

---

## Worker's Compensation – Are you eligible?

### Worker hurt on break – do you still owe comp?

December 12, 2008 by Fred Hosier

In light of a recent court decision, you might be paying workers' comp for employees who are injured while they're on break.

Here's what happened:

An employee was on his paid 15-minute break, and he was required to stay on site.

The worker played basketball using a hoop and court on company property and injured his knee. Then, he filed for comp.

The company argued it shouldn't have to pay because the worker was engaged in voluntary recreational activity.

But the court disagreed.

### He was on the clock

The court said the injury technically arose during the course of employment.

How so? The worker was on the clock. Although he wasn't *paid to participate* in the game, he was *getting paid while participating*, so the company had to pay comp.

While workers' comp laws vary from state to state, in many cases, companies will have to pay if a worker is injured in recreational, social or athletic injuries if they happen during the course of employment. For example, you might have to pay comp for an injury if:

- The activity took place on company premises during lunch or a recreational event

- Your company required participation, or
- Your company received direct benefit from the worker's participation, such as advertising the company logo on shirts or hats during games or practice.

---

### Safety Trumps Disability Law

Disability laws don't trump OSHA rules on required personal protective equipment (PPE).

That's according to a new document from the Equal Employment Opportunity Commission (EEOC).

If OSHA requires PPE for a certain type of work, and a person with a disability can't wear the PPE, the Americans with Disabilities Act (ADA) doesn't provide the worker with an exemption.

### Is worker 'qualified?'

Example: An OSHA regulation requires an employer's workers to wear steel-toed boots.

An employee has severe burns on his feet and legs that prevent him from wearing steel-toed boots.

No accommodation is possible, so the employee asks for an exemption.

The ADA doesn't prevent employers from complying with other federal laws, including the Occupational Safety and Health Act.



---

Under these circumstances, the employer may insist that the employee wear steel-toed boots.

Because the employee can't comply, he is considered "not qualified."

At this point, the company should explore whether it can reassign him to another job as a reasonable accommodation. If that isn't possible, the company can consider medical leave until he can wear the boots.

For more information, you can download *The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees with Disabilities* at <http://www.eeoc.gov/facts/performance-conduct.html>.



**HSS** Safety Share

---