefits, including access to clinicians for mental health, alcoholism, and substance abuse; child and parenting support services; elder care support services; pet care services; legal services; and, identity theft services.

Also unlike the NFL, MLS offers no health insurance benefits for former players.

3) DISABILITY BENEFITS

MLS does provide long-term disability insurance for its players equivalent to 60% of a player's salary, with a monthly maximum benefit of \$10,000.¹⁸⁹ The monthly maximum benefit is the same in the 2015 CBA as it was in the 2004 CBA.¹⁹⁰

4) WORKERS' COMPENSATION BENEFITS

MLS players are entitled to workers' compensation benefits.¹⁹¹ Additionally, like the NFL and NHL, MLS clubs that are in states that are not required to provide workers' compensation benefits are required to provide equivalent benefits.¹⁹² Thus, players on Orlando City FC are able to obtain the equivalent of workers' compensation benefits when they otherwise would have been denied coverage because Florida does not require employers to provide workers' compensation benefits. Alternatively, MLS and the MLSPU have agreed that players can file for benefits in New York state, regardless of where they play.¹⁹³ In other words, MLS will not challenge the jurisdiction of the claim.¹⁹⁴

5) EDUCATION-RELATED BENEFITS

MLS does not offer any league-wide education-related benefits. However, for players who participate in the Generation adidas program, an initiative designed to grow domestic talent, players can leave college early and money is placed in escrow for them to complete their college education at a later date.¹⁹⁵ Nevertheless, this benefit is available only to a select group of the most highly-skilled young players—it is not a league-wide benefit to all players like the NFL's Tuition Assistance Plan.

6) JOINT HEALTH-SPECIFIC COMMITTEES

MLS has a Health and Safety Committee, which includes one MLSPU representative, that is responsible for making "recommendations to the Commissioner concerning health and safety procedures and protocols."¹⁹⁶



G) Analysis

While we provide an analysis that compares the leagues on the benefits they provide players, it is worth emphasizing at least two reasons why this is not a full apples-to-apples comparison. First, the mean number of seasons of play varies across the leagues,ⁿ such that in some leagues fewer individuals will make the milestones necessary for vesting

or activation of some benefits. Second, while we lack complete data on the health risks of playing each of the sports, from what we do know the risks associated with each sport are heterogeneous in at least some respects, such that the need for health insurance and disability benefits varies from league to league.

With that caveat, Table 3-I provides a comparison of the leagues' benefits while Tables 3-J and 3-K provide a comparison of monthly payments under the Big Four leagues' retirement/pension plans in two different scenarios.

Table 3-I:
Comparison of Leagues' Benefits

Benefit	NFL	MLB	NBA	NHL	CFL	MLS
Pension Plan	Yes	Yes	Yes	Yes	Yes	No
Pension Plan Vesting Requirement	3 years (post 1992)	1 day	3 years	1 day	9 games	N/A
Severance Plan	Yes	No	No	No	No	No
401k Plan	Yes	Yes	Yes	Yes	No	Yes
Other Deferred Compensation Plan	Yes	No	Yes	No	No	No
Health Insurance (Current Players)	Yes	Yes	Yes	Yes	Yes	Yes
Health Insurance (Former Players, other than COBRA)	5 years	For life potentially	For life potentially	For life potentially	No	No
Life Insurance	Yes	Yes	Yes	Yes	Yes	Yes
Dental Insurance	Yes	Yes	Yes	Yes	Maybe	Yes
Health Reimbursement Account	Yes	No	Yes	No	No	No
Long Term Care Insurance	Yes	No	Potentially	No	No	No
Wellness Benefits	Many	Some	Some	None	None	None
Disability Benefits (Current Players)	Yes	Yes	Yes	Yes	Maybe	Yes
Disability Benefits (Former Players)	Yes	Yes	No	No	No	No
Neurocognitive Disability Benefits	Yes	No	No	Only for current players	No	No
Workers' Compensation	Yes	Partial	Yes	Yes	Prohibited by law	Yes
Education-Related Benefits	Yes	No	Yes	Yes	No	For some players
Joint Health-Specific Committee(s)	Yes	Yes	Yes	Yes	Yes	Yes

ⁿ In Chapter 5: Compensation, Table 5-I, we use the following mean career lengths: NFL – 5.0 years; MLB – 5.6 years; NBA – 4.8 years; NHL – 5.6 years; CFL – 3.2 years; and, MLS – 3.2 years.

In examining the projected monthly payouts under the Big Four Leagues' retirement/pension plans, we caution that the plans are complicated and involve many different variables to determine what a former player's monthly payment will be, including but not limited to the player's current income and cost of living adjustments. In Tables 3-J and 3-K below, we try to provide a picture of the type of retirement benefits

available to players in each of the leagues. For this analysis, we chose the age of 62 for the age at which the retired player would begin to receive benefits because in the NHL this is the earliest age at which a player can receive retirement benefits. Then, we chose to analyze players who last played in 2000 and 2015 to provide a spectrum of how the benefits change depending on when the player last played.

Table 3-J:

Projected Monthly Payments under the Big Four Leagues' Retirement Plans (Last Played in 2000 and Will Take Retirement Benefits at Age 62)

League	Experience			
	1 Year	3 Years	5 Years	10 Years
NFL	\$470	\$1,410	\$2,090	\$3,661
MLB	\$1,666	\$5,000	\$8,333	\$16,666
NBA ¹⁹⁷	\$1,792	\$5,375	\$8,958	\$17,917
NHL	Uncertain ^o			

Table 3-K:

Projected Monthly Payments under the Big Four Leagues' Retirement Plans (Last Played in 2015 and Will Take Retirement Benefits at Age 62)

League	Experience			
	1 Year	3 Years	5 Years	10 Years
NFL	\$470	\$1,720	\$2,810	\$5,160
MLB	\$1,666	\$5,000	\$8,333	\$16,666
NBA	\$1,792	\$5,375	\$8,958	\$17,917
NHL	\$1,750	\$5,250	\$8,750	\$17,500

According to the NFLPA, NFL players have “the very best benefits package in professional sports.”¹⁹⁸ This claim seems substantially true. First, the NFL offers every benefit that is provided by any of the other leagues. Second, the NFL offers several benefits that are not provided by any of the other leagues, including severance pay, long term care insurance, the Former Player Life Improvement Plan, and neurocognitive disability benefits for former players. Third, there are several benefits that only the NFL and a limited number of the other leagues provide: (a) only the NFL, MLB, NBA, and NHL provide health insurance (beyond COBRA) for former players; (b) only the NFL, MLB, and

NBA provide players with mental health and substance abuse treatment; (c) only the NFL and NBA offer a health reimbursement account; (d) only the NFL and MLB offer disability benefits to former players; (e) only the NFL and NBA offer education-related benefits for all players; and, (f) only the NFL, NBA, NHL, and MLS guarantee workers' compensation benefits to all of their players.

