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Articles of Note

Work Hard, Play Hard: An Overview of Georgia Law on Injuries Occurring During Recreational Events

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The success of a company can be measured in many ways, one of which is by the happiness of its employees. A savvy employer knows that boosting employee morale can pay dividends, especially when it comes to productivity and longevity within a company. One common way of boosting employee morale is with recreational activities.

Unfortunately, the reality is that accidents happen and people get hurt, even when it's clear that an employee is simply participating in positive activities alongside fellow coworkers. What isn't as clear, is whether those accidents occurring during recreational activities are considered work related accidents subject to the Workers' Compensation Act, or whether they are considered outside the scope of employment.

The law in Georgia is well-settled that for an accident to be compensable, it must arise out of and in the course of one's employment. For purposes of recreational or social activities, the accident is compensable if it occurs on the employer's premises as a regular incident of employment; if the employer expressly or impliedly requires the employee's participation in the activity, or makes the activity part of the services of an employee such that it brings the activity within the orbit of employer; or where the employer derives substantial and direct benefits from the activity beyond the intangible value of improvement in employee health and morale.

The first two ways the recreational or social activity can be found compensable are relatively straightforward. If the activities take place on the employer's property, or if the employer requires the employee's participation, any accident that occurs during the activity will be considered to be within the course and scope of the employment. The third way, where the employer's benefit from the activity is greater than simply improving employee health and morale, is subject to a bit more interpretation, and thus, Georgia courts must conduct a very fact specific inquiry.

The seminal case in Georgia addressing this issue is a case decided by the Georgia Court of Appeals in 1990. In *Pizza Hut of America, Inc. v. Hood*, 198 Ga. App. 112 (1990), the employer sponsored a picnic for its employees and their families at a local park. During the course of the picnic, one of Pizza Hut's employees drowned in the lake at the park. His parents and estate sued the employer in tort, so the employer's posture was actually to show that the accident was compensable in order to bring the claim within the subject of the Act, and as a result, trigger the exclusive remedy provision and preclude the employer from liability in tort. The Employer alleged that the picnic was a recreational or social activity that was within the course of employment by claiming that Pizza Hut derived significant employment from the picnic beyond that of just boosting general employee morale. Pizza Hut contended that the purpose of the picnic was to promote a new product of traditional hand-tossed pizza and recruit and maintain

employees. However, the Court of Appeals disagreed, finding that not only did the picnic not occur on work premises and attendance by the employees was not required, but the evidence showed there was no effort at the picnic to promote the new product. Instead, the court found that the picnic was put on for the sole purpose of boosting employee health and morale, and even though an employer might benefit from better employee morale, it was not the kind that would subject an employer-sponsored social event to the Act.

There is a notable dissent in that case which disagreed with the conclusion that Pizza Hut only derived morale-engendering benefits from the picnic. The dissenting judge found, rather convincingly, that the deceased employee was at the picnic because he was an employee of Pizza Hut and the activity was sufficiently work-related in that the employer totally initiated, paid for and controlled the picnic, deriving more than a simple morale boost from its employees' participation. The dissenting opinion noted that the idea of the picnic was conceived by the area manager, the purpose was to emphasize to employees the importance of a new product so as to promote sales, to provide a fringe benefit of recreation for employees and their families, and to act as a recruitment and retention incentive. Additionally, he noted that management planned, arranged and paid for the event and sent park tickets, maps of the park and an invitation to its area restaurants which noted that Pizza Hut signs would be displayed at the park. He also pointed to the fact that Pizza Hut management organized the food set up and presided over softball games. These cumulative facts, he found, were above and beyond the employee health and morale boost that was identified by prior courts in two prior cases involving employees injured playing softball with coworkers. In *Crowe v. Home Indemnity Co*., 145 Ga. App. 873 (1978), the employee broke a collarbone during softball practice for a team she played on with other employees at a field not owned by her employer. The injury occurred after her normal working hours, and while the team wore uniforms with the employer's name on them, the employees paid for the shirts. The Court of Appeals of Georgia found that the only benefit the employer derived from the employee's participation was the intangible value of improvement in employee health and morale, and because the practice was off the employer's premises and participation was not required, the accident was not compensable. Similarly, in *City Council of Augusta v. Nevils*, 149 Ga. App. 688 (1979) the Georgia Court of Appeals again found that an injury that occurred while an employee of the Augusta Fire Department was playing on the fire department softball team was not compensable. In that case, the evidence showed that the fire department executives liked the firemen to partake in recreation because it improved their physical fitness as a fireman and therefore, were better able to perform their job. However, the team was funded independently of the fire department, and took place during non-working hours at an off-premises location, although it was undisputed that the firemen were on duty 24 hours a day in that they were always on call. The Court of Appeals was persuaded by the fact that the City made no monetary contribution to the team and that the team played off premises during non-working hours. Additionally, while the Fire Department encouraged the employee's participation, it was purely voluntary. Furthermore, the Court found that the Fire Department did not achieve any economic or business benefit from the team, such as advertising or good will. The only possible benefit the Court identified was improved productivity through employee fitness, but the Court found that there was nothing specifically connected to the job because any type of sport or recreation outside of the job could arguably increase an employee's fitness. Ultimately, the Court found there was an insufficient connection between the increased fitness level and a benefit to the employer to warrant a finding that the participation in the event did more than boost morale. Consequently, the claim was denied.

In those two cases, the softball game was off of the employer's premises, the employer contributed no money towards the team and did not require participation, and the employee's participation in the softball games did nothing to promote the employer, increase sales or further the employer's business interests or relationships. To the contrary, in the Pizza Hut case, the dissenting Judge found that Pizza Hut initiated, controlled, organized, and paid for the event, and therefore, should have found the accident occurred within the course and scope of employment.

The dissenting judge's opinion in the *Pizza Hut* case is actually rather compelling when you compare the facts of that case with those involving the softball games, yet Pizza Hut remains good law in Georgia. What we can gather from these cases is that the inquiry into whether an employer derives any substantial benefit from the recreational or social activity will be a very fact intensive one. Furthermore, depending on the angle an employer seeks, to allege the accident falls within the scope of the Act or outside the scope of the Act, could very well be determined by the potential for tort liability and the desire to trigger the exclusive remedy provision.

What is the law like in your state?

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