Time to Corral That Horseplay—Workplace Injuries May Be Compensable

Have you ever taken a ride around the office in your desk chair or pulled a practical joke on your coworkers to liven up the mood at the office? Pulling these pranks can be human nature, particularly if the work environment is mundane or repetitive. Inevitably there will be a moment when employees break from the daily grind of work tasks and engage in merriment, frivolity, or practical jokes, also known as "horseplay." However, good fun can turn into a serious injury. In these situations, is workers compensation coverage applicable?

Generally, employees who instigate or participate in horseplay at work are ineligible for workers compensation benefits for resulting injuries. Such activity is viewed as a deviation from the employee's duties and, therefore, is not considered to have occurred during the course of their employment. Consider that most employee job descriptions do not include playing practical jokes on coworkers as a duty to be performed. However, the analysis can go beyond the determination that the injured employee initiated or participated in the horseplay. Rather, it is often detailed and specific facts regarding the circumstances of the employment and horseplay that are determinative. A recent South Dakota Supreme Court ruling is representative of the impact that unique facts and circumstances can have.

The Case of the Concrete Prank

In *Petrik v. JJ Concrete, Inc., et al.*, the South Dakota Supreme Court considered whether the claimant, Jason Petrik, was entitled to workers compensation benefits for an injury he sustained after being chased by another employee. JJ Concrete employed Petrik as a concrete laborer. One day Petrik and his coworkers had completed their initial work and were waiting for a concrete truck to arrive to pour concrete. It was a hot day, so some of the workers sat in an air-conditioned JJ Concrete truck while they waited. Wanting to cool off, Petrik decided to trick a coworker into leaving his seat in the truck by telling him another coworker wanted him on the other side of the job site. Petrik took the vacated seat for a few minutes, then left the truck to return to the job site. Upon seeing the employee he had tricked, Petrik started running and the coworker gave chase. When Petrik attempted to jump across a trench to get away, he broke his ankle.

Petrik sought workers compensation benefits for medical expenses and temporary total disability. JJ Concrete and its insurer denied benefits, asserting Petrik's injury did not "arise out of" and was not "in the course of" his employment because JJ Concrete specifically prohibited horseplay by employees.

Petrik petitioned the South Dakota Department of Labor (DOL) for a hearing, arguing that the horseplay "arose out of" and was "in the course of his employment" because horseplay was to be expected when employees have repeated and mandatory lulls in their workday. After the hearing, the DOL concluded that Petrik's injury "arose out of" his employment because he would not be at the job site where he was injured unless he worked for JJ Concrete.

However, when the DOL then considered whether Petrik's injury was "in the course of his employment," it determined that Petrik's act of running on the job site and attempting to jump over a trench was a substantial deviation from his employment and, therefore, was **not** "in the course of the employment." The decision was appealed to the circuit court, which affirmed the Department's finding that Petrik's act of horseplay and resulting injury did not occur "in the course of his employment." Petrik then appealed to the South Dakota Supreme Court.

The Supreme Court held that the DOL correctly concluded that Petrik's injury "arose out of" the employment. However, it also held that the Department erred when it determined that Petrik's acts were a substantial deviation from his employment and thus did not occur "in the course of the employment."

An injury will "arise out of" employment if:

1. The employment contributes to causing the injury
2. The activity is one in which the employee might reasonably be expected to engage, or
3. The activity brings about the disability upon which compensation is based

Here, the Court determined that Petrik was injured during a period of time in which he was required to stand by and remain idle until the concrete truck arrived and that the activity—playing a prank on a coworker during this idle period—is one in which employees might reasonably engage despite the employer's prohibition against horseplay.

The Court noted that whether an injury is "in the course of employment" depends on the time, place, and circumstances of the injury. In addition, it depends on whether the employee is doing something either naturally or incidentally related to his employment or the employee is either expressly or impliedly authorized to do by the contract or nature of the employment. Whether Petrik's initiation of horseplay constituted a deviation from his employment was analyzed by the Court using the following factors from *Larson's Workers' Compensation Law (§ 23.01 2014)*:

1. The extent and seriousness of the deviation
2. The completeness of the deviation (i.e., whether it was commingled with the performance of duty or involved an abandonment of duty)
3. The extent to which the practice of horseplay had become an accepted part of the employment
4. The extent to which the nature of the employment may be expected to include some such horseplay

The first factor was considered critical to the Court's decision in this case. At the time of the horseplay, Petrik had no duties to perform and was required to wait for the truck in order to accomplish his next task. He wanted to cool off on a hot day and tricked his coworker into vacating his seat. Although impulsive and misguided, his prank and subsequent decision to run was a momentary deviation during a lull in work and was found to be insubstantial.

The Court further relied on the public policy in South Dakota that workers compensation laws are "remedial in character and entitled to a liberal construction."

Conclusion

While the horseplay Petrik initiated was the direct cause of his injury, the deviation from employment was not substantial enough to render the horseplay outside of the course of employment, based on the facts in this case, according to the South Dakota Supreme Court.

Other states, such as Indiana and Oklahoma, focus the analysis on whether the injured worker was an instigator or participant in horseplay in determining whether an injury is compensable. The outcomes of these cases are as varied as the facts and jurisdiction of each case. In assessing potential workers compensation liability from horseplay injuries, you should review the applicable law in your state.

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