

Client Alert

Tips for Avoiding Holiday Party Liability in the Wake of All These Sexual Harassment Scandals

December 7, 2017 – In the wake of all these sexual harassment scandals, now more than ever the risks associated with holiday parties is greater for employers and employees in every industry. Here are some ways to avoid the dangers that come along with the annual holiday party.

Employers and employees look forward to celebrating with their work colleagues at the annual holiday party each year. No employer wants to be called a Grinch, but the reality is the holiday party can often result in trouble for both employers and employees. For employers, sexual-harassment allegations, assault complaints, personal injury claims and other legal problems stemming from the annual holiday party have become more and more prevalent over the years and yet many claims arising from the annual holiday party still go unreported. But, with the flurry of sexual harassment claims surfacing every day, employers, regardless of their size, must be more vigilant in avoiding the pitfalls attributed to holiday party celebrations. And, for employees, the risks of “unsavory behavior” and accidents have plagued holiday parties for years, including resultant terminations or worse, injury, death or divorce. As much as we all enjoy them and, in