No Place At Work For Horseplay



INCIDENT

Workplace pranks: a history of violence

It has long been established that employers can avoid liability for practical jokes in the workplace if they can show that the jokers were acting on a “frolic of their own”, for example by doing something totally unconnected with work.

Two contrasting cases get out the principle:

Smith v Crossley Brothers (Court of Appeal, 1951)

As a “practical joke”, two mechanics removed a colleague’s trousers and inserted a rubber hose into his bottom. The rubber hose expelled compressed air, causing serious injury.

The Court of Appeal found that the employer was not liable for the resulting injuries as there was nothing that the employer could have done to prevent such unpredictable actions.

Hudson v Ridge Manufacturing Co Ltd (Court of Assizes, 1957)

An employee’s wrist was broken when a colleague wrestled him to the ground as a practical joke. The colleague was a known practical joker and had a reputation for playing pranks. The employer had been aware of this for years.

The employer was found to be liable for the injury because it was obvious that the joker posed a danger, but it had done nothing to prevent him from committing further pranks.

Male manager fairly dismissed for “attempting to touch a colleague’s testicles and bottom”

NEED TO KNOW

While horseplay and pranks in the workplace can be fun, they can also end up distracting workers to the point that major accidents and serious injuries can occur. Furthermore, as you will see from the examples described below, even the most innocent of activities can sometimes lead to unexpected injuries that may be serious enough to cause death. As a result, workplace safety should always remain your number one priority.

Horseplay is rough or boisterous play or pranks that occur at the workplace. Horseplay can be activities such as joking that includes physical contact, playing around, racing, grabbing, foolish vehicle operation, social pressure to participate in unsafe acts, harassment, and unauthorized contest. There is probably at least one on every job – the practical joker – the smart aleck who likes to make a bid for laughs and attention by playing jokes on fellow workers. Playing jokes and having fun with your coworkers may break up the day and make work more interesting, but it can lead to serious injuries and sometimes be deadly.

At one time or other friends play "Practical Jokes" on friends outside the workplace which are not harmful. There is a world of difference between practical joke outside the workplace and engaging in the definition of workplace horseplay described above.

Each year there are hundreds of injuries in the United States from pranks at work. Workplace horseplay incidents may lead to serious injuries at work, divide the workplace, and prevent employees from getting their jobs done. In some states, horseplay that results in injury can result in criminal prosecution. Courts have held that these injuries are not the result of an accident but are deliberate acts.

Example of the Dangers of Horseplay

Did you know fooling around with air hoses has caused many cases of ruptured eardrums and ruptured bowels?

- A blast of air under 40 pounds per square inch (psi) of pressure from 4 inches away can rupture bowels or eardrums and cause brain damage.
- As little as 12 psi can pop an eyeball from its socket.
- Air can enter the navel, even through a layer of clothing, and inflate and rupture the intestines.
- If directed at the mouth, compressed air can rupture the lungs.

How Horseplay Affects the Workplace

When practical jokes are common in the workplace, it's hard to pay attention to your job because you're always on the lookout for the next joke. Horseplay is a safety hazard that can quickly get out of hand and lead to injury or death. If someone else gets hurt as a result of your horseplay or joke, you may be liable for damages and you'll risk losing your job. Even if a practical joke isn't dangerous in itself, it can result in humiliation, embarrassment, anger, hurt feelings, distrust and even a desire for revenge. **Employee Responsibility**

- Do not engage or participate in any type of unsafe behavior or acts.
- Follow all regulations and work rules to ensure the safety of individuals or other employees.
- Ensure protective equipment is used properly and operating machinery is in good repair and does not present a hazard to employees

Supervisors and Management Responsibility – It is management's responsibility to ensure all employees have access to a safe, respectful, and harassment free place to work.

- Provide a safe and healthy work environment for all employees.
- Take all precautions necessary to protect the safety and health of employees.
- Ensure that employees understand and follow company operating practices and safety procedures.

Employers Responsibility

Make it known that workers are responsible for each other's safety.

It should be clear to employees that they're to refrain from engaging in unsafe behaviors on the job, follow all workplace rules and regulations, and ensure equipment is used properly. Supervisors and managers have a responsibility to keep their employees' work environment safe and free of harassment by monitoring for and preventing horseplay.

BUSINESS / REGULATIONS

Most American employees are aware that the workers' compensation can help them recover after a work-related injury or illness, but what happens when employees cause harm to themselves due to recklessness or carelessness? If a worker suffers an injury due to worksite horseplay, then his or her deviation from job duties will likely influence a subsequent workers' compensation claim.

