

New Jersey Supreme Court Announces Bright-Line Rule for Employer-Compelled Social and Recreational Activities

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It's been a good year for your company. Revenues have never been higher, and clients and customers are happy with the services you provide. The president of the company has decided it's time to celebrate, and plans are made for a company dinner for all staff.

Such events can help boost employee morale and lead to more productive, happier employees. They can also lead to worker's compensation claims, at least according to an opinion of the New Jersey Supreme Court issued in March 2004. In Lozano v. Frank DeLuca Construction, the New Jersey Supreme Court held that non-work related injuries will result in a compensable workers' compensation claim if the activity has been compelled by the employer.

As originally drafted in 1911, the New Jersey Workers' Compensation Act simply provided that compensation would be awarded for injuries or deaths from accidents "arising out of and in the course of employment." Since its passage, however, New Jersey courts were often asked to award damages in cases in which injuries were sustained by employees engaging in recreational or social activities that were work-related, such as the company-sponsored softball game or the annual employer picnic.

In deciding those cases, New Jersey courts came up with a number of loose guidelines to be applied on a case-by-case basis, including factors such as whether the employer received a benefit from the employee's participation in the

activity and whether the employer directed or managed the activity. These guidelines were neither definite nor clear, and led to a general judicial trend broadly awarding workers' compensation benefits for most voluntary recreational and social activities, even where there was hardly any work-relatedness to the employee conduct at all, such as where an employee decides, on his own, to engage in a sports activity during his lunch hour.

Thus, in 1979, the New Jersey Legislature amended the Workers' Compensation law in an effort to curb awards for recreational and social activities engaged in by employees. The Legislature attempted to do so by explicitly requiring that the recreational activities be "a regular incident of employment" in order for benefits to be awarded. As intended, the Legislature's action led to a tightening of benefit awards by courts.

The recently decided Lozano case is a significant exception to that tightening. In Lozano, the plaintiff was employed by a mason contractor as a laborer. On the date of his accident, the plaintiff and his employer, Frank De Luca, were constructing a stone wall at a private home. They completed the wall by approximately 5:00 p.m. that day, and plaintiff, who did not drive, was waiting for De Luca to take him home.

The owner of the home had three go-carts parked on a paved, circular track on his property. De Luca got in one of the go-carts and drove it around the track.

When he finished, he directed the plaintiff to “get in” the go-cart. Not knowing how to drive, plaintiff refused to do so. De Luca persisted and plaintiff, understanding his supervisor’s persistence to be a command, complied. On his first lap around the track, the plaintiff crashed into a parked truck and sustained serious and permanent injuries.

On March 10, 2004, the New Jersey Supreme Court ruled that the plaintiff was entitled to workers’ compensation benefits. The Court reached this decision after reviewing pre-1979 legislative amendment “social and recreational activity” cases and determining that they comprised two categories. The first category involved those cases in which employer-sponsored recreational and social activity is voluntarily engaged in by the employee. The second category is comprised of employer-*compelled* activities. In this latter category of cases, the Supreme Court said, New Jersey courts had always held that mandated activities fell within the scope of employment regardless of the activity’s departure from the employee’s normal job duties.

The Court reasoned that because the language and legislative history of the 1979 legislative amendments did not address employer-compelled recreational and social activities, those amendments were only intended to encompass activities in which participation is not compulsory. Thus, the Court set out a bright-line rule in which employees will always be entitled to workers’ compensation benefits where attendance at a social or recreational function is required by the employer.

When read against the bare language of the Worker’s Compensation statute’s requirement that an injury “aris[e] out of and in the course of employment” in order to be compensable, the Lozano decision is perhaps surprising, since the ruling means that *any* employer-compelled conduct, no matter how unrelated to employment, can lead to a workers’ compensation award. However, understood in the context of the Court’s long-established view that the Workers’ Compensation Act is “remedial” legislation intended to “place the cost of work-connected injury on the employer who may readily provide for it as an operating expense,” Lozano should not come as a surprise.

By establishing such a bright-line rule, however, the Court has made it easier for employers to know when they may be liable for worker’s compensation benefits. Thus, employers should use Lozano as a guide.

One way that employers may guard against workers’ compensation claims for social or recreational activities is to make it clear to employees, in writing and otherwise, that employer-sponsored activities such as company picnics, softball games or other similar activities are completely voluntary. Employers would also be wise to counsel supervisors against compelling or ordering employees to engage in non-work related activities.