While overall the NFL thus appears to be the best league for benefits, comparing the leagues' benefit offerings is challenging and not without judgment calls. For example, considering the NFL's higher injury rates (see Chapter 2: Injury

^o Prior to 2012, when a new CBA established a new Retirement Plan and 401(k) plan, clubs contributed amounts into investment accounts on behalf of the players on an annual basis. For example, in 2012, if a player had played less than 160 games in his career, the club contributed \$23,820 in Canadian dollars into the player's account that season. If the player had played 160 or more career games, the club contributed \$50,000 into the player's account. The amounts a player would receive under this plan after their career depends on investment results and when the player starts to draw benefits from the account.

Rates and Policies), it seems appropriate that NFL players would be entitled to more benefits, such as the NFL's Long Term Care Insurance Plan and Former Player Life Improvement Plan. In particular, given the disparities in concussion rates, neurocognitive disability benefits are likely appropriate in the NFL but may not be needed in some of the other leagues. Moreover, we have identified three areas in which the NFL might learn lessons for improvement from one or more of the other leagues.

First, the NFL's health insurance options for former players appear to be less favorable than those offered by MLB, the NBA and the NHL. Currently, for players who have vested under the Retirement Plan (which requires at least three years of Credited Service for players after 1992), the NFL provides the same health insurance as available to current players for five additional years or the former player can also obtain health insurance via COBRA. However, COBRA is designed to be a temporary solution and is generally regarded as expensive relative to other health insurance plans.¹⁹⁹ In contrast, MLB's Benefit Plan provides former players the option to continue (or obtain) the same health insurance benefits as current players for life. While former MLB players have to pay more for their health insurance than current MLB players, presumably the plans offered are cheaper than COBRA coverage or else the players would have opted for COBRA coverage. Similarly, the NBA's Retiree Medical Plan is available to former players for life free of charge and the NHL allows former players who played at least 160 games to continue with the NHL's insurance plan for life.²⁰⁰

The NFL does offer a variety of health benefits that might partially fill the gap for former players, including health reimbursement accounts, long term care insurance, benefits for uninsured former players, and disability benefits. Nevertheless, players often have to go through a difficult process to obtain some of these benefits after they have already had to pay for the care, or care is delayed until they can obtain the benefits. We believe there may be advantages to allowing former players to continue to obtain some form of the same health insurance that they were able to receive while playing—ensuring, among other things, that they can remain in the same network of doctors.

Second, as shown in Tables 3-J and 3-K, the monthly payments to former NFL players under the Retirement Plan are seemingly the smallest payments of the Big Four leagues. Nevertheless, when all of the benefits available to former players are packaged together, it is likely that the NFL's benefits are the most valuable due to the number of benefits that are available. Consequently, lower Retirement Plan payments might simply reflect the NFLPA's preferred

allocation of total benefits, *i.e.*, a shifting of the value of benefits away from the Retirement Plan and to other benefits instead. As with health insurance benefits, the NFL's Retirement Plan payments require players to undertake relatively little administrative work to receive and they are a more secure and stable income source and benefit than some of the other benefits made available by the NFL. Nevertheless, some might believe it is a better use of player benefit money to fund benefits and programs for former players who are disabled or impaired in some way as opposed to providing larger Retirement Plan payments to all eligible former players. All the benefits available to NFL players must be viewed collectively. For these reasons, as discussed in the Recommendation, we recommend the NFL consider whether the current allocation of player benefits is the preferred, most just, and most effective allocation.

Third, MLB and NHL players are vested in their pension plans on the first day they play in those leagues. By comparison, the NFL requires players to accrue three years of experience (or more depending on when they played), before they are eligible for retirement benefits (as well as many other benefits). The mean career of NFL and MLB players are both around five years long.²⁰¹ Yet, the NFL's Retirement Plan likely excludes and has excluded thousands of former players who did not earn three Credited Seasons. It is unclear why the NFL requires three years of service (the NBA does as well). The minimum service time clearly reduces costs of the Retirement Plan, but might also reflect a policy decision as to when an NFL player has sufficiently contributed to the NFL to deserve pay under the Retirement Plan. Below, we make a recommendation concerning the vesting requirement for the NFL's Retirement Plan.

In addition to the above-described potential deficiencies, there is another issue worthy of comment. To obtain Neurocognitive Disability Benefits after their career is over, the NFL requires players to execute a release releasing the NFL and clubs from any liability for head or brain injuries when they apply for the benefits. Similarly, the NHL requires players to release the NHL, clubs, and a variety of other parties for players to obtain career-ending disability insurance benefits. It could be argued that these releases unfairly condition benefits to which players are entitled on the relinquishment of their legal rights. On the other hand, the releases could be seen to ensure players do not seek more benefits than those to which they are entitled and to prevent litigation. As there are persuasive points for and against the releases, we do not make a recommendation concerning them. Instead, we merely highlight the issue for potential future consideration by the leagues, unions, and others.

H) Recommendation

Recommendation 3-A: The NFL and NFLPA should consider whether change is necessary concerning player benefit plans.

As discussed above, we identified three potential areas of concern regarding the benefit plans offered by the NFL. Also as discussed above, the benefits available to NFL players must be viewed in the context of one another: increasing one benefit might mean a decrease in another benefit. Below, we identify and discuss possible changes to the benefit plans, the implementation of which must be weighed collectively.

