

Potential liability for employers if employees are injured while participating in employee wellness activities

(such as walking in a neighborhood near the worksite during paid breaks, or riding employer-owned bicycles to off-site meetings)

Response from Public Health Law Center

Potential liability may arise through a claim for workers compensation or personal injury. Employer liability for a worker's compensation claim is limited because of an exception in the Minnesota law for voluntary wellness activities. Employer liability for a personal injury claim is also limited because workers compensation is the only remedy available for an employee who is injured in a situation "arising out of or in the course of employment" and because of the high standard that an employee would have to meet to prove a personal injury claim. For example, an employee is not required to prove that the employer was negligent under workers comp, but would have to prove the employer's negligence in a personal injury case. Although the likelihood of employer liability under either workers comp or personal injury is small, the outcome of any claim will depend on the specific facts of the situation. An employer who is considering adopting a wellness program should have its attorney review the specifics of the program for liability and other legal issues.

A Minnesota employer must pay workers compensation benefits when a personal injury or death of an employee arises out of or in the course of employment. However, the law creates a specific exception for employee wellness programs. That section states:

Injuries incurred while participating in voluntary recreational programs sponsored by the employer, including health promotion programs, athletic events, parties, and picnics, do not arise out of and in the course of the employment even though the employer pays some or all of the cost of the program. This exclusion does not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program. Minnesota Statute 176.021, subdivision 9.

Therefore, as long as participation in the wellness program is voluntary, the employer will not be required to pay workers compensation benefits, for example, to an employee who is injured while taking a walk through the neighborhood during a paid break. Even if the employer provides a map of the area showing a suggested route, it is unlikely that the employer would be liable if an employee were injured. The result might be different, however, if an employee is injured while taking a "walking meeting." In that situation, it would be more likely that the injury occurred in the course of employment.

If an employee is injured while riding an employer-owned bicycle to an off-site meeting instead of driving, the employer may have workers compensation liability because the employee is riding the bike in the course of his or her employment. The employee is traveling to the off-site meeting for the employer's benefit, not the employee's benefit. The fact that the employee had the choice to drive his or her own car and chose to use the employer's bicycle should not make a difference. If the employer makes the bicycles available for employees to ride as part of the wellness program unrelated to any employment duties, any injuries that occur would be exempt from workers comp coverage. However, the employer could be liable for personal injury if it made bicycles available to its employees that it knew to be defective and an employee were injured in an accident because of the defect.

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Equipment Use

If using the treadmill at work is a voluntary wellness activity that an employee does on their own break time then liability is not assumed by the employer. If it's a required function of their job then it's different. There are also other things the employer could do to minimize any potential liability. The following information is from the bike share document from the Public Health Law Center. If employers got in the habit of doing the last three around any equipment used it would greatly reduce any risk.

Q: How can the owner or operator of a bike share program limit its liability?

A: There are numerous ways that the owner or operator of a bike share program can limit its liability, including:

- Purchasing insurance
- Requiring users of the program to sign waivers releasing the program from liability for injuries,
- Keeping the bikes well maintained
- Educating users about use of the bike
- Providing safety training.