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The end of the year is a time to celebrate. While the holiday party offers many positive rewards, it can also carry with it some unintended negative consequences for employers. The following is an article on how employers can protect themselves from liability from holiday party related activities.

Avoiding the Hangover: Minimizing Liability for Holiday Parties

By Alison Hightower and Gary Bethel

The end of the year is a time to celebrate. Employers often take the opportunity to join the celebration by sponsoring holiday parties for employees and sometimes their families. Employers consider such events an opportunity to foster team spirit by letting employees know that their work is appreciated. In turn, employees appreciate the chance to celebrate with coworkers outside the often hectic workday.

While the holiday party offers many positive rewards, it can also carry with it some unintended negative consequences for employers. This is especially true when alcohol is served, as alcohol consumption can quickly turn an otherwise innocuous office party into a minefield for employer liability.

Holding true to the maxim that “no good deed goes unpunished,” employers may face liability for the conduct of employees who become intoxicated during office parties and thereafter behave inappropriately or illegally. Some of the more common claims that arise in this situation are:

Sexual harassment claims. These types of claims can easily occur when intoxicated employees use offensive language towards other employees at the party. Even worse, managers can make unwanted sexual advances or gestures, or suggest to subordinates that sexual favors will result in work-related advancement. Managers may be under the misimpression that their employer could not be responsible for their conduct after-hours or off-site. Such harassment can occur not only when an employee overindulges in alcohol, but also when only a few drinks are served and inhibitions become lowered. Conduct that might seem funny or harmlessly flirtatious during an office party can be viewed in a quite different light the following day, especially by subordinates. And even if no one complains at the time, the transgression may be raised at a later date when the employment relationship sours.

Discrimination claims. Intoxicated or relaxed employees—particularly at an off-site location—may make inappropriate and offensive remarks regarding the gender, race, ethnicity, religion or sexual orientation of other employees.

Injuries to third parties. Employers also face liability when intoxicated employees *leave the office party*. Employers who allow employees to drink and drive may be liable

for the intoxicated employee's actions if the injured party can prove that the intoxication occurred while the employee was engaged in the employer's business.

Premises liability. Employers are also vulnerable to premises liability and workers' compensation claims if the event is held at the office. These claims tend to occur when intoxicated employees fall and injure themselves at the party.

Employers can take action to minimize these risks: Given the potential liability for employers, careful consideration should be given to the decision as to whether alcohol should be served at office parties. As banning alcohol entirely is often out of the question, a little advance planning can go a long way toward reducing the legal risks posed by these gatherings.

Action Items To Minimize Risks

Minimize risks from alcohol consumption:

- Establish and maintain an alcohol and drug use policy in your Employee Handbook. The policy should indicate that alcohol is not allowed in the workplace except at company sponsored events and that when alcohol is served employees are expected to maintain composure, avoid intoxication and act responsibly.
- Send a memo to each employee before the holiday party reiterating the terms of the Handbook policy on alcohol and on harassment. Make it clear that employees are expected to behave responsibly and act in a professional manner at all times.
- Consider not serving alcohol. A breakfast or lunch event can eliminate the consideration entirely.
- Limit the length of the event to two or three hours and make it clear when the event ends.
- If you do serve alcohol, consider limiting the types of alcohol served. Beer and wine may be sufficient.
- If an open bar will be provided, limit the number of hours the bar is open, use a ticket system to limit the number of drinks each employee is permitted and close the bar at least an hour before the party is scheduled to end.
- Empower the bartenders to refuse to serve alcohol to intoxicated guests.
- A cash bar may operate as a disincentive for employees to overindulge.
- Offer plenty of food rich in starch and protein since these types of food slow the absorption of alcohol into the bloodstream.
- Have non-alcoholic drinks available.
- Designate "spotters" who will not drink, will watch for employees who are too intoxicated to be served and to drive, and will send them home in a taxi cab if the employee starts to behave inappropriately or appears intoxicated.
- Encourage carpooling and/or designation of non-drinking drivers.
- Provide taxi cabs, transportation or even hotel accommodations at company expense to those who are too intoxicated to drive and have failed to arrange for a designated driver or public transportation.

Minimize other risks:

- Convey clearly to employees that attendance at the holiday party is voluntary.
- Avoid award presentations, bonus presentations, or other employee recognition awards at the party since these activities may indicate that the event is mandatory and give the impression that employees are there for business reasons.
- To avoid any religious discrimination claims, keep references to the party secular (*i.e.*, "holiday" rather than "Christmas").
- Treat any discrimination or harassment claims that arise seriously and conduct appropriate investigations.
- Contact your insurance carrier to determine whether your coverage extends to the type of claims discussed above and promptly notify your insurer if any claims or injuries arise.

With a little pre-planning to reduce risks, a good time is far more likely to be had by all.

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Alison Hightower is a Shareholder in Littler Mendelson's San Francisco office, and Gary Bethel is Office Managing Shareholder for the Fresno office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Ms. Hightower at ahightower@littler.com, or Mr. Bethel at gbethel@littler.com.