- The NFL and NFLPA should consider providing former players with health insurance options that meet the needs of the former player population for life: While the NFL provides significant benefits to former players, players likely do not take full advantage of those benefits due to the associated administrative burdens.²⁰² Additionally, a consistent and reliable health insurance plan seems preferable to ad hoc and uncertain benefits. The NFL and NFLPA should consider whether it would be more appropriate to shift some of the value of benefits away from the unplanned benefits (*e.g.*, disability benefits and the health reimbursement account) to more stable health insurance options.^p Where players have only played one or two seasons (and perhaps games), there might be questions as to whether it is appropriate to provide lifetime health insurance to someone who was employed for such a short period of time. On the other hand, only a few games or seasons can have life-lasting effects on a player. One option worth considering is tiering health insurance benefits and allowing those with less Credited Seasons to qualify for some but not full benefits.
- The NFL and NFLPA should consider increasing the amounts available to former players under the Retirement Plan: The monthly retirement benefits represent a more stable benefit than the other valuable but still uncertain benefits. Consequently, the NFL and NFLPA should consider whether it would be more beneficial to shift some of the value of benefits away from the unplanned benefits to the more stable Retirement Plan monthly payments.
- The NFL and NFLPA should consider reducing the vesting requirement for the Retirement Plan: The purpose of the NFL's three-year vesting requirement is unclear. The vesting requirement results in a considerable portion of former players being unable to collect any retirement benefits. We acknowledge that there may be appropriate policy reasons for such a limitation, such as a determination as to when a player has sufficiently contributed to the NFL. Indeed, many employers require a certain number of years of service before accruing certain benefits.^q If the vesting requirement is instead principally motivated by cost, then the distribution of benefits among former players should be reconsidered to determine what is maximally beneficial for player health. In other words, is the current distribution of benefits among former players, which largely excludes players with less than three years of experience, preferred by the NFL, NFLPA, and players, or would it be preferable to reduce the benefits to players with more than three years of experience to provide some benefits to those with less than three years of experience? While these considerations are not easy and require a delicate balance, the exclusion of a significant portion of former players from the Retirement Plan requires an examination of the vesting requirement. As with health insurance benefits, one option worth considering is tiering Retirement Plan benefits and allowing those who have played less than three Credited Seasons to qualify for some if not full benefits.

^p According to columnist Mike Freeman, the NFLPA did analyze the potential costs of providing NFL players with health insurance for life and found the cost to be approximately \$2 billion. Mike Freeman, *Two Minute Warning: How Concussions, Crime, and Controversy Could Kill the NFL (and What the League Can Do to Survive)*, xxv (2015).

^q The principal distinction would be that employers require a certain number of years of service to, in part, encourage employees to continue working for them rather than obtaining employment elsewhere. This incentive structure is not needed in the NFL—where the vast majority of players play in the NFL for as long as they are able.

