# Injuries During Employer-Sponsored Recreational Activities: Are They Compensable?

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In a financial climate where companies are not handing out raises and bonuses of all sorts are nearly obsolete, employers are trying to find ways to boost the morale of employees in inexpensive ways. One way to do that is by providing an outlet for recreational activities, such as softball games, skating nights, picnics and barbeques. In South Carolina, employers and carriers are relatively free of workers' compensation liability for recreational activities if they comply with three guidelines: (1) the activity takes place off the employer's premises; (2) the employee's participation in the activity is voluntary; and (3) the employer does not derive a substantial benefit from the activity other than improvement in morale and employee health. Recently, in a case that made national news, the South Carolina Supreme Court clarified the voluntary attendance requirement of recreational activities and found that an employee, who suffered an injury while playing kickball, sustained a compensable injury under the Workers' Compensation Act.

On August 27, 2014, the South Carolina Supreme Court filed its opinion in the case of *Whigham v. Jackson Dawson Communications*, and in the days to follow, headlines across America discussed the now infamous kickball case. In *Whigham*, a manager who arranged an off premises kickball game for his company's employees suffered an injury while playing in the game. Attendance at the game was voluntary for the employees, and the game offered no benefit to the employer other than a general morale boost. However, because Whigham was the one who organized the event on behalf of the employer, the court reasoned that the employer impliedly required him to attend the event and that the injury he suffered during the kickball game arose out of and in the course of his employment. The court directed its attention to Whigham's testimony that it would have been a reflection of poor management had he not attended the game and that he considered his attendance at the event to be a part of his job on the day in question. Additionally, Whigham's superior testified, "[Y]ou don't just plan something and then not show up for it." For Whigham's supervisor, it was unfathomable that Whigham would have failed to showed up for the kickball game after being in charge of planning it.

The take away from *Whigham* is that employers need to be increasingly careful about impliedly requiring employees to attend recreational events. In order to reduce the risk of a compensability finding, employers need to ensure that they clearly communicate the voluntary attendance nature of the event. Also, employers need to ensure that supervisors do not put undue pressure on employees to attend recreational events, even if the pressure is applied in a jovial manner. Lastly, if an employer directs an employee to organize an event, a best practice would be to ensure that the organizing employee maintains his or her supervisory role at the recreational event and does not actually participate in the risk-causing activity.

## ABOUT THE AUTHOR

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