COMPNEWS

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OSHA toughens reporting requirements

Effective January 1, 2015 employers must notify OSHA promptly when an employee is killed on the job or suffers a work-related hospitalization, amputation, or loss of an eye.

Under the revised rule, employers will be required to notify OSHA of work-related fatalities within eight hours, and work-related in-patient hospitalizations, amputations or losses of an eye within 24 hours. Previously, OSHA's regulations required an employer to report only work-related fatalities and in-patient hospitalizations of three or more employees. Reporting single hospitalizations, amputations or loss of an eye was not required under the previous rule.

All employers covered by the Occupational Safety and Health Act, even those who are exempt from maintaining injury and illness records, are required to comply with OSHA's new severe-injury and illness reporting requirements. To assist employers in fulfilling these requirements, OSHA is developing a web portal for employers to report incidents electronically, in addition to the phone-reporting options.

"Hospitalizations and amputations are sentinel events, indicating that serious hazards are likely to be present at a workplace and that an intervention is warranted to protect the other workers at the establishment," said Dr. David Michaels, assistant secretary of labor for occupational safety and health.

OSHA reports nationwide 4,405 workers were killed on the job in 2013. According to the South Carolina Department of Labor, Licensing and Regulation, there were a total of 72 occupational deaths in South Carolina in 2013. Most of the deaths were attributed to transportation incidents (27), violence (14), and falls, slips, trips (13). LLR administers the state's OSHA program.

Business Insurance notes workplace fatalities in the U.S. peaked in 1994, when there were 6,632 deaths. Transportation accidents have been the number one cause of workplace deaths for at least 10 years, accounting for two in five deaths in 2013.

Separately, OSHA released its list of the ten most-frequently cited safety violations for fiscal 2014. The list below shows the number of citations:

1. Fall protection (1926.501) – 6,143
2. Hazard Communication (1910.1200) – 5,161
3. Scaffolding (1926.451) – 4,029
4. Respiratory Protection (1910.134) – 3,223
5. Lockout/Tagout (1910.147) – 2,704
6. Powered Industrial Trucks (1910.178) – 2,662
7. Electrical – Wiring Methods (1910.305) – 2,490
8. Ladders (1926.1053) – 2,448
9. Machine Guarding (1910.212) – 2,200
10. Electrical – General Requirements (1910.303) – 2,056

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Judicial Notes

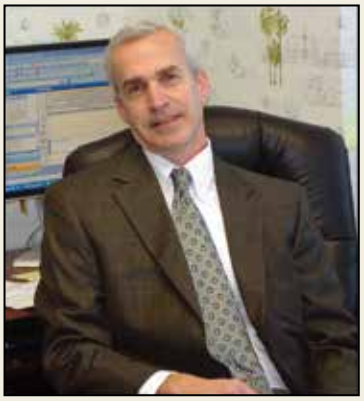
Kickball injuries compensable?!?

The South Carolina Supreme Court recently reversed the Court of Appeals, Full Commission, and Single Commissioner in finding an employee's injuries sustained during a kickball game are compensable.

In Whigham v. Jackson Dawson Communications, Op. No. 27440 (2014), the claimant, the Director of Creative Solutions (supervising web designers and marketing personnel), planned a company-sponsored kickball game for the company's employees. The company paid approximately $440.00 for t-shirts, snacks, and renting a local field. No clients were invited to participate. Claimant organized the event using the company intranet, emails and flyers. Attendance at the event and playing kickball were both voluntary for employees, and no employees were paid during that time.

During the game, the 47-year-old claimant jumped up and landed on his right foot breaking his right leg. He sought medical benefits and permanent partial disability benefits based on a 12% impairment rating to the right lower extremity.

The single commissioner, Susan Barden, found the claim was not compensable and the claimant was not entitled to benefits. She noted in her order: (1) Claimant admitted his job did not require him to plan any employee-only events, (2) Claimant did not usually attend other employee-only events, (3) the game was not attended by potential employees as a recruitment tool or by clients, (4) the employer-provided t-shirts did not include the company's name or logo, (5) the employer did not provide transportation, reimburse mileage or pay any employees for attending the game, and (6) the employer derived no direct benefit from the kickball game beyond the intangible value of improving employee morale.



Mike Chase
Legal Advisor, SCSIA

Commissioner Barden found the most compelling evidence to be that it was not Claimant's job to plan this type of event, and Claimant rarely attended similar employee softball games.

The three-member Appellate Panel (Derrick Williams, David Huffstetler and Avery Wilkerson) as well as the Court of Appeals affirmed Commissioner Barden's Order. The Full Commission noted the requirements for compensability set out by the Supreme Court in Leopard v. Blackman-Uhler were not present: (1) the activity occurs on premises or during a recreation period as a regular incident to the employment, (2) the employer expressly or impliedly requires participation making it a part of the employee's job, or (3) the employer derives a substantial, direct benefit from the activity beyond the intangible value of improving employee health and morale.

