



## **Horsing Around – Think Twice if You Want Workers’ Compensation**

by Steve Burke

You don’t have to watch the TV series “The Office” to know about very odd things that can happen in the workplace. Perhaps you’ve seen employees arm-wrestle each other at work. Maybe you’ve chased a stapler-thieving co-worker down the hall. Or perhaps you asked someone to hand you a hammer, but they threw it at you instead. If so, you have entered the grand domain of “horseplay,” and that one word alone is enough to jeopardize workers’ compensation coverage.

Most people believe any kind of injury that happens while at work is covered by workers’ compensation. While that is often true, there are dozens of exceptions. A heart attack on the job may not qualify for comp benefits, and an unexplained fall may not qualify. A work injury resulting from drug use or intoxication may go uncovered. Horseplay also is a widely recognized defense to a workers’ compensation claim.

The courts generally recognize horseplay as a deviation from work. If they find that the play is totally without a work-related purpose or sanction and it has not ceased, then resulting injuries are not compensable. In other words, if the horseplay is independent and unconnected with employment, there likely is no coverage. Some examples:

- **Arm-wrestling** – In Kentucky, a jailer suffered a broken arm in one of many arm-wrestling contests that occurred there. The county jailer did have a policy requiring employees to be physically fit and did allow them to work out. However, the courts ruled there was no coverage because the county jailer had never consented to the arm-wrestling nor turned a blind-eye to it. Had the county jailer known about the arm-wrestling and permitted it to continue, the outcome likely would have been different.
- **Chasing the office thief** – In Tennessee, an office worker tripped after chasing a co-worker who had taken his stapler. There was no coverage because chasing the co-worker went beyond the scope of anything that was expected on the job – there were other means available to recover the stapler.
- **Throwing the heavy tool** – However, coverage was deemed to exist when a construction worker asked a co-worker to hand him a hammer, but it was thrown instead. This may have constituted horseplay on the part of the thrower, but not the person on the wrong end of the hammer. There was coverage because the injured party had not consented to the thrower’s horseplay.
- **Tough guys square off** – In Kentucky, two warehouse workers were arguing about who was tougher and even had playfully punched one another. One was driving a forklift, and the other was standing beside it. The forklift operator told the other one he was done arguing and to back off. The forklift driver then ran over the other co-worker’s foot. This was compensable, even though the co-worker did not back away from the forklift. The forklift driver had declared the argument over, and also had a duty to operate the forklift safely when others were nearby.

As can be seen, incidents of horseplay can be a close call. The most important lesson is to take statements as soon as possible after an incident, take scene photos if necessary, and consult your carrier or counsel about whether the horseplay defense might apply. The cast in “The Office” gets away with a lot of shenanigans, but of course, they don’t have to pay the bills!

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