Endnotes

- 1 See Thomas Richardson et al., *The relationship between personal unsecured debt and mental and physical health: A systematic review and meta-analysis*, 33 *Clinical Psychol. Rev.* 8, 1148-62 (2013).
- 2 Pablo S. Torre, *How (and Why) Athletes Go Broke*, *Sports Illustrated*, Mar. 23, 2009, <http://www.si.com/vault/2009/03/23/105789480/how-and-why-athletes-go-broke>, archived at <http://perma.cc/7KVD-QA72>.
- 3 David R. Weir, et al., *National Football League Player Care Foundation Study of Retired NFL Players* 37, Inst. for Social Res. at Univ. of Mich. (2009), <http://ns.umich.edu/Releases/2009/Sep09/FinalReport.pdf>, archived at <http://perma.cc/WY8A-HZ8Z>.
- 4 Kyle Carlson, et al., *Bankruptcy Rates Among NFL Players with Short-Lived Income Spikes* 8, Nat'l Bureau of Economic Res. (April 2015), <http://www.nber.org/papers/w21085.pdf>, archived at <http://perma.cc/Y8A5-NJLZ>. The study found that the rate of bankruptcy among the general population in the 25–34 year age group was very similar to the bankruptcy rate of NFL players. However, the general population's average income is almost certainly substantially less than that of the average NFL player.
- 5 Linda Holmes, *ESPN's 'Broke' Looks At The Many Ways Athletes Lose Their Money*, NPR (Oct. 2, 2012, 1:35 PM), <http://www.npr.org/blogs/monkeysee/2012/10/02/162162226/espn-s-broke-looks-at-the-many-ways-athletes-lose-their-money>, archived at <https://perma.cc/NPK7-QLBX>.
- 6 See Jim Baumbach, *Life After Football*, *Newsday*, Jan. 22, 2015, <http://data.newsday.com/projects/sports/football/life-football/>, archived at <http://perma.cc/77DP-LUUE>.
- 7 Pablo S. Torre, *How (and Why) Athletes Go Broke*, *Sports Illustrated*, Mar. 23, 2009, <http://www.si.com/vault/2009/03/23/105789480/how-and-why-athletes-go-broke>, archived at <http://perma.cc/7KVD-QA72>.
- 8 See Ken Belson, *When Settlement Buys Time*, *N.Y. Times*, Jul. 19, 2014, <http://www.nytimes.com/2014/07/19/sports/football/former-nfl-players-make-difficult-choice-in-opposing-concussion-settlement.html>, archived at <http://perma.cc/5P3D-9A88>; Sally Jenkins and Rick Maese, *Do No Harm: Who Should Bear The Costs Of Retired NFL Players' Medical Bills?* *Wash. Post*, May 9, 2013, http://www.washingtonpost.com/sports/redskins/do-no-harm-who-should-bear-the-costs-of-retired-nfl-players-medical-bills/2013/05/09/2dae88ba-b70e-11e2-b568-6917f6ac6d9d_story.html, archived at <http://perma.cc/VER2-EM24>.
- 9 See, e.g., Melissa B. Jacoby, Teresa A. Sullivan, Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 *N.Y.U. L. Rev.* 375 (2001) (empirical data demonstrating how many American families declare bankruptcy in the aftermath of illness or other healthcare crisis); Christopher Tarver Robertson, Richard Egelhof, Michael Hoke, *Get Sick, Get Out: The Medical Causes of Home Mortgage Foreclosures*, 18 *Health Matrix* 65 (2008) (empirically demonstrating and discussing the role that health crises have in home foreclosures).
- 10 Gabe Feldman, *Closing the Floodgates: The Battle Over Workers' Compensation Rights in California*, 8 *Flu L. Rev.* 107, 109 (2012).
- 11 Lex Larson, *Workers' Compensation Law*, § 1.01 (Matthew Bender 2014).
- 12 Lex Larson, *Workers' Compensation Law*, § 1.03 (Matthew Bender 2014).
- 13 Howard Berkes, *Injured Workers Suffer As 'Reforms' Limit Workers' Compensation Benefits*, *Nat'l Pub. Radio*, Mar. 4, 2015, <http://www.npr.org/2015/03/04/390441655/injured-workers-suffer-as-reforms-limit-workers-compensation-benefits>, archived at <https://perma.cc/6MB8-56Y4> (discussing states' reductions in maximum workers' compensation benefits).
- 14 See, e.g. 2011 NFL CBA, Art. 41, § 4.
- 15 See, e.g., 2011 CBA, App. A, ¶ 9.
- 16 With the assistance of the NFLPA, we were able to gain access to lengthy summaries of NFL plan documents.
- 17 These programs can be found at the NFL's Player Engagement Department website at <https://www.nflplayerengagement.com>.
- 18 See *NFLPA Externship Program Enters Second Year*, *Nat'l Football League Players Ass'n*, Feb. 23, 2015, <https://nflpa.com/news/all-news/nflpa-externship-program-enters-second-year>, archived at <https://perma.cc/AZX7-G8AY>; *Active Players—Grow Experience*, *Nat'l Football League Players Ass'n*, <https://nflpa.com/active-players/playerdevelopment/experience> (last visited Apr. 7, 2015), archived at <https://perma.cc/AZX7-G8AY>; *A Winning Team: Kelley School of Business and the NFLPA*, *Kelley Sch. of Bus.*, https://nflpawebqa.blob.core.windows.net/media/Default/PDFs/Player%20Development/NFLPA-Kelley_%20Program.pdf (last visited Apr. 7, 2015), archived at <https://perma.cc/E4UJ-N6CT>.
- 19 See Bert Bell/Pete Rozelle NFL Player Retirement Plan (Apr. 1, 2012) § 1.11 (defining "Credited Season"); 2011 CBA, Art. 26, § 2 (same).
- 20 CBA, Art. 12, § 6(c)(i).
- 21 CBA, Art. 1.
- 22 CBA, Art. 12, § 2.
- 23 CBA, Art. 12, § 6(c)(v).
- 24 The summary provided in this Section comes from reviewing a Summary Plan Description for the Severance Pay Plan prepared for NFL players by the NFL Management Council, the administrators of the Severance Pay Plan.
- 25 The summary provided in this Section comes from reviewing a Summary Plan Description for the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Retirement Plan") prepared for NFL players by the Retirement Board, the administrators of the Retirement Plan.
- 26 Aaron Gordon, *Battle for Benefits, Part 3: "Don't Make Proud Men Beg"*, *Vice Sports* (Sept. 18, 2015), https://sports.vice.com/en_us/article/battle-for-benefits-part-3-dont-make-proud-men-beg, archived at <https://perma.cc/YP4J-8AGY>.
- 27 *Id.*
- 28 See Mark Fainaru & Steve Fainaru, *League of Denial: The NFL, Concussions, and the Battle for Truth* 86–87 (2013).
- 29 Pursuant to the Employee Retirement Income Security Act ("ERISA"), individuals claiming entitlement to benefits under a retirement plan are entitled to bring a civil action to enforce or clarify their rights under the plan. 29 U.S.C. § 1132(a). Former players routinely sue the Retirement Plan alleging they were wrongfully denied benefits, with mixed success. See, e.g., *Atkins v. Bert Bell/Pete Rozelle NFL Player Retirement Plan*, 694 F.3d 557 (5th Cir. 2012) (plan administrator's determination that player was not entitled to additional benefits was not an abuse of discretion); *Giles v. Bert Bell/Pete Rozelle NFL Player Retirement Plan*, 925 F. Supp. 2d 700 (D.Md. 2012) (Retirement Board's classification of participant's disability as "inactive" rather than "Football Degenerative" was not reasonable decision supported by substantial evidence in the record); *Moore v. Bert Bell/Pete Rozelle NFL Player Retirement Plan*, 282 Fed.Appx. 599 (9th Cir. 2008) (Retirement Board's decision to terminate player's benefits was not based on reasonable interpretation of plan's terms); *Johnson v. Bert Bell/Pete Rozelle NFL Player Retirement Plan*, 468 F.3d 1082 (8th Cir. 2006) (plan administrator did not abuse its discretion in setting date of disability as time of disability determination by physician to whom plan had referred former player); *Boyd v. Bert Bell/Pete Rozelle NFL Players Retirement Plan*, 410 F.3d 1173 (9th Cir. 2005) (administrator did not abuse its discretion in rejecting retiree's claim, given ambiguity as to cause of neurologic disability at issue); *Courson v. Bert Bell NFL Player Retirement Plan*, 75 F. Supp. 2d 424 (W.D.Pa. 1999) *aff'd* 214 F.3d 136 (3d Cir. 2000) (plan administrator's determination that former player was not disabled was not arbitrary or