In the event that workers' compensation benefits do not fully cover the cost of a workplace injury, the employee may have grounds for a personal injury lawsuit against his or her employer if a known safety issue caused the injury. However, if the employee bears any responsibility for the injury, his or her negligence may influence a workers' compensation claim and a personal injury lawsuit in different ways.

WHEN DOES HORSEPLAY DISQUALIFY A WORKERS' COMPENSATION CLAIM?

The determining factor in most workers' compensation claims is whether the claimant suffered an injury during the course of performing work-related duties. If a worker suffers an injury due to horseplay, this may seem to indicate a clear deviation from the worker's job duties. However, most courts acknowledge that some types of work inherently lead to waiting or idle time, and it can be reasonable to expect some level of horseplay from employees who have no current duties to perform.

A workers' compensation review board will likely use a four-step system to determine whether horseplay should disqualify a claim for workers' compensation benefits. First, the seriousness and duration of the horseplay is a major factor. Engaging in objectively dangerous behavior or deviating well outside the scope of the employee's job duties may disqualify a claim. Next, it's important to determine if the employee engaged in horseplay during work or if the employee completely abandoned his or her work to engage in horseplay. For example, a delivery crew must frequently wait for periods up to an hour between jobs. If they engage in horseplay during these times, they technically have no immediate job duties to abandon.

The workers' compensation board or judge reviewing a claim will also assess whether horseplay was an accepted part of the job. Following the previous example, the delivery crew may play innocent pranks on one another during their wait time between deliveries, and the investigation may include testimony from other employees who report that pranks and horseplay were common during these lulls in activity. The final determining factor is if the nature of the employment could reasonably lead to horseplay. If wait time is common, then whoever reviews the claim could assume that some horseplay is a reasonable expectation.

LEGAL OPTIONS BEYOND WORKERS' COMPENSATION

If an injured worker faces a denial of benefits from the workers' compensation board, he or she may try to appeal the decision to a higher court. This can lead to additional legal expense but may also work in the injured employee's favor. If the employee's injuries could have resulted from any type of employer negligence, this will strengthen the employee's workers' compensation claim. Even though the employee

may have engaged in horseplay, the employer still had an obligation to ensure the worksite was reasonably safe.

A plaintiff who decides to pursue a personal injury claim against a negligent employer after suffering a horseplay-related injury should expect to bear some liability for the damages. In states that follow comparative negligence laws, a plaintiff will lose a portion of his or her recovery equal to his or her degree of fault for the damages. If a judge determines an employee is 40% at fault due to his or her horseplay, the employee would lose 40% of the case award but still qualify for recovery. However, in states that follow contributory negligence laws like Alabama, any plaintiff negligence completely bars recovery.

WORKPLACE HORSEPLAY CAN CAUSE SERIOUS ISSUES FOR BOTH EMPLOYEES AND EMPLOYERS

Employee liability

It is a common misconception among employees that health and safety is the sole responsibility of the employer and that if an accident or incident were to occur (including one resulting from horseplay) that resulted in the injury of another person, it would be the employer that would have full responsibility.

However, pranks at work that injure or threaten to injure another person may be the subject for individual prosecution against the perpetrator.

Section 7 of the Health and Safety at Work, etc Act 1974 requires the employee to "take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work".

Section 8 then requires that "no person shall intentionally interfere with or misuse anything provided in the interests of health, safety and welfare in pursuance of any of the relevant statutory provisions".

These duties include avoiding obviously silly or reckless behaviour and employees who fail to comply with either of the duties described above make themselves liable to be prosecuted in the courts.

As such, the prosecution of individuals does occur as a result of horseplay or practical jokes at work. The **Health and Safety Executive (HSE) Operational Circular OC130/8** states that "some acts of horseplay and violence against people will come within the scope of s.7 if they arise out of or in connection with work and put people's health and safety at risk".

Employer liability

Employers can be held vicariously liable for employees where it can be proven that the employer is aware of the horseplay taking place.

In one such case, a South Wales office furniture firm was fined a total of £10,000 following an incident in which a young employee was injured during leaving celebrations for another employee.

The employee leaving was tied up, placed on the forks of a lift truck and was driven around the site. This included passing through perspex doors. The driver of the fork-lift truck drove through these doors, striking another employee who was on his way to join in the celebrations. He suffered a broken ankle.

The subsequent investigation found that the employer had failed to ensure that its employees were properly supervised as both the works and production managers were

aware of the goings-on, but failed to stop this from occurring. Indeed, supervisors were found to take part and instigate such activity in some cases.

