

# 11.14.19

Weber   
Gallagher

## Work vs. Play - Compensability of Injuries Occurring During Recreational Activities

On November 7, 2019, the Appellate Division ruled on the issue of whether an injury sustained by an employee at an employer-sponsored recreational event was compensable. The Court held in an unpublished Decision that a worker who voluntarily offered her services at her employer's "Family Fun Day" was not entitled to Workers' Compensation benefits for an injury sustained during the event.

The Petitioner was a chef at a non-profit organization that provided vocational and clinical services to developmentally challenged individuals. She usually worked Monday through Friday from 10 a.m. to 3:30 p.m. On Saturday, September 23, 2017, the employer held its first "Family Fun Day." The event took place on the employer's premises and provided recreational activities for the employer's clients and employees. The Respondent sought volunteers from its employees to staff the event. Some employees volunteered, and some did not. The Respondent did not pay the volunteering employees. Those who declined to volunteer sustained no negative consequences from the Respondent.

The Petitioner sustained an injury while performing cooking duties at the event. The Petitioner filed a Motion for Medical and Temporary Disability Benefits. The trial Judge denied the Motion on the basis that it did not arise out of or in the course of her employment. The Appellate Court upheld that Decision. The Appellate panel noted that the N.J.S.A. 34:15-7 provides a two-prong test to determine when employers must compensate employees for injuries arising from recreational or social activities. First, a recreational activity must be a regular incident of the injured worker's employment. Second, the activity must provide a benefit to the employer beyond employee health and morale. The Court found the Petitioner failed to meet either prong.

The Appellate Court pointed out the Petitioner volunteered for the event and those workers who refused to volunteer suffered no negative consequences. Moreover, the event was the first of its kind and held on a Saturday, outside the Petitioner's regular working hours. The Court admitted that if the Petitioner were required to attend the event, her injury would be compensable. However, she voluntarily participated. The Petitioner argued that the injury occurred while performing cooking duties, which were a regular incident of her employment. The Court was unmoved by this argument since employees who volunteered to take part in "Family Fun Day" were permitted to volunteer for any duty. The Petitioner could have worked at a game or distributed prizes. The fact that she chose to cook did not render the activity a regular incident of her employment. The Court did not address the second prong of the test because the Petitioner failed to meet the burden of proving the first test.

**Comment:** This Decision makes clear that there is a difficult burden for the Petitioner to meet if they sustain an injury during any recreational truly voluntary activity. However, it's important to note injuries occurring during mandatory recreational activities will be treated the same as injuries arising during the regular workday.

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