- capricious); *Brumm v. Bert Bell NFL Retirement Plan*, 995 F.2d 1433 (8th Cir. 1993) (trustees' interpretation of ERISA plan to allow higher level of disability benefits only in cases involving single, identifiable football injury, and excluding cases of disability resulting from football career's overall impact on body, was unreasonable in light of plan's goals).
- 30 *Oversight of the Nat'l Football League (NFL) Retirement System: Hearing Before the Comm. On Commerce, Sci. & Transp.*, 110th Cong. 1177 (2007), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg76327/html/CHRG-110shrg76327.htm>, archived at <https://perma.cc/RK38-GBYQ?type=pdf>.
- 31 Aaron Gordon, *Battle for Benefits, Part 3: "Don't Make Proud Men Beg"*, Vice Sports (Sept. 18, 2015), https://sports.vice.com/en_us/article/battle-for-benefits-part-3-dont-make-proud-men-beg, archived at <https://perma.cc/YP4J-8AGY>.
- 32 *Id.*
- 33 The summary provided in this Section comes from reviewing a Summary Plan Description for the Player Annuity Plan prepared for NFL players by the Annuity Board, the administrators of the Player Annuity Plan.
- 34 An annuity plan is one in which a person contributes money to an investment account and then, at a later date (typically in retirement), the account makes regular payments to the person. *Definition of Annuity*, Investopedia, <http://www.investopedia.com/terms/a/annuity.asp> (last visited Sep. 18, 2015), archived at <http://perma.cc/CV69-CQC7>.
- 35 *See IRS Announces 2016 Pension Plan Limitations; 401(k) Contribution Limit Remains Unchanged at \$18,000 for 2016*, Internal Revenue Service, Oct. 21, 2015, [https://www.irs.gov/uac/Newsroom/IRS-Announces-2016-Pension-Plan-Limitations%3B-401\(k\)-Contribution-Limit-Remains-Unchanged-at-\\$18,000-for-2016](https://www.irs.gov/uac/Newsroom/IRS-Announces-2016-Pension-Plan-Limitations%3B-401(k)-Contribution-Limit-Remains-Unchanged-at-$18,000-for-2016), archived at <https://perma.cc/G28S-9K6R>.
- 36 The summary provided in this Section comes from reviewing a Summary Plan Description for the Second Career Savings Plan prepared for NFL players by the Savings Board, the administrators of the Second Career Savings Plan.
- 37 A 401(k) is a retirement plan provided for in Section 401(k) of the Internal Revenue Code 26 U.S.C. § 401(k). Under a 401(k), employees contribute a certain percentage of their salary to an investment account before taxes are withheld from the salary. Taxes on the income are deferred until the employee withdraws money from the 401(k) account, which is generally not permitted until the employee reaches age 59½. An additional benefit of 401(k) plans is that often times employers contribute to the accounts and these contributions are also tax-deferred. *See 401k Plans*, Internal Revenue Service, <http://www.irs.gov/Retirement-Plans/401k-Plans> (last visited Sep. 18, 2015), archived at <http://perma.cc/DN7N-WVKS>.
- 38 The Summary Plan Description for the Second Career Savings Plan does not specify whether a player who is employed by a club as a coach or in some other capacity is not eligible for the benefits at 45.
- 39 *Quotes from NFLPA Press Conference*, Nat'l Football League Players Ass'n (Feb. 4, 2016), <https://www.nflpa.com/news/all-news/quotes-from-nflpa-sb50-press-conference>, archived at <https://perma.cc/2GZH-FQ37>.
- 40 The summary provided in this Section comes from reviewing a Summary Plan Description for the Player Insurance Plan prepared for NFL players by Aon Hewitt, the administrators of the Player Insurance Plan.
- 41 COBRA, 29 U.S.C. §§ 1161–69, requires continuation coverage to be offered to covered employees, their spouses, former spouses, and dependent children when group health coverage would otherwise be lost due to certain specific events, including, as would be relevant in the NFL, “the termination (other than by reason of such employee’s gross misconduct), or reduction of hours, of the covered employee’s employment.” 29 U.S.C. § 1163(2).
- 42 The summary provided in this Section comes from reviewing a Summary Plan Description for Health Reimbursement Account Plan prepared for NFL players by the HRA Board, the administrators of the Health Reimbursement Account Plan.
- 43 Upon the player’s death, the player’s spouse and dependents can continue to utilize the HRA Plan until the account is exhausted or they die.
- 44 The summary provided in this Section comes from reviewing a Summary Plan Description for the Former Player Life Improvement Plan prepared for NFL players by Aon Hewitt, the administrators of the Former Player Life Improvement Plan.
- 45 The summary provided in this Section comes from reviewing the NFL Player Disability & Neurocognitive Benefit Plan.
- 46 The Initial Claims Committee consists of three members: one appointed by the NFL; one appointed by the NFLPA; and, a medical professional jointly chosen by the parties.
- 47 The Disability Board consists of three members selected by the NFL and three members selected by the NFLPA.
- 48 League football activities include any NFL “pre-season, regular-season, or post-season game, or any combination thereof, our out of League football activity supervised by a[] [Club], including all required or directed activities.”
- 49 Edgeworth Economics, *DRAFT Dangers of the Game: Injuries in the NFL—Analysis for the NFLPA* (Sept. 6, 2010), http://esq.h-cdn.co/assets/cm/15/07/54dae83730ce3_-Dangers-of-the-Game-Draft-Esquire.pdf, archived at <http://perma.cc/T3MH-YTVU>.
- 50 *Id.*
- 51 *Id.*
- 52 *Id.*
- 53 *Id.*
- 54 The summary provided in this Section comes from reviewing a Summary Plan Description for the 88 Plan prepared for NFL players by the 88 Board, the administrators of the 88 Plan.
- 55 CBA, Art. 41, § 1.
- 56 *See* 2011 CBA, Art. 41, § 3 (identifying Florida as a state that does not require workers’ compensation coverage).
- 57 For more on the role of workers’ compensation in the NFL, *see* Christopher R. Deubert, I. Glenn Cohen, Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, § 8(B) (2016).
- 58 CBA, Art. 50, § 1(a).
- 59 CBA, Art. XI.
- 60 CBA, Art. 50, § 1(d). “Within 60 days of the initiation of an investigation, two or more neutral physicians will be selected to investigate and report to the Joint Committee on the situation. The neutral physicians shall issue a written report within 60 days of their selection, and their recommendations as to what steps shall be taken to address and correct any issues shall be acted upon by the Joint Committee.” *Id.*
- 61 In *Stringer v. Nat'l Football League*, the Court also expressed concerns about the effectiveness of the Joint Committee: “While the NFL is required to give ‘serious and thorough consideration’ to recommendations of the Joint Committee, the CBA imposes no independent duty on the NFL to consider health risks arising from adverse playing conditions, or to make recommendations for rules, regulations or guidelines for the Clubs to follow.” 474 F. Supp.2d 894, 906 (S.D. Ohio 2007).
- 62 This information was provided by the NFLPA.
- 63 *Id.*
- 64 CBA, Art. 39, § 3(a).
- 65 *Id.*
- 66 The three NFL-appointed members of the ACC are: Dr. Matthew Matava, club doctor for the St. Louis Rams and former President of the NFL Physicians Society (“NFLPS”); Rick Burkholder, athletic trainer for the Kansas City Chiefs and President of the Professional Football Athletic Trainers (“PFATS”); and, Dr. Elliott Hershman, Chairman of NFL Injury and Safety Panel, Department of Orthopaedic Surgery, Lenox Hill Hospital, and Team Orthopedist, New York Jets. The three NFLPA-appointed members of the ACC are: Dr. Anthony Alessi, neurologist and Associate Clinical Professor of Neurology, University of Connecticut; Dr. Ross McKinney, Director, Trent Center for Bioethics, Humanities & History