However, Chief Justice Jean Toal and Acting Justice Moore, concurring with Justice Hearn, reversed the decision and found Claimant was entitled to workers' compensation benefits (Justices Kittredge and Pleicones dissented). The Supreme Court majority opinion places great weight on the employer's testimony he would have been shocked if Claimant did not participate in the event

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President's note

Tosca Walls
President

Volunteers needed

This is my final column as president of the South Carolina Self-Insurers Association. My two year term expires December 31st and it has truly been a pleasure serving on the board.

We are well on our way in planning the 2015 Members-Only Forum and need just a little bit of help from members to complete the program. We need volunteers for our popular employers' panel discussion on Thursday.

As you may recall, we usually have three employers' representatives on the panel along with a moderator, and we will follow the same format next year. Each member of the panel will have 10-15 minutes to introduce their organization, go over the kind of injuries they typically see in their workplace, share what they are doing well in their workers' compensation program, and talk about the particular challenges they deal with in their daily operations.

We truly need more participation from employers as this in turn helps us attract more vendors and exhibitors. It is in large part because of our vendors and exhibitors that we have not had to raise membership dues or registration fees in several years, while providing breakfast and a group dinner at the annual conference. Also, if employers are prominent on the program, it makes it easier for us to draw registrants from other employers as everybody sees the value of networking and learning of new developments. So, only two or three of you can set in motion a virtuous cycle with far-reaching benefits.

Please let us know soon if you or someone you know would like to participate. We are planning a great Members Only Forum in 2015 and hope to have the agenda finalized by year's end.

I hope to see you there!

Tosca

Kickball injuries *continued from page 2*

because he planned it. Therefore, they held it was undisputed that Claimant was expected to attend as part of his professional duties whereas the event was voluntary to other employees in general.

On the other hand, the dissenting opinion contains two interesting comments as to why they would have ruled otherwise. First, they point out that even if they were to accept the majority's view that claimant was impliedly required to attend the kickball game, attending the event and participating in the game are two different things entirely. Second, they indicate that bringing supervisors within the course and scope of employment for recreational and social activities, while leaving other employees who attend the same event without coverage seems contrary to the purposes of the Workers' Compensation Act.

The employer has filed for a re-hearing before the Supreme Court. It is unclear whether the Court will grant the re-hearing.

This case may have significant impact on employers for many reasons. First, the court held that an injury at a voluntary event may become compensable whenever the claimant takes it upon himself to plan the event. Since we spend more waking hours with our co-employees than our families, friendships naturally develop that give rise to employees planning voluntary recreation and social events (ball games, bowling, charity runs, fitness events, picnics, lake parties, etc.). Depending upon the circumstances, injuries sustained by those planning these events may now be found compensable.

Comments: This does not constitute legal advice. You should seek the counsel of your attorney concerning the application of the information in this article to your particular situation. Please e-mail any questions or comments to Mike at mchaseturnerpadget.com.

Calendar

March 25-27, 2015	Annual Conference, NC Association of Self-Insurers. Holiday Inn Resort, Wrightsville Beach.
April 15-17, 2015	Members-Only Forum, SC Self-Insurers Association. Litchfield Beach & Golf Resort.

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DEA reclassifies hydrocodone

The U. S. Drug Enforcement Administration has moved hydrocodone combination products from Schedule III to the more-restrictive Schedule II because of widespread concerns about hydrocodone's abuse and potential for abuse.

The new regulation became effective October 5. Physicians can no longer call in prescriptions for drugs like Lortab and Vicodin, and patients are allowed only one 90-day prescription per doctor visit. Additionally, patients have to see a physician before they can obtain a refill.

DEA Administrator Michele Leonhart noted more Americans die from controlled-substance prescription medications, including opioid painkillers, than die from auto accidents. The sale of opioids has increased 300% since 1999. The agency says its analysis of hydrocodone combination products shows adding nonnarcotic substances, like acetaminophen, to hydrocodone does not diminish its potential for abuse

The drug enforcement agency also reports multiple federal and non-federal agencies have found twice as many high school seniors use Vicodin®, which contains hydrocodone, than used OxyContin®, a Schedule II substance, which is more tightly controlled. Hydrocodone is the most frequently prescribed opioid in the United States with nearly 137 million prescriptions dispensed in 2013. There are several hundred brand name and generic hydrocodone products on the market.

Opioid overdose rate is highest among people of working age, and workers' compensation insurers and risk managers are among those most vocal about the hazards of opioid drugs. Observers note abuse is a problem in workers' compensation because back injuries are common and back pain is one of the most common reasons for prescribing opioids.

In a position paper released in early October, titled ***Evidence for the efficacy of pain medications***, the National Safety Council concludes "the combination of over-the-counter pain medications ibuprofen and acetaminophen are more effective at treating acute pain than opioid painkillers. As patients find that they are unable to refill their hydrocodone prescription, this paper presents alternatives that should be discussed with their physician."