

To: New Jersey Law Revision Commission
From: Whitney Schlimbach, Counsel
Re: Recreational or Social Activities Defense to Workers' Compensation - N.J.S. 34:15-7
(*Goulding v. NJ Friendship House, Inc.*, 245 N.J. 157 (2021))
Date: February 7, 2022

MEMORANDUM

Project Summary

In New Jersey, the Workers' Compensation Act (the Act), authorizes an employer to assert certain defenses to compensation claims, including that "recreational or social activities . . . [we]re the natural and proximate cause of the injury or death."¹ That defense is not applicable, however, when the activity satisfies the two-pronged exception in the statute: the activity (1) is "a regular incident of employment" and (2) "produce[s] a benefit to the employer beyond improvement in employee health and morale."²

In *Goulding v. N.J. Friendship House, Inc.*,³ the New Jersey Supreme Court addressed whether an injury sustained by an employee while volunteering at an employer-sponsored event was compensable, although her employer asserted the "recreational and social activities" defense found in N.J.S. 34:15-7.⁴ Relying on the plain language of the statute, its legislative history, and prior decisions interpreting its scope, the *Goulding* Court concluded that the employee was entitled to compensation for her injuries.⁵

Relevant Statute

N.J.S. 34:15-7 provides, in relevant part, that:

When employer and employee shall by agreement, either express or implied . . . accept the provisions of this article compensation for personal injuries to, or for the death of, such employee by accident arising out of and in the course of employment shall be made by the employer without regard to the negligence of the employer . . . in all cases except . . . when recreational or social activities, unless such recreational or social activities are a regular incident of employment and produce a benefit to the employer beyond improvement in employee health and morale, are the natural and proximate cause of the injury or death.

Background

Kim Goulding (Appellant) was an employee of Friendship House, a non-profit entity providing services to individuals with developmental disabilities.⁶ She was injured while

¹ N.J.S. 34:15-7.

² *Id.*

³ 245 N.J. 157 (2021).

⁴ *Id.* at 161.

⁵ *Id.* at 161-162.

⁶ *Id.* at 161.

volunteering at the organization’s first annual “Family Fun Day.”⁷ At the time of the event, the Appellant worked as a cook at Friendship House.⁸ The purpose of Family Fun Day was “to provide a safe and fun environment with recreational activities, including games and music, for the clients of Friendship House and their families.”⁹ Although Friendship House asked its employees to volunteer to work the event, there were no consequences for those who did not volunteer.¹⁰ The Appellant volunteered to work as a cook.¹¹ She was injured when she fell in the parking lot during the event.¹²

The Appellant filed a claim for compensation that Friendship House opposed.¹³ The workers’ compensation court dismissed the claim, relying on the “recreational or social activities” defense in N.J.S. 34:15-7.¹⁴ That compensation court determined that the “Family Fun Day” event qualified as a social or recreational activity, that it was not a “regular incident of employment”¹⁵ and that Friendship House did not receive a benefit “beyond an improvement to employee health and morale.”¹⁶

The Appellate Division affirmed the decision of the workers’ compensation court.¹⁷ It explained that the event was “recreational or social” because it was intended to celebrate Friendship House clients and “included food, games and music.”¹⁸ The Appellate Division determined that the first prong of the exception to the “recreational or social activities” defense was not satisfied for some of the same reasons relied on by the worker’s compensation court.¹⁹ Although the Appellate Division concluded that an analysis of the second prong was unnecessary, it noted “there was a ‘lack of support in the record [to show] that there was any benefit to [Friendship House] in the form of positive public relations.’”²⁰ The Supreme Court granted the Appellant’s petition for certification.²¹

Analysis

The Supreme Court in *Goulding* considered the legislative history of the “recreational or social activities” defense in N.J.S. 34:15-7, the plain language of the statute, and the common law

⁷ *Goulding*, 245 N.J. at 162-163.

⁸ *Id.* at 162.

⁹ *Id.* at 163.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 164.

