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Sporting and Leisure Activities

Purpose

The purpose of this Circular is to provide you with some general information on whether injuries, sustained during a sporting activity or during attendance at a social occasion, are covered under the Safety, Rehabilitation and Compensation Act 1988 (SRC Act).

General framework for determining such claims

The SRC Act provides that in the case of an injury, compensation is payable where the injury **'arises out of or in the course of employment'**. It is sometimes difficult to establish whether a particular sporting and leisure activity falls within the scope of 'arising out of or in the course of employment'. However a number of Court and Administrative Appeals Tribunal decisions have provided a general framework for determining whether this is in fact the case.

It would be expected that injuries arising from sporting activities or social functions occurring during normal recess breaks would generally be covered. In cases where these activities are at times that are outside normal work hours or recess breaks it would be necessary for the employee to establish that there is a connection between his or her employment and the injury.

The case law indicates that consideration needs to be given to whether the employer 'reasonably required, expected or authorised' the employee to spend time in a particular place or activity. In each case it is important to view these issues in the context of the particular employment and the circumstances in which the employer is placed. For example, if an employee is required to maintain a certain level of fitness in his or her employment it may be more likely that there is a link between sporting activities and employment.

Sporting activities

In assessing claims for injuries arising out of sporting activities, Comcare will consider issues such as:

- level of employer support (see below);
- where the activity was conducted (see below);
- when the activity was conducted (see below);
- the nature of, and requirements of, employment
 - this will be important in relation to jobs requiring a certain level of physical fitness, for example emergency services personnel.

The level of employer support

The following matters have been looked at in cases in deciding whether an activity is within the course of employment:

- whether the employer supported the activity (for example, in one case a senior executive attended a sports match to give encouragement to a team of employees);
- whether the employer's name was used (for example, one sports team might be the "Customs Team");
- whether sporting activities are organised during work time, or using work facilities (such as meeting rooms, the telephone, fax machine etc) with the support of the agency;
- whether transport was provided for attending sport; and
- whether employees were treated as being at work for the purposes of flex time when they played sport.

Where the activity was conducted

If the activity was conducted on the employer's premises, this may suggest that the activity was in the course of employment. However, use of the employer's premises does not necessarily mean compensation is payable.

Similarly, where the activity was conducted elsewhere, it may still be within the course of employment. As with all scenarios, the final determination will require an assessment of a range of facts.

When the activity was conducted

If the activity was conducted during an ordinary recess (such as during the lunch hour, where the employee would only be temporarily absent from his or her employment), this would strongly suggest that the activity was in the course of employment.

However, where an employee 'flexed off' for an afternoon to participate in a sporting activity, he or she may have broken the employment nexus, and, therefore, would not generally be covered for the activity. Likewise, activities on weekends and after hours are also less likely to be covered by compensation. However, there could be cases where there is such a strong level of employer involvement that it is clear the activity is reasonably incidental to the employee's employment.

Examples and case law for sporting activities

Example A

Example A involves an employee who is a member of a netball team. The team plays competitive netball every Saturday morning as well as meeting once a week at the captain's house for meetings, making phone calls, arranging other social activities, and then going on to training. They have been provided with T-shirts by their employer. The employee is injured while training one night.

Example B

Example B involves an employee who trains each Tuesday and Thursday night for Saturday afternoon rugby. The employee goes home, has his evening meal and then returns to his local oval to undertake training. His employer allows him to leave work early on training nights, and to make use of facilities at the workplace to hold meetings, make phone calls and photocopy material for newsletters, raffles, etc. His employer sponsors the team, with uniforms being purchased by the employer. The employee is injured while training one night.

Example 'B' provides a much stronger connection to the employer than does Example 'A', and therefore, a much greater likelihood that the injury would be compensable.

Special events and social occasions

The same principles apply to special events and social occasions, such as work Christmas parties, as apply to sporting activities. In determining these cases Comcare would look at issues such as:

- support of employer for the activity (for example, whether the employer organises, or pays for the activity);
- where the activity is held (for example, if it is on the employer's premises);
- when the activity is held (for example, if it is during an ordinary recess).

In some cases, the nature of employment may be relevant, for example, if an employee worked in a public relations position which involved entertaining.

It is not generally enough that the employer merely encourages a certain activity to be undertaken. Some more substantial participation is usually required before liability would be found.

Application of exclusionary provisions

Compensation for injuries that occur due to sporting events or social occasions would not be payable in cases where the exclusionary provisions of the SRC Act apply.

If an employee sustains an injury because he or she voluntarily and unreasonably submits to an abnormal risk of injury, then that injury is not within the course of employment (SRC Act sub-section 6(3)).

Subsection 14 (3) of the SRC Act provides that:-

“Compensation is not payable in respect of an injury that is caused by *serious and wilful misconduct by an employee*, but is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment.” (Italics added)

Subsection 4(13), in turn, states:-

“For the purposes of this Act , *an employee who is under the influence of alcohol or a drug* (other than a drug prescribed for the employee by a legally qualified medical practitioner or dentist and used by the employee in accordance with that prescription) *shall be taken to be guilty of serious and wilful misconduct.*” (Italics added)

The Safety Rehabilitation and Compensation Commission has decided that the blood alcohol level of 0.05 is the standard in determining whether the exclusionary provisions of subsection 4 (13) apply, (where a blood alcohol level reading is available).

Employer’s Role

Policy

Employers should ensure they have a policy with regard to sporting and leisure activities and the level of support they will provide. This is especially important with any sporting activity that is, in some way, linked to the workplace.

Submitting Claims

When forwarding relevant claims to Comcare, employers should ensure they include details of:-

- level of employer support;
- where the activity was conducted;
- when the activity was conducted; and
- if applicable, any fitness requirements associated with the employment.

Conclusion

Each claim for an injury sustained during a sporting or leisure activity will be decided on its own merits in accordance with the principles discussed above and relevant case law applicable at the time the claim is considered.

Further Information

If you would like more information on this topic please contact Comcare on 1300 366 979.

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