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New Calif. Law Will Change Youth Sports Concussion Cases

Law360, New York (March 10, 2017, 1:13 PM EST) -- Effective Jan. 1, 2017, California enacted a youth sports concussion law codified in the state's Health and Safety Code. The new law significantly expands the scope of the pre-existing "return to play" law in effect in California and similarly found throughout the country.

These "return to play" laws were inspired in part by 13-year-old Zakery Lystedt, who sustained a concussion while playing in a middle school football game in the state of Washington. The basic purpose of these laws was twofold: increased education and greater caution. "Return to play" laws impose educational, training and notification requirements designed to ensure that coaches, parents, and youth athletes are better educated about the signs and risks of concussions. Such laws also require an athlete suspected of suffering a concussion to sit out the rest of the game and remain out of play until cleared by a qualified health care profession.

In California, the "return to play" law only applied in the scholastic setting — as is the case in most other jurisdictions throughout the country. See, e.g., Cal. Educ. Code § 49475(a). The recently enacted youth sports concussion law goes much further. Specifically, the new statute applies to any "youth sports organization," which is defined as: any "organization, business, nonprofit entity, or a local governmental agency that sponsors or conducts amateur sports competitions, training, camps, or clubs in which persons 17 years of age or younger participate in any of [a wide variety of enumerated sports.]" Cal. Health & Safety Code § 124235(b)(3).

Those sports include baseball, basketball, bicycle motocross (BMX), boxing, competitive cheerleading, diving, equestrian activities, field hockey, football, full contact martial arts, gymnastics, ice hockey, lacrosse, parkour, rodeo, roller derby, rugby, skateboarding, skiing, soccer, softball, surfing, swimming, synchronized swimming, volleyball, water polo, or wrestling. Cal. Health & Safety Code § 124235(b)(3).

Furthermore, this statute imposes additional obligations:

- Every year, a concussion and head injury information sheet must be signed by the athlete and parent or guardian before the athlete initiates practice or competition. Cal. Educ. Code § 49475(a)(3);
 - At a minimum, these materials must include information relating to (1) head injuries and their potential consequences; (2) the signs and symptoms of a concussion; (3) best practices for removal of an athlete from an athletic activity after a suspected concussion; and (4) steps for returning an athlete to school and athletic activity after a concussion or head injury. Cal. Educ. Code § 49475(b)(1);
- All youth sports organizations must offer concussion and head injury education, or related



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educational materials, or both, to each coach and administrator of the youth sports organization on an annual basis. Id. at § 49475(a)(4);

- The materials must, at a minimum, include the information related to head injuries referenced above. Cal. Educ. Code § 49475(b)(1);
 - All youth sports organizations must require their coaches and administrators to successfully complete concussion and head injury education at least once, either online or in person, before supervising an athlete in an activity of the youth sports organization. Id. at § 49475(a)(5);
- An athlete who is suspected of sustaining a concussion or head injury in an athletic activity must be immediately removed from the athletic activity and must remain out of play “until he or she receives written clearance to return to the athletic activity from a licensed health care provider.” Id. at § 49475(a)(1);
 - A “health care provider” must be one who is trained in the management of concussions and is acting within the scope of his or her practice). Id. at § 49475(b)(2);
 - If the health care provider determines that the athlete sustained a concussion or a head injury, the athlete shall also complete a graduated return-to-play protocol of no less than seven days in duration under the supervision of a licensed health care provider. Id. at § 49475(a)(1);
 - When a minor athlete suffers a suspected concussion, the youth sports organization must notify the participant’s parent or guardian of the time and date of the injury, the symptoms observed, and any treatment provided. Id. at § 49475(a)(2);
 - Finally, all youth sports organization must develop and identify what procedures it has adopted to guarantee compliance with the new law. Id. at § 49475(a)(6).

Given the wide variety of new statutory obligations and the reliance on volunteer coaches by many youth sports organizations, California’s youth sports concussion law may be a game changer for how these organizations operate going forward. Injured participants will cite the new law as establishing new duties or heightened standards of care for the purpose of negligence causes of action. Organizations that do not adapt their procedures to ensure swift and complete compliance with the new statutory regime run the risk of lawsuits by injured participants premised on the plaintiff-friendly doctrine of negligence per se.

Assumption of risk and contractual waivers likely will not serve as defenses if an organization fails to provide adequate information to participants and parents, or fails to educate all coaches before they step on the field. Of course, governmental immunity defenses — sometimes available in the context of state schools — are not available to private youth sports organizations. Similarly, because the new law imposes greater coach education and supervision obligations, youth sports organizations will be less likely to evade liability for injuries resulting from a coach’s negligence (for example, in allowing an injured player to return to play in practice or at a game) merely because the coach happens to be a volunteer. Plaintiffs likely will also rely on the new law when invoking such doctrines as negligent training and supervision or respondeat superior liability to support claims against youth sports organizations. Succinctly stated, strict compliance with the medical clearance requirements is now a sine qua non for any youth sports organization seeking to limit potential liability.

Youth sports organizations can expect that their liability insurance carriers will impose compliance with the new law’s informed consent, medical clearance, and education requirements as a term and condition of coverage. Alternatively, for insurance carriers seeking to limit potentially catastrophic damage awards arising from serious head injury suits, California’s new law is a wakeup call to consider the use of exclusionary provisions for head injuries.

For manufacturers and distributors of sports safety equipment, the new laws may provide an

opportunity to deflect liability by pointing to the youth sports organization's failure to comply with the new law — rather than any alleged defect in the equipment — as a source of a plaintiff's injuries. On the other hand, a jury convinced that a youth sports organization violated the law may be more easily persuaded to side with the injured plaintiff on all count regardless of the fact that the equipment manufacturer and distributor had nothing to do with the organization's illegal conduct.

As goes California, so goes the nation. Given how quickly other states adopted variations of Washington's Zackery Lystedt Law, private youth sports organizations in other states can certainly expect that soon they will be subjected to similar laws requiring comprehensive concussion-related education for coaches, parents and participants, as well as strict adherence to notification and medical clearance requirements whenever a head injury is suspected. Youth sports organizations — especially those with a national presence — must ensure that they understand the full scope of the state-specific laws that apply to their leagues, competitions, training, camps, or clubs, and remain abreast of any developments to or expansion of those laws.

To assist youth sports organizations seeking to comply with the heightened standards imposed by California's new statute, there are numerous resources available through the National Center for Injury Prevention and Control, Division of Unintentional Injury Prevention (a unit of the Centers for Disease Control and Prevention). These resources address current medical knowledge regarding head injuries and concussions in youth sports. The center also offers proposed policies, strategies and action plans which youth sports organizations can implement to ensure that parents, guardians, coaches, administrators, and athletes are fully informed and educated with respect to detecting concussions and responding appropriately when a concussion is suspected.

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