

Liability Related to Physical Fitness Activities in the Workplace

Federal Employees' Compensation Act (FECA) *as amended, 5 U.S.C. §8101 et seq.*, provides for the payment of workers' compensation benefits to federal employees who are injured while performing their duties. The Department of Labor established guidelines providing FECA coverage for employees injured while engaging in physical fitness activities. This guidance expands an employee's right to file a claim for benefits under FECA to an employee who is injured while engaging in an activity that is specifically identified in that employee's Physical Fitness Program (PFP) and provides coverage for all FECA benefits. A PFP is an agency initiated and structured program that allows employees to participate in specified physical exercise activities. If an employee is injured while engaging in a physical fitness activity or recreational activity that is not part of a PFP, FECA coverage is considered on a case-by-case basis. The following criteria are used to determine if the employee is eligible for FECA coverage:

- The physical fitness activity occurs on the agency's premises during the employee's normal working hours;
- The activity is not specifically barred by the agency;
- The employing agency explicitly or implicitly requires the employee to participate, or makes the activity within the employee's scope of employment, for example, if the employee is injured during a mandatory evaluation; and
- The employing agency derives substantial direct benefit from the employee's participation in the activity, above and beyond the benefits of morale and good health. (An example of a case covered is a federal employee who is injured playing a softball game with an outside organization that worked on some cooperative projects with the employing agency. The employee's injury is covered because of a combination of factors, one of which was that the employee's participation in the activity established a closer professional relationship with the outside organization and substantially benefited the agency.)

If an employee receives payment under FECA, he or she cannot bring suit against the U.S. Government under the Federal Tort Claims Act for death or disability arising out of federal employment.

Federal Tort Claims Act

The Federal Tort Claims Act (as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988) provides individuals with an appropriate remedy against the U.S. Government for personal injury caused by the negligent or wrongful acts of federal employees. This insures that federal employees cannot be sued personally for negligent or wrongful acts resulting in personal injury, as long as that employee was acting within the scope of his or her office or employment. Instead, the

U.S. Government will serve as the defendant. It does not protect the employee if they are doing something illegal, or outside the scope of their employment.

Individuals that are not covered by FECA may bring suit against the U.S. Government through this act if they are injured by the actions of a federal employee.

A consideration for agencies that develop fitness activities through non-federal groups should require that the vendor carry general liability insurance. This would include contractors, private health clubs, fitness equipment vendors, and employee organizations that are responsible for providing physical fitness programs.