Further, although the perspex doors were designed for use by the fork-lift trucks, they were regularly used by employees as a means of access and egress. The driver of the lift truck had received no training in its safe operation with untrained operatives/supervisors regularly operating the lift trucks.

The employer pleaded guilty, but stated that all of its employees had been instructed to use the pedestrian walkways at the site and that all acts of horseplay had been stopped. They were fined £7500 under the Health and Safety at Work, etc Act 1974 and £2500 under RIDDOR for failing to report the incident.

In a more recent case, a waste management firm was fined £136,000 with £64,770 costs after an employee was crushed by a motorised shovel and subsequently died. The HSE Investigating Inspector said that there had been "extended, terrible horseplay" prior to the incident.

CCTV footage showed workers having to jump out of the way of vehicles and machinery being driven at somebody seated in a chair. The HSE's investigation revealed a "litany" of unsafe practices in the 10 days prior to the employee's death.

Sentencing, the judge stated that it was important to understand that the firm was not only prosecuted for the death, but for "consistent disregard of worker safety on the premises over a 10-day period".

Civil claims

In addition to criminal prosecutions, employers may face civil claims arising due to injuries inflicted by horseplay or pranks at work.

However, case law suggests that if an employer can show that the employees undertaking the actions were acting on a "frolic of their own", not connected to work, the employer would not be liable for damages.

The key case on this is *Smith v Crossley Brothers* (1951), where a practical joke involving inserting a rubber hose into the rectum of an employee by co-workers caused injury. The court found the employer could not have prevented such an unpredictable action.

In the more recent case of *Patel v Homerton University Hospital NHS Foundation Trust* (2017), the court found that the employer was not liable for injuries sustained when a co-worker pulled the claimant's chair away as she was about to sit down, causing damage to her spine.

Dismissing the case, the court decided that the employee who pulled the chair away was "acting in a purely private capacity, unconnected with his work" and therefore the employer could not be held responsible.

However, there are occasions when employers can be held liable. In the case of *Hudson v Ridge Manufacturing Co Ltd* (1957), an employee's wrist was broken following a practical joke. The person responsible for the practical joke was known to be a "prankster" by his employer and as such the employer was liable as it was obvious, he posed a danger, but it did nothing to prevent the behaviour.

Conclusion

Employers cannot rule out the possibility that horseplay at work will result in harm

being caused and that they can be held liable for the actions of their employees in such circumstances.

Employers should, therefore, put in place appropriate policies and procedures in relation to pranks, practical jokes and horseplay that inform employees of the consequences of inappropriate behaviour at work. It is important to strike a balance and not to discourage banter that can have a positive impact by setting out clearly what is deemed to be acceptable and unacceptable behaviour.

Where any activities take place that could constitute inappropriate horseplay, the employer, having been made aware of the activities, must take action to protect itself. Such actions should be discouraged and, where necessary, dealt with as a matter under organizational disciplinary procedures. When doing so, consideration should be given.

STATISTICS

Depending on the size of your organization and whether you rely on office workers, staff out in the field or manual laborers, your view of workplace injuries may vary. In fact, you may not even consider workers' compensation preparation to be a priority for your company. However, when you dig into the hard numbers, it is clear that preparing for an injury should be a top priority for any business.

Major investment

Workers' compensation insurance costs employers more than $95 billion every year. Covering more than 140 million workers, this means that companies are investing, on average, more than $678 per employee. Recent data shows that companies are paying around $31.5 billion annually to cover medical and surgical expenses and around $32 billion a year in lost wages.

When you consider that 3 to 4 percent of employees will suffer a workplace injury every year, the immediate financial impact for any company can be significant.

More physical activity, more risk

Data shows that jobs that involve more physical activity have a higher rate of workers' compensation claims. For example, 20 percent of cases that involved days away from work due to injury came from just five types of occupations: laborers; nursing aides, orderlies and attendants; janitors; tractor-trailer truck and heavy-truck drivers; and police and sheriff's patrol officers.

If your organization requires that employees engage in physical activity, it is in your best interest to ensure these staff members are properly trained in safety best practices to minimize injuries.

A grim outlook

Our society is focusing more and more on health and wellness, driven by behavior and attitudes adopted by the millennial generation. However, despite this attention to health, many young workers will face a debilitating injury or incident. According to the Social Security Administration, as many as one in four 20-year-olds will become disabled before they reach retirement.

The drivers behind this trend are still being studied, but lack of proper treatment after a significant injury is one of the key factors. Ensuring that staff members receive the proper long-term care and guidance after an injury is one of the best

ways to keep skilled employees in the workforce.

