

# HOLIDAY PARTIES & RISK

## FOR WORKERS' COMPENSATION CLAIMS

BY JENNY HONEYCUTT

For more information regarding the compensability of injuries at social activities, I recommend reading *Whigham v. Jackson Dawson Communications*, 410 S.C. 131, 763 S.E.2d 420 (2014) and *Leopard v. Blackmon-Uhler*, 318 S.C. 369, 458 S.E.2d (1995).



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As the holiday season draws near, many employers will be hosting parties for employees and staff. It may not surprise you that the South Carolina Workers' Compensation Commission has heard cases regarding the compensability of injuries incurred during business Christmas parties. So how do you know whether an injury suffered during a Christmas party is compensable?

### COURSE & SCOPE OF EMPLOYMENT

We all know an injury must arise out of one's employment. The Law of Workers' Compensation treatise by Professor Larson creates a three-factor test to determine whether social activities are within the course and scope of employment:

- Whether the activity occurred on the premises during lunch or a recreation period as a regular incident of the employment; or
- The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of employment; or
- The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

### MANDATORY EQUALS COMPENSABLE

There has been at least one case where the South Carolina Workers' Compensation Commission found an injury sustained on the way to an office Christmas party compensable.

The Commissioner reasoned that since the employee's attendance was mandatory and the employee was required to attend other social outings on behalf of the employer to obtain additional clients, the activity was within the course and scope of employment.

### QUESTIONS YOU SHOULD ASK TO DETERMINE WHETHER AN INJURY IS COMPENSABLE INCLUDE:

- Did the holiday party occur during normal business hours?
- Did the holiday party occur on the premises of the employer?
- Did the employer require attendance?
- Did the holiday party include marketing events to obtain additional business?
- Was it a part of the employee's job to plan and attend the holiday party?
- Did the claimant drink alcohol at the party?

### THE AFFIRMATIVE DEFENSE OF INTOXICATION REMAINS INTACT

South Carolina courts allow employers to assert the affirmative defense of intoxication even if the employer supplies the alcohol at an event. While alcohol increases the risk of an injury, the Supreme Court has confirmed that injuries caused by an employee's intoxication may still bar a claim under §42-9-60. *Spoone v. Newsome Chevrolet Buick*, 306 S.C. 438; 412 S.E.2d 434 (1992). This case confirmed providing employees alcoholic beverages does not provide an equitable reason to deny the employer's ability to assert the affirmative defense of intoxication.