Fallin' Around the Christmas Tree: Are Injuries At Holiday Parties Covered Under Workers' Compensation?

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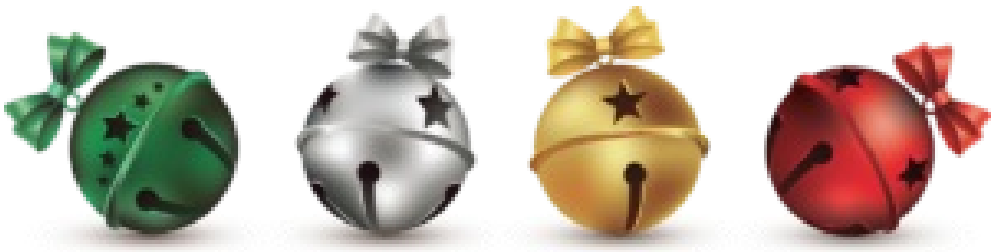

The office party is coming up soon. The venue is reserved, the caterer is scheduled, an office-wide email has been sent encouraging everyone to wear their tackiest sweater (except for Bob – we don't want a repeat of Last Christmas!). Everyone is set to have a Happy Holiday. What if, during all the frivoling, Jim trips over his own feet while Jingle-Bell-Rocking and twists his ankle? Would that be covered under the workers' compensation insurance, under the company general liability insurance, Jim's insurance?

While an employee does not need to show negligence under the Workers' Compensation Act, it will be a Silent Night if they cannot show that the injury arose out of and in the course of the employment. N.C. Gen. Stat. § 97-2(6). An injury arises out of the employment when it is a "natural and probable consequence or incident of the employment and a natural result of one of [its] risks, so there is some causal relation between the accident and the performance of some service of the employment." *Frost v. Salter Path Fire & Rescue*, 361 N.C. 181, 185, 639 S.E.2d 429, 432 (2007).

However, even if the injury occurs at a company social event, it could be related to the work! An injury during a holiday party will "arise out of the employment" in any of three scenarios:

- The injury occurs on the premises during a lunch or recreation period as a regular incident of the employment; or
- The employer expressly or impliedly requires participation in the event; or
- The employer derives substantial direct benefit, beyond intangible value of morale.

Perry v. Am. Bakeries Co., 262 N.C. 272, 275, 136 S.E.2d 643, 646 (1964).

The N.C. Court of Appeals applies a set of factors when the facts do not fit neatly into any of the three scenarios. While

the Supreme Court has not adopted these factors as controlling, it has stated that they may be helpful guideposts. *Frost*, 361 N.C. at 187, 639 S.E.2d at 434. The factors are:

Did the employer sponsor the event?

To what extent was attendance voluntary?

Was there some degree of encouragement to attend, such as:

- Taking a record of attendance;
- Paying for the time spent;
- Requiring the employee to work if he or she did not attend; or
- Maintaining a known custom of attending?

Did the employer finance the occasion to a substantial extent?

Did the employees regard it as an employment benefit to which they were entitled as of right?

Did the employer benefit from the event, not merely in a vague way through better morale and good will, but through such tangible advantages as having an opportunity to make speeches and awards?

Chilton v. Bowman Gray Sch. of Med., 45 N.C. App. 13, 15, 262 S.E.2d 347, 348 (1980) (external citations omitted).

So how is this analysis applied in the real world? So long as the party is off-site, the employee's attendance is not required, and there is no tangible benefit (like awards or big speeches), then it will pass the *Perry* test. If it is clear that attendance was not required even implicitly, and it is clear the facts do not fit in any of the *Perry* scenarios, the Supreme Court will not even consider the *Chilton* factors. However, if application to *Perry* is questionable, the Court of Appeals would then start weighing the *Chilton* factors and it would be a case-by-case factual determination.

If you are still wondering whether injuries at your employee holiday party would fall under the Workers' Compensation Act, give us a call so we can run through all of the facts with you and ask the questions the Industrial Commission will want to know. Keep in mind: this only answers whether the injury is compensable under the Workers' Compensation Act, don't forget about general liability issues if there is some allegation of negligence. And, yes, we've got people for that, too! From all of us here at Young, Moore & Henderson, have a wonderful and safe holiday season!

Related Links:

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