Workers' Compensation Alert

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Employer-sponsored Recreational or Fitness Activities: How to Field a Team Without Striking Out on Liability

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With cooler weather looming ahead, employers are busy thinking of ways to boost employee productivity and morale. Employer-sponsored recreational or fitness activities, such as bowling leagues, charity walks, golf outings and fitness classes, are great ways to bond staff and build teams. Before finalizing the activity roster, however, employers should consider the potential legal risks associated with employer-sponsored activities and ways to mitigate those risks.

For example, what happens if an employee sustains an injury while participating in the employer-sponsored activity? In general, an employee is entitled to participate in the Ohio Workers' Compensation Fund for any injury sustained "in the course of" and "arising out of" his or her employment. Courts have held that injuries sustained as a result of an employee's participation in an employer-sponsored recreational or fitness activity can be compensable.

To determine whether an employer-sponsored recreational or fitness activity is within the course of an employee's employment, courts typically analyze whether:

1. the activity occurs on the premises as a regular incident to employment;
2. the employer expressly or impliedly requires participation; or
3. the employer derives a substantial benefit as a result of the employee's participation.

Similarly, to determine whether an injury allegedly sustained as a result of participating in an employer-sponsored recreational or fitness activity arises out of an employee's employment, courts analyze:

1. the proximity of the scene of the injury to the place of employment;
2. the degree of control the employer had over the scene of the injury; and
3. the benefit the employer received from the employee's presence at the scene of the injury.

To avoid litigation over compensability of these types of claims, Ohio Revised Code 4123.01(C)(3) allows an employee to voluntarily waive his or her right to compensation and benefits for voluntary participation in an employer-sponsored recreational or fitness activity. To do so, the employee must execute the Ohio Bureau of Workers' Compensation Form C-159 "Waiver of Workers' Compensation Benefits for Recreational or Fitness Activities."

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For Form C-159 to be valid, the following conditions must be satisfied:

1. participation in the employer-sponsored recreational or fitness activity must be voluntary;
2. the waiver must specifically identify the activity or program for which the employee wishes to waive workers' compensation coverage; and
3. the employee must sign and date Form C-159 prior to the date of injury.

Once an employee properly executes Form C-159, an employer must retain the original in the employee's personnel file and provide the employee with a copy. Form C-159 is not to be submitted to the Ohio Bureau of Workers' Compensation unless and until an employee files a claim for an injury as a result of participating in the employer-sponsored recreational or fitness activity. The waiver will serve as a defense against a claim.

Form C-159 is not, however, an absolute defense against a workers' compensation claim. Rather, there are two important limitations to the waiver. First, it is valid for only two calendar years. Second, it does not bar a workers' compensation claim for death benefits filed by an employee's dependents.

Moreover, employers need to realize that once an employee executes Form C-159, the employer is no longer protected by the exclusivity provision of the Ohio Workers' Compensation Act. This means an employee may be able to bring a general negligence action against the employer for any injury as a result of participation in an employer-sponsored recreational or fitness activity. Therefore, employers should consider having an employee execute a general liability waiver in addition to Form C-159.

While enforceability of general liability releases varies from state to state, in Ohio, courts typically will enforce a general liability release if the release contains an express assumption of risk outlining the potential dangers associated with participation in the activity. To constitute an express assumption of risk, the employee must make a conscious choice to accept the consequences of the employer's negligence. In other words, the release must be expressed in terms that are clear and unequivocal and utilize font stylistic changes to clarify that the employee is executing a release from liability.

In sum, the best advice to minimize potential liability associated with employer-sponsored recreational or fitness activities is to require employees to execute both Form C-159 and a general liability and release prior to participation. Because every employment environment is different, employers also should consider their culture, philosophy and the effect requiring employee waivers will have on employee morale and participation in deciding the best way to approach employer-sponsored recreational or fitness activities.

Please do not hesitate to contact Mark A. Shaw or Melissa A. Ebel at Eastman & Smith Ltd.'s Columbus office if you have any questions regarding employer-sponsored recreational or fitness activities.