- of Medicine, Duke University & School of Medicine; and, Dr. Johnny Benjamin, orthopedist and Director, Pro Spine Center.
- 67 The Benefit Plan can be found as an exhibit in a lawsuit brought by the widow of former MLB pitcher Jose Lima. See *Lima-Leclerc v. Major League Baseball Players Benefit Plan*, 13-cv-271 (S.D.N.Y.), ECF No. 11-5.
- 68 *Id.* § 7.2.
- 69 *MLBPA, MLB Announce Details of New Labor Agreement*, MLBPA (Dec. 2, 2016), http://www.mlbplayers.com/ViewArticle.dbml?DB_OEM_ID=34000&ATCLID=211336390, archived at <https://perma.cc/4XUA-2DAW>.
- 70 See Benefit Plan at Tables 1–9.
- 71 *Id.* § 7.12–13. See also *id.* at Tables 1–9. U.S. Department of Treasury Regulations cap maximum annual player benefits at \$200,000. *Id.* § 9.1.
- 72 See *id.*
- 73 *Id.* § 27.62.
- 74 *Id.*
- 75 See *id.* (defining a “Vested Member”); *id.* § 27.37 (defining “Normal Retirement Date”).
- 76 *Id.*
- 77 See Benefit Plan at Tables 1–9 (“For fractional years of credited service, benefits shall be determined by interpolation.”)
- 78 Benefit Plan § 6.1.
- 79 *Id.* § 7.6(b).
- 80 *IRS Announces 2016 Pension Plan Limitations*, Internal Revenue Service, Oct. 21, 2015, <https://www.irs.gov/uac/newsroom/irs-announces-2016-pension-plan-limitations-401-k-contribution-limit-remains-unchanged-at-18-000-for-2016>, archived at <https://perma.cc/8AQV-YZNB>.
- 81 Benefit Plan § 8.1. In 2016, the maximum amount an employee could contribute to a 401(k) plan was \$18,000. *IRS Announces 2015 Pension Plan Limitations*, Internal Revenue Service, Oct. 23, 2014, <http://www.irs.gov/uac/Newsroom/IRS-Announces-2015-Pension-Plan-Limitations-1>, archived at <http://perma.cc/4DFY-BQAL>.
- 82 Benefit Plan § 8(g).
- 83 See *id.* § 8.1(b)(i) (permitting clubs to make contributions “in their discretion”).
- 84 MLB Comments and Corrections (Sept. 30, 2016).
- 85 Benefit Plan § 8.5.
- 86 *MLBPA, MLB Announce Details of New Labor Agreement*, MLBPA (Dec. 2, 2016), http://www.mlbplayers.com/ViewArticle.dbml?DB_OEM_ID=34000&ATCLID=211336390, archived at <https://perma.cc/4XUA-2DAW>.
- 87 Benefit Plan § 13.2(a)(i)–(iv).
- 88 *Id.* § 13.2(a)(iv).
- 89 *Id.* §§ 13.3, 13.4(a). Players are entitled to extend their healthcare coverage under the inactive health benefits program until they are eligible for Medicare at age 65. *Id.* § 13.4(d).
- 90 MLB Comments and Corrections (Mar. 15, 2017).
- 91 *Id.*
- 92 Benefit Plan §§ 14.3–14.8.
- 93 *MLBPA, MLB Announce Details of New Labor Agreement*, MLBPA (Dec. 2, 2016), http://www.mlbplayers.com/ViewArticle.dbml?DB_OEM_ID=34000&ATCLID=211336390, archived at <https://perma.cc/4XUA-2DAW>.
- 94 Benefit Plan § 10.1.
- 95 *Id.* § 10.2(a). If the player was not injured as an active member or within five years of becoming inactive—or if the player cannot prove by clear and convincing evidence that his disability is the result of his active services—he may still receive disability benefits equal to one-twelfth of his total income from employment or self-employment during the year preceding his disability (capped at a high of \$5,000 and a low of \$2,500) if he is otherwise eligible. *Id.*
- 96 *Id.* § 10.3(b).
- 97 See 2012 MLB CBA, Art. IX, § E (entitling player to receive unpaid balance of salary if contract was terminated after injury “less all workers’ compensation payments received by the Player”); Art. XXIII, § D(1)(g) (including medical “costs reimbursed or paid for through workers’ compensation” as part of the definition for Player Benefit Costs).
- 98 As discussed in the Introduction to this Section, the normal trade-off for workers’ compensation benefits is that the injured employee cannot sue the employer for injuries suffered in the course of employment. Even though Florida players do not receive workers’ compensation benefits, they likely still cannot sue the club. The CBA also presents a potential obstacle against any such claim. Common law claims such as negligence are generally preempted by the Labor Management Relations Act (“LMRA”). 29 U.S.C. § 185. The LMRA bars or “preempts” state common law claims 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.” *Allis-Chambers Corp. v. Lueck*, 471 U.S. 202, 213 (1985). In order to assess a club’s duty to a player—an essential element of a negligence claim—the Court may have to refer to and analyze the terms of the CBA, resulting in the claim’s preemption. So long as the player’s claim is “inextricably intertwined” with the CBA, it will be preempted. Instead, such claims are intended to be brought pursuant to the arbitration provisions in the CBA.
- 99 MLB CBA, Art. XV, § D.
- 100 *MLBPA, MLB Announce Details of New Labor Agreement*, MLBPA (Dec. 2, 2016), http://www.mlbplayers.com/ViewArticle.dbml?DB_OEM_ID=34000&ATCLID=211336390, archived at <https://perma.cc/4XUA-2DAW>.
- 101 MLB CBA, Art. XIII, § A(1).
- 102 MLB CBA, Art. XIII, § A(3).
- 103 MLB CBA, Art. XIII, § A(4). Nevertheless, the SHAC does not appear to have completed any serious investigations, other than looking into a rise in broken bats in 2008. *Major League Baseball, MLB, MLBPA Adopt Recommendations of Safety and Health Advisory Committee*, Major League Baseball (Dec. 9, 2008), available at http://mlb.mlb.com/pa/pdf/health_advisory_120908.pdf, archived at <https://perma.cc/QN49-XDBJ>.
- 104 See 2017 NBA CBA, Art. VII, § 2(a) (explaining that the Salary Cap, *i.e.*, the amounts available to players in the form of salary, is reduced by the amount spent on player benefits).
- 105 See Sonya Stinson, *Go Long: Retirement Plans for Pro Athletes*, Fox Bus., <http://www.foxbusiness.com/personal-finance/2012/09/25/go-long-retirement-plans-for-pro-athletes/>, Sep. 25, 2012, archived at <http://perma.cc/TR69-SG8Z>; Ron Kroichick, *Pensions in Pro Sports: NBA All-Star break brought big boost to Ezersky*, S.F. Chron., Mar. 18, 2007, <http://www.sfgate.com/sports/kroichick/article/PENSIONS-IN-PRO-SPORTS-NBA-All-Star-break-2609494.php>, archived at <https://perma.cc/9JTS-W7S6>. “Years of Service” means the number of years of NBA service credited to a player in accordance with the following: a player will be credited with one (1) year of NBA service for each year that he is on an NBA Active List or Inactive List for one (1) or more days during the Regular Season.” 2017 NBA CBA, Art. I, § 1(iiii).
- 106 See Scott Soshnick, *NBA Players Forced to Save Toward Retirement for First Time*, Bloomberg Bus., Jul. 12, 2012, <http://www.bloomberg.com/news/articles/2012-07-12/nba-players-forced-to-save-toward-retirement-for-first-time>, archived at <http://perma.cc/EV83-V42Z> (mentioning that NBA players can begin receiving their pension at 45).
- 107 NBA, CBA Art. IV, § 1(a)(1).
- 108 NBA, CBA Art. IV, § 1(a)(2).
- 109 NBA CBA, Art. IV, § 1(c).
- 110 *IRS Announces 2015 Pension Plan Limitations*, Internal Revenue Service, Oct. 23, 2014, <http://www.irs.gov/uac/Newsroom/IRS-Announces-2015-Pension-Plan-Limitations-1>, archived at <http://perma.cc/4DFY-BQAL>.
- 111 NBA, CBA, Art. IV, § 2.
- 112 See Jay MacDonald, *Professional Athletes’ Big-League Tax Bills*, Fox Bus., Mar. 15, 2012, <http://www.foxbusiness.com/personal-finance/2012/03/15/professional-athletes-big-league-tax-bills/>, archived