¹⁵ *Id.* (relying on the fact that “this was the ‘first and only’ Family Fun Day Friendship House had sponsored, and the incident in question was not the cooking activity Goulding volunteered for, but her attendance at the event generally,” and “that Goulding volunteered to help at the event, was not compelled to do so, and could have volunteered for a position other than the one she held at her job”).

¹⁶ *Id.* (explaining “there was no fundraising or marketing associated with the event”).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 164-165 (finding that “[t]his was the first Family Fun Day;” it was held outside normal working hours; employees were not required to volunteer or attend; if an employee did volunteer, she could do so in any capacity; and Goulding could have chosen to help with games or prizes, she did not have to cook”).

²⁰ *Id.* at 165.

²¹ 241 N.J. 66 (2020).

interpretation of its scope. The Court emphasized that it has “long stressed that [the Act] is humane social legislation designed to place the cost of work-connected injury upon the employer who may readily provide for it as an operating cost.”²²

- *Legislative History of N.J.S. 34:15-7*

Originally, the Act “provided that compensation would be awarded for injuries or death from accidents ‘arising out of and in the course of employment.’”²³ Courts considered whether the injury was sufficiently related to employment to be compensable under the Act using the following five factors:

- (a) the customary nature of the activity; (b) the employer’s encouragement or subsidization of the activity; (c) the extent to which the employer managed or directed the recreational enterprise; (d) the presence of substantial influence or actual compulsion exerted upon the employee to attend and participate; and (e) the fact that the employer expects or receives a benefit from the employee’s participation in the activity.²⁴

In 1979, the Act was amended by the Legislature to add the “social or recreational activities” defense and its limited exceptions when N.J.S. 34:15-7 was enacted.²⁵

“In early cases . . . compensation was denied ‘for injuries sustained during employer-sponsored recreational and social activities’” when attendance was not compulsory and there was no “clear business benefit” to employers.²⁶ Subsequently, in *Tocci v. Tessler & Weiss, Inc.*,²⁷ and *Complitano v. Steel & Alloy Tank Co.*,²⁸ the New Jersey Supreme Court found claims for injuries sustained during employee softball games compensable under the Act.²⁹ The Court explained that the “carve-outs from coverage” contained in N.J.S. 34:15-7 “have been interpreted as a legislative attempt to reverse the judicial trend toward expansive interpretation that began in *Tocci* and *Complitano*.”³⁰

Against this background, the Court analyzed the applicability of the “recreational or social activities” defense to the facts in *Goulding*. The Court indicated that it “must first consider whether the activity was, in fact, ‘recreational or social’ within the meaning of the statute.”³¹ If so, an injury is still compensable if the activity was “(1) . . . a ‘regular incident of employment,’ and (2) . . . ‘produce[d] a benefit to the employer beyond improvement in employee health and morale.’”³²

²² *Goulding*, 245 N.J. at 167.

²³ *Id.* at 168.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ 28 N.J. 582 (1959).

²⁸ 34 N.J. 300 (1961).

²⁹ *Id.* at 169-170.

³⁰ *Id.* at 170.

³¹ *Id.* at 171.

³² *Id.*

- *Meaning of “Recreational or Social Activities”*

The Court addressed the threshold determination of whether Family Fun Day fell within the meaning of “recreational or social activities” in N.J.S. 34:15-7, noting that the Act does not define the term, and that it had previously “underscored the ambiguity of that label” because “from the perspective of an employee” its meaning “is not self-evident.”³³ Therefore, the Court concluded that its inquiry must “extend beyond the plain language” of the statute.³⁴

In *Lozano v. Frank DeLuca Constr.*,³⁵ an employee was injured while driving a go-cart at a customer’s private home. After employees and their supervisor finished installing a wall on the customer’s property, they were permitted to use his go-cart track.³⁶ Although Lozano initially refused because he did not have a license or know how to drive, his employer “assured him it was easy and told him to ‘get in.’”³⁷ Reversing both the compensation court and the Appellate Division, the Supreme Court held that “when an employer compels an employee’s participation in an activity generally viewed as recreational or social in nature, the employer thereby renders that activity work-related as a matter of law.”³⁸

