



“Stop Horsing Around!”
Injuries Resulting from Horseplay and
Workers’ Compensation Claims
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Employees blowing off steam and having a little fun on the job may be a common part of your operations. After all, you want your team to work hard, have some fun, and enjoy their work. However, all too often “horseplay” results in injuries to one or more of your workers and may possibly implicate your workers’ compensation policy.

The natural tendency is to say that any horseplay injury is not a compensable workers’ compensation claim. After all, you are not paying your employees to “goof off” while on the clock. Generally, your thoughts on this would be correct. Recall that for an injury to be compensable, it must “arise out of” or occur in the “course and scope of employment.” An injury does not “arise out of” or occur “in the course and scope of” employment if the injury is the result of acts taken for the employee’s sole benefit. Actions taken by an employee for the employee’s sole benefit are often referred to a “personal deviation” from the employment. If an employee is involved in a “personal deviation” and suffers an injury, it is usually not compensable. **Applying these basic principles leads to the simple conclusion: If an employee gets injured horsing around, that is their fault and their responsibility.**

But as has become a theme in these articles this summer, **each case is different and must be individually analyzed.**

The Colorado Courts have created **a four-part test** to analyze whether initiation of, or participation in, horseplay is a personal deviation (not compensable) or arises out of the employment relationship (compensable). **So, when deciding whether you may be liable for an injury that is caused by horseplay you must ask the following four questions:**

- (1) How extensive and serious is the deviation? Was the incident minor or were your employees seriously screwing around?
- (2) How complete was the deviation, *i.e.*, whether it was commingled with the performance of a duty or involved an abandonment of duty? Did the horseplay happen while the employee was at his workstation, or did the employee engage in horseplay at a time when he was completely uninvolved with any work task or duty?
- (3) Was the practice of horseplay an accepted part of the employment? The judge will look very hard at this element to see what the common practices were on your jobs. Did the supervisor often engage in horseplay? How often did horseplay happen on the job? Were other employees written up for horseplay or did everyone just laugh and look the other way?

(4) Are the working conditions or atmosphere such that some horseplay might be expected on your job site? This question is similar to number 3, and takes into consideration what an employee would believe is acceptable? Did your employee witness others engaged in Page Two horseplay on the jobsite? Did your employee observe horseplay without repercussions? Did supervisors engage in horseplay along with the others?

So if an employee gets injured while engaged in horseplay, don't assume it won't be compensable. Take a good hard look at your job site and see what the general atmosphere is in regards to horseplay on your jobs. If you want to avoid having any compensable horseplay claims create an atmosphere which does not tolerate roughhousing and screwing around. Document all incidents of horseplay and provide consequences when appropriate. Make sure your supervisors never engage in horseplay and set the example for a safe workplace. Inform your employees that horseplay on the jobsite is "a personal deviation" from work and that your company maintains the position that any injuries that happen from horseplay are not covered as a workers' compensation claim.

If an injury does occur from horseplay, do not assume it is not compensable. Contact your attorney and claims representative, file all necessary reports, provide emergency care, identify designated providers, and treat it as a possible claim. Let your attorney and claims representative make the final compensability determination after applying the four part test above.

As always, feel free to contact me at 303-575-8096 for any advice.

**** Note: The information contained in this document does not convey legal advice of any kind. Please consult your attorney for advice on the application of the law to the specific facts of your case or legal problem.**

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Summer Safety Series 2017
Issue 4 | August 3 2017

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