- at <http://perma.cc/2WDF-RULG>; Mark Riddix, *Top Pro Athlete Pension Plans*, Investopedia, July 16, 2010, <http://www.investopedia.com/financial-edge/0710/top-pro-athlete-pension-plans.aspx>, archived at <http://perma.cc/SR8A-HV72>. See also *Top 15 Sports Organizations with the Best 401k Plans*, BrightScope, Jun. 25, 2013, <http://blog.brightscope.com/2013/06/25/top-15-sports-organizations-with-the-best-401k-plans/>, archived at <http://perma.cc/XKT4-NNDZ> (rating the plan as the best in professional sports, in part because of generous contributions of NBA clubs).
- 113 NBA CBA, Art. IV § 4(a).
- 114 NBA CBA, Art. IV, § 4(d)(1).
- 115 This information was provided by the NBA.
- 116 See 2011 NBA CBA, Art. IV, § 4(b)(3).
- 117 *Id.*
- 118 *Voluntary Employee Beneficiary Association — 501(c)(9)*, Internal Revenue Service, Jan. 13, 2015, <http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Voluntary-Employee-Beneficiary-Association-501%28c%29%289%29>, archived at <http://perma.cc/XGW2-WXEK>. The VEBA is funded through 1% of Basketball Related Income. 2011 NBA CBA Art. IV § 4(c).
- 119 NBA CBA, Art. IV, § 3(a)(9).
- 120 NBA CBA, Art. IV, § 3(a).
- 121 NBA CBA, Art. IV, § 3(a)(9).
- 122 *NBPA-NBA Supplemental Benefit Plan*, CitizenAudit, July 2014, http://pdfs.citizenaudit.org/2014_07_EO/20-1260597_9900_201306.pdf, archived at <http://perma.cc/EG2S-XXCL>.
- 123 *Id.*
- 124 See 2011 NBA CBA, Art. IV, § 3(b).
- 125 The CBA does not define what it means to be a “resident” of Canada.
- 126 NBA CBA, Art. IV, § 3(a)(6)(i).
- 127 *Current NBA Players Break New Ground by Choosing to Fund Health Insurance for Retired NBA Players*, Nat’l Basketball Players Ass’n (July 27, 2016), available at <http://nbpa.com/current-nba-players-break-new-ground-by-choosing-to-fund-health-insurance-for-retired-nba-players/>, archived at <https://perma.cc/4UKC-6KUU>.
- 128 This information was provided by the NBA.
- 129 NBA CBA, Art. IV § 3(a)(2)(ii).
- 130 NBA CBA, Art. IV, § 6(a).
- 131 NBA CBA, Art. IV, § 3(a)(7).
- 132 *Id.*
- 133 NBA CBA, Art. IV, § 5(b).
- 134 *Id.*
- 135 NBA CBA, Art. XXII § 2.
- 136 NBA CBA, Art. XXII § 8.
- 137 NBA CBA, Art. XXII, § 9(b).
- 138 NBA CBA, Art. XXXIII, § 2 (d)(i).
- 139 NBA CBA, Art. XXXIII, § 2 (d)(ii).
- 140 See 2013 NHL CBA, § 50.4(a)-(b) (explaining that “Players’ Share” of league revenues is equal to the clubs’ aggregate salaries plus player benefits).
- 141 “Actuarial equivalence” is a “[g]eneral term used for applying some measurement to two benefit plans to see if resulting values are sufficiently close for the specified purpose.” John M. Bertko and Cori E. Uccello, *Comparing Health Benefit Plans: Demystifying “Actuarial Equivalence,”* Am. Acad. of Actuaries, Jun. 11, 2008, http://www.actuary.org/briefings/pdf/equivalence2_july08.pdf, archived at <http://perma.cc/23VS-LBLP>.
- 142 NHL CBA, § 21.15.
- 143 NHL CBA, § 21.13.
- 144 A player earned “credited service” for each regular season game he is on the club’s roster. 2013 NHL CBA, § 21.14.
- 145 *Id.* Additionally, a player who has five years of credited service is eligible, upon becoming totally and permanently disabled, to receive pension benefits under the Retirement Plan equal to “the value of his accrued pension benefits, actuarially reduced to the age of commencement.” 2013 NHL CBA, Art. 21, § 18.
- 146 NHL CBA, § 21.11(a)(i).
- 147 See *IRS Announces 2016 Pension Plan Limitations; 401(k) Contribution Limit Remains Unchanged at \$18,000 for 2016*, Internal Revenue Service, Oct. 21, 2015, [https://www.irs.gov/uac/Newsroom/IRS-Announces-2016-Pension-Plan-Limitations%3B-401\(k\)-Contribution-Limit-Remains-Unchanged-at-\\$18,000-for-2016](https://www.irs.gov/uac/Newsroom/IRS-Announces-2016-Pension-Plan-Limitations%3B-401(k)-Contribution-Limit-Remains-Unchanged-at-$18,000-for-2016), archived at <https://perma.cc/G28S-9K6R>.
- 148 NHL CBA, § 21.16.
- 149 *Senior Retired Players Fund Increased*, Nat’l Hockey League Player Ass’n, Jul. 31, 2013, www.nhlpa.com/news/senior-retired-players-fund-increased, archived at <http://perma.cc/YYD8-KZCQ>.
- 150 *Id.*
- 151 *Id.*
- 152 See *IRS Announces 2016 Pension Plan Limitations; 401(k) Contribution Limit Remains Unchanged at \$18,000 for 2016*, Internal Revenue Service, Oct. 21, 2015, [https://www.irs.gov/uac/Newsroom/IRS-Announces-2016-Pension-Plan-Limitations%3B-401\(k\)-Contribution-Limit-Remains-Unchanged-at-\\$18,000-for-2016](https://www.irs.gov/uac/Newsroom/IRS-Announces-2016-Pension-Plan-Limitations%3B-401(k)-Contribution-Limit-Remains-Unchanged-at-$18,000-for-2016), archived at <https://perma.cc/G28S-9K6R>.
- 153 NHL CBA, § 23.2.
- 154 NHL CBA, § 23.6(a).
- 155 See 2013 NHL CBA, § 23.6(d).
- 156 NHL CBA, § 23.7(b).
- 157 NHL CBA, § 21.18.
- 158 NHL CBA, § 23.3(a).
- 159 NHL CBA, § 23.3(d).
- 160 NHL CBA, § 23.3(b).
- 161 See 2013 NHL CBA, § 23.3(a) (limiting career ending disability benefits to “a Player who is on a Club’s Insured Roster”); § 23.3(b) (limiting serious disability benefits to “a Player who is on a Club’s Insured Roster”).
- 162 NHL CBA, § 31.5.
- 163 NHL CBA, § 31(5).
- 164 NHL CBA, Art. 29.
- 165 Rick Westhead, *NHLPA readies \$3M ‘back to school’ program*, TSN, Jun. 9, 2015, www.tsn.ca/nhlpa-readies-3m-back-to-school-program-1.303734, archived at <http://perma.cc/G6BQ-WGSL>.
- 166 *Id.*
- 167 NHL CBA, § 34.9(b).
- 168 NHL CBA, § 34.9(a).
- 169 NHL CBA, § 34.9(e).
- 170 NHL CBA, § 34.1(c).
- 171 NHL CBA, § 34.3(b)(i).
- 172 NHL CBA, § 34.4(a).
- 173 CFL CBA, § 13.02.
- 174 *Id.*
- 175 *Id.*
- 176 CFL CBA, Art. 16.
- 177 *Id.*
- 178 See Rick Westhead, *CFL, union need to step up and protect the players*, Toronto Star, Nov. 27, 2007, available at 2007 WLNR 23396716; *Wealthy athletes go after compensation*, Edmonton J. (Canada), Aug. 16, 1996, available at 1996 WLNR 3805939.
- 179 Farhan Lalji, *CFLPA submits application for WCB coverage*, TSN (Aug. 23, 2016), <http://www.tsn.ca/cflpa-submits-application-for-wcb-coverage-1.553968>, archived at <https://perma.cc/ZKB8-VCVP>.
- 180 *Id.*
- 181 CFL CBA, § 31.01.