Acknowledging that the Appellant’s participation in Family Fun Day was voluntary, the *Goulding* Court emphasized it was the “nature of Goulding’s activities at the event,” not the “character of the event,” that was dispositive.³⁹ Because the Appellant was at Family Fun Day “to help facilitate it” rather than participate “in a social or recreational role,” the Court held that Family Fun Day “cannot be deemed a social or recreational activity as to her,” and the injury she sustained during the event was compensable.⁴⁰

- *Two-Pronged Exception to the “Recreational or Social Activities” Defense*

Noting that its analysis could end with the above, the Court added that the Appellant “would also be entitled to compensation under N.J.S. 34:15-7 if her volunteer work at Family Fun Day could be deemed a recreational or social activity.”⁴¹

- *“Regular Incident of Employment”*

The Supreme Court concluded that Family Fun Day was a “regular incident of employment” based on the event’s relationship to the Appellant’s employment at Friendship House.⁴² It emphasized that she “would not have attended the event,” or been injured, absent her employer’s “request for volunteers at the event.”⁴³

³³ *Goulding*, 245 N.J. at 172 (quoting *Lozano v. Frank DeLuca Constr.*, 178 N.J. 513, 522 (2004)).

³⁴ *Id.* (quoting *Lozano*, 178 N.J. at 522).

³⁵ 178 N.J. 513 (2004).

³⁶ *Id.* at 518-519.

³⁷ *Goulding*, 245 N.J. at 172 (quoting *Lozano*, 178 N.J. 519).

³⁸ *Id.* (quoting *Lozano*, 178 N.J. 518).

³⁹ *Id.* at 174.

⁴⁰ *Id.* at 174-175.

⁴¹ *Id.* at 175.

⁴² *Id.* at 175-176.

⁴³ *Id.* at 176.

Further, Friendship House was actively involved in, and had “complete control” of, Family Fun Day.⁴⁴ The event was held with the intent that it would be a “recurring ‘annual’ event,” demonstrating its “customary” nature.⁴⁵ The Court also noted the fact the Appellant “volunteered to cook at the event in keeping with her regular employment position.”⁴⁶

The Court said it would be “difficult to imagine that the Legislature intended to preclude compensation for injuries sustained by an employee who was volunteering at the employer’s behest to assist in facilitating an employer-sponsored event designed to celebrate the employer’s clients.”⁴⁷

○ *“Benefit to the Employer Beyond Improvement in Employee Health and Morale”*

The second prong of the statutory test requires courts to consider whether an employer received a benefit from the social or recreational activity beyond improving employee health and morale. The Court said that it “would be hard-pressed to conclude that an event designed for the employer’s clients, and not for its employees, has the primary and sole purpose of improving employee health and morale.”⁴⁸ It determined that Friendship House received “the ‘intangible benefits’ of promoting itself and fostering goodwill in the community.”⁴⁹ Friendship House also received “a separate benefit in and of itself” arising from the “experience enjoyed at Family Fun Day by the clients and their families – the very people Friendship House has made it its mission to serve.”⁵⁰

Finding that “[b]oth prongs” of the exception were met, the Court held that “even if her volunteering for Family Fun Day were social or recreational” pursuant to N.J.S. 34:15-7, the Appellant would still be entitled to compensation for her injury.⁵¹

Pending Legislation

There are no bills currently pending that involve the “recreational or social activities” defense, or the exception to it, in N.J.S. 34:15-7.

Conclusion

Staff seeks authorization to conduct research and outreach to determine whether N.J.S. 34:15-7 would benefit from a modification to clarify the scope of the “recreational or social activities” defense, pursuant to the Supreme Court decision in *Goulding v. N.J. Friendship House, Inc.*, 245 N.J. 157 (2021).

⁴⁴ *Id.*

⁴⁵ *Id.* (providing “a lunch, coffee, or cigarette break” and “a daily softball game” as examples of “customary” activities).

⁴⁶ *Id.*

⁴⁷ *Id.* at 176-177.

⁴⁸ *Id.* at 177.

⁴⁹ *Id.* at 178.

⁵⁰ *Id.*

⁵¹ *Id.*