

Why NFL Anthem Protests Aren't Getting Players Sacked

By **Braden Campbell**

Two weeks have passed since President Donald Trump suggested that players who kneel during the national anthem should be fired, but no one has been. For a host of legal and practical reasons, that's not likely to change as the protests continue, experts say.

[NFL](#) rules empower the league and its teams to punish players for actions the league and its clubs don't like. But in addition to at least some support for players among owners, there's a potential minefield of legal protections for workers that makes player discipline a long shot.

"It's not as straightforward as many think," said Eve Wagner, founding partner of Los Angeles firm [Sauer & Wagner LLP](#). "There are federal, state and local laws that are involved, as well as individual contracts and the collective bargaining agreement" between the players' union and the NFL.

Trump said late last month that players who protest are "son[s] of bitch[es]" and called for them to be fired, a little over a year after then-[San Francisco 49ers](#) quarterback Colin Kaepernick first knelt to protest police violence against black people. The president's comments galvanized the league, prompting scores of players and a handful of coaches and team owners to protest the anthem or lock arms in solidarity during that weekend's games. These protests have continued since.

The NFL is private, so the First Amendment doesn't give its players a right to protest or speak their minds like it does government employees. But a handful of states and municipalities with NFL teams, such as California and Seattle, have laws on the books blocking employers from taking action over workers' political views, Wagner said.

"It actually goes all the way back to the McCarthy era, where ... if you called [someone] out as a communist, then they would be fired," she said, referring to Sen. Joe McCarthy's Red Scare of the 1950s. "Some states over the years started saying, 'We want you to be able to express your political views.'"

Most private employees in other states and municipalities are at-will workers, meaning their employers can fire them for reasons unconnected to federally protected traits like race and sex. NFL players, however, are signed to contracts and can only be fired for specific reasons. Whether participating in these protests could count as such a reason is fuzzy.

Provisions of individual player contracts may vary, but the NFL's standard agreement allows teams to end the deal if the player engages in conduct that "adversely affect[s] or reflect[s]" on the team. The [NFL Players Association](#)'s collective bargaining agreement with the NFL allows the league to dole out punishment to players who break its rules, including one provision barring them from engaging in "conduct detrimental to the integrity of and public confidence in" the league.

This language leaves teams and the league a lot of leeway to define fireable offenses. But because team owners and league officials have joined the protests, they may have a hard time citing it to punish players.

"You've got players, owners, management and even [NFL Commissioner] Roger Goodell standing side by side," Wagner said. "It would be really difficult for someone to argue this is going to cause some sort of reputational injury."

The protests could also implicate federal law, though that may not be so effective a shield in this case, attorneys say.

Title VII of the Civil Rights Act of 1964 bars employers from discriminating against workers based on their race, among other things. Although race is at the center of the protest, that link won't necessarily protect participating players, attorneys say.

"The question is ... whether or not those protests encompass allegations of race discrimination within the NFL or within a particular team," said Jay Holland, chair of [Joseph Greenwald & Laake PA's](#) labor, employment and whistleblower practice. "To the extent a player can assert that their particular protest is a protest inclusive of discrimination within the NFL ... Title VII can possibly be raised.

The National Labor Relations Act guarantees workers' rights to engage in "protected activities for ... mutual aid or protection." But it would be a "stretch" for players to argue that a police brutality protest encompasses workplace issues, Holland said.

For all these reasons, NFL players are not likely to be punished for kneeling or refusing to salute the flag during the national anthem. But if these players stepped up their speech, they could be disciplined, said [Cummings McClorey Davis & Acho PLC](#) attorney James Acho.

"If they started wearing shirts on the field, or tried to wear things on the sideline with their own political messages, then I think it would happen," said Acho, who represents professional athletes in legal disputes.

Despite this web of laws, there is some precedent for disciplining players who refuse to salute the flag. In the late 1960s, then-[St. Louis Cardinals](#) player and anti-Vietnam war advocate Dave Meggyesy drew jeers from sports fans and media after he held his helmet and bowed his head during the playing of the national anthem. Meggyesy, a starter for most of his career, was benched the next season and quit the league soon after.

By the letter of its bylaws, the NFL and its teams have the power to discipline players not otherwise protected by state or federal law. But these legal concerns aside, doing so might

not be in teams' best interest, Acho said.

"If a team feels that kneeling for the anthem is 'conduct detrimental' to the club or league, they absolutely can discipline them," Acho said. "Practically speaking, would the NFL ever do that? Absolutely not, because the players would, in essence, revolt."