Workforce

‘Voluntary’ Kickball Game Injury Falls Under Workers’ Comp, Court Rules

Employers should be aware that injuries at work-related events that are nominally voluntary may be compensable if there is an implied expectation of participation.

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It’s a rare occurrence, but the realms of recreational kickball and employment law do sometimes collide.

The South Carolina Supreme Court recently ruled that injuries incurred by a man who organized a voluntary kickball game for fellow employees must be covered under workers’ compensation. As a result, the principle that employee injuries can be compensated by workers’ compensation only if they occur in the course and scope of employment was broadened.

The case, *Whigham v. Jackson Dawson Communications and Hartford*, turned on the court’s view that the man was “impliedly required” to attend the event because of his role in organizing it. The decision won’t necessarily apply to other employees who were injured at an event where employees are encouraged — but not required — to attend. It does suggest, however, that employers should be aware that encouraging attendance may be regarded as an implied requirement.

Stephen Whigham, then a manager at Jackson Dawson Communications, a marketing, advertising and public relations company in Greenville, South Carolina, attended bimonthly meetings where managers discussed the importance of team-building events for employees. At one of these meetings, Whigham proposed that the company organize a kickball game for employees. Whigham’s superior endorsed the idea, and authorized him to spend $440 of company funds to rent a facility and buy T-shirts and snacks. Whigham used the company intranet to promote the event. About half of the company’s employees attended.

Unfortunately for Whigham, he jumped on the last play of the game and came down awkwardly on his right leg, shattering his tibia and fibula. He underwent two surgeries, and was told he would need a knee replacement.

Whigham's initial claim for workers' compensation was denied, and that decision was affirmed by the full South Carolina Workers' Compensation Commission, and later the South Carolina Court of Appeals. Each court explained that since attendance at the event was voluntary, it did not meet the legal threshold of an injury arising out of or in the course of employment.

Typically, courts look at three tests to determine whether a work-related recreational or social activity is within the course of employment. A court will consider if the injury occurred on the premises during a lunch or recreation period as a regular part of employment. Also considered is whether the employer expressly or implicitly requires participation, and if the employer derives substantial, direct benefit from the activity, beyond the intangible value of employees' health and morale.

Whigham argued that his injury qualified under two of these criteria: participation was impliedly required and the employer derived benefit.

Key to the case was whether Whigham's participation was truly voluntary — or impliedly required.

In its decision, the court cited the testimony of Whigham's supervisor, who said that while attendance was not mandatory, he would have been "surprised and shocked" if Whigham had not attended after organizing the event.

The court also noted the company's financial support of the event, the fact it was held during normal business hours and an evaluation of Whigham where his supervisor praised him for organizing the kickball event.

All this prompted the court to rule that Whigham's participation in the kickball event met the threshold for being "impliedly" required.

"The law is clear that when determining whether an employee is required to attend an event, a directive is not necessary, 'If the employee is made to understand he is to take part in the affair,' " according to the court's opinion.

The court didn't address the other criteria — whether the company derived substantial, direct benefit —since a claimant only has to meet one of the criteria.

The ruling also indicates that the court may not have been sympathetic to a workers' compensation claim by a line employee injured at the event, as Whigham's organization of the event and expected attendance as a manager "sets [his] participation apart from that of all the other employees."

The employer has asked the state high court for a re-hearing, but if the decision stands, employers should be aware that injuries at work-related events that are nominally voluntary may be compensable if there is an implied expectation of participation, especially for a manager who organized the event.

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