- 182 *Id.*
- 183 CFL CBA, §31.06.
- 184 CFL CBA, § 31.03.
- 185 MLS CBA, § 10.8.
- 186 *Id.*
- 187 *Id.*
- 188 MLS CBA, § 22.
- 189 MLS CBA, § 22.4.
- 190 *Compare* 2015 MLS CBA, § 22.4 and 2004 MLS CBA, § 22.4.
- 191 MLS CBA, § 22.5.
- 192 *Id.*
- 193 This information was provided by the MLSPU.
- 194 *Id.*
- 195 See L. E. Eisenmenger, *McCabe Explains Generation adidas*, USSoccer-Players.com, Jan. 8, 2010, <http://www.ussoccerplayers.com/2010/01/mccabe-explains-generation-adidas.html>, archived at <https://perma.cc/RWK5-4R64>.
- 196 MLS CBA, § 24.1.
- 197 The retirement benefit amounts for NBA players were provided by the NBA.
- 198 *Benefits and Services*, Nat'l Football League Players Ass'n, <https://www.nflpa.com/active-players/benefits-and-services> (last visited Sep. 18, 2015), archived at <https://perma.cc/45QW-DPZC>.
- 199 See *FAQs about COBRA Continuation Health Coverage*, U.S. Dept. of Labor, <http://www.dol.gov/ebsa/faqs/faq-consumer-cobra.html> (last visited Sep. 18, 2015), archived at <http://perma.cc/79A8-EKUQ> (discussing COBRA's temporary nature); Anna Rapa, *Individual Health Insurance, Sometimes a Bane, Sometimes a Benefit, and Increasingly the Only Option*, 88 Mich. B. J. 16, 17 (2009) ("Maintaining insurance coverage under COBRA rather than having a separate individual policy between jobs may provide the best coverage, even if COBRA premiums are notoriously expensive."); Tiffany M. Alexander, *Are You Covered? Your Health Insurance Options*, 32 Sum Fam. Advoc. 20 (2009) ("COBRA disadvantages are (1) it tends to be much more expensive than a private policy because it often offers better coverage, and (2) it is only a temporary solution.")
- 200 While speculative, some similarity in the plans offered by MLB and the NHL may be due to overlapping leadership at the MLBPA and NHLPA. Don Fehr was Executive Director of the MLBPA from 1983 until 2009, during which time Fehr helped established the MLBPA's reputation as one of the strongest unions in the country. After leaving the MLBPA in 2009, Fehr became the NHLPA's Executive Director in 2010. In addition, Steve Fehr, Don's brother, serves as outside counsel to both the MLBPA and NHLPA.
- 201 See *Average NFL Career Length*, Sharp Football Analysis, Apr. 30, 2014, <http://www.sharpfootballanalysis.com/blog/?p=2133>, archived at <http://perma.cc/X8QV-77A3> (discussing disagreement between NFLPA and NFL and determining that the average drafted player plays about 5 years); William D. Witnauer, Richard G. Rogers, Jarron M. Saint Onge, *Major league baseball career length in the twentieth century*, 26 Population Res. & Policy Rev. 4, 371-386, Jun. 14, 2007, <http://link.springer.com/article/10.1007%2Fs11113-007-9038-5> (finding average MLB career to be 5.6 years).
- 202 For more on this issue, see Christopher R. Deubert, I. Glenn Cohen, Holly Fernandez Lynch, *Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations*, Recommendation 7:3-B (2016).