Injury outpacing illness

While the single largest driver of overall healthcare costs in the United States is chronic conditions and illness, when it comes to workplace issues, on-the-job injuries account for about 95 percent of all workers' compensation claims while on-the-job illnesses account for about 5 percent of costs.

Though on-the-job injuries may not seem like a pressing concern, these figures show that a single incident in the workplace can have a substantial impact on your organization's bottom line, not to mention the toll it can have on the employee. By arming employees with best practices and promoting a safe work environment, this risk can be mitigated.

PREVENTION

Here are 4 ways to prevent workplace horseplay.

1. **Horseplay and Fooling Around Are the Opposites of Safe, Responsible Work**

According to the dictionary:

- Horseplay means rough fun.
- Fooling around means doing foolish, useless things.
- Fool is a person with little or no judgment or common sense.

2. **Workplace Rules Ban Horseplay Because It's Dangerous**

Horseplay is usually a friendly, physical way to let off steam. But that type of fooling around is

dangerous on the job because:

- When you're fooling around, you're not concentrating on your work.
- Directing your horseplay at others is even more dangerous. They're not expecting the distraction and could easily have an accident such as falling into a moving machine part,
- slipping on the floor, or dropping a tool.
- Giving less than full concentration and attention to safety procedures makes you less likely to notice or account for hazards until it may be too late.
- Most accidents are caused by unsafe acts—and horseplay itself is an unsafe act.

3. **Workplace Horseplay Creates Unnecessary Risks**

You can prevent most workplace accidents by being alert to hazards and following safety rules.

You can't do either when you indulge in horseplay. Examples:

- Running, chasing, or pushing can cause slips, trips, falls, and other accidents. You may:
- Not notice spills or items lying on the floor.
- Crash into, or push someone else into, heavy equipment or moving parts.
- Knock boxes or materials onto a person.
- Knock over open containers of hazardous substances.
- Throwing tools is a frequent cause of injuries. They may:
- Stab someone with a sharp edge.
- Hit someone in the head, eye, foot, etc., and cause an injury.

- Fall from a height and hit a person below with tremendous impact.
- Fooling around with PPE can damage it and expose you or another worker to a hazardous substance.
- Speeding or stunt driving with a forklift can cause it to tip over or hit people or objects, possibly injuring the driver or pedestrians.
- Climbing on or under forklift forks or moving crane parts can cause you to get crushed or pushed. It’s against the law.
- Running with a hand truck could spill the load on someone or run over feet.
- Pushing, teasing, or otherwise distracting people working with machinery could cause pinch point or other injuries.
- Take Your Job, Your Responsibilities, and Safety Seriously
- You’re responsible for performing your job correctly, which includes safely.
- Safety rules and procedures are designed to protect you.
- Everyone must follow safety rules.
- Failure to follow the rules is dangerous—for you and for others.
- Horseplay and other safety rule violations can lead to disciplinary action.
- Don’t indulge in horseplay or accuse those who won’t go along of having “no sense of humor.”
- Think how bad you would feel if your horseplay injured someone else.
- Don’t allow other people to engage you in horseplay.

“Roughhousing” or “Horseplay” while on the job is counter to the behaviours and thinking we coach our teams to engaging in, to help create a safe workplace:

Be Responsible for the Safety of ourselves and others: Horseplay can result in an injury by accident, to the person engaging in it and to those who are by-standers. If employees are not in control of their emotions and the impact it has on other employees, it can lead to a physical confrontation and possibly violence.

Keep Alert for Potential Risks and Dangers: When employees are engaged in horseplay, often they are also not paying attention to other people and objects around they may make contact with. Engaging in this type of behavior can lead to the individual and other workers being distracted or providing less attention to their immediate environment.

Engage in Safety Best Practices and Behaviors: This is not only applicable to employees at inherently dangerous work-sites, where this type of behavior should already be prohibited. Tolerating horseplay will impact the safety culture of any workplace because it provides allowance, for those individuals who may find it harder to follow the safe rules or policies, to break them on a continually basis without consequence. This behavior unnecessarily increases potential dangers and risk for other workers, who could also become distracted while engaging in their workplace tasks.

Awareness of Potential Risks and Dangers: Employees engaging in horseplay are not being safe or contingent of their surroundings which can increase their and co-worker’s exposure to risk and dangers. As managers and safety leaders, we must coach employees to have fun while in the workplace in a safe and controlled manner. It is key to bring attention to our workers, especially new workers, the various hazards that exist in our work environments and why it is key not to add more unnecessary risks.

We all want our employees to be happy and productive while at work, however not at the expense of their or other people’s safety. It is key to set clear boundaries for workplace behaviors and conduct at our work sites to help keep our people safe and

proactive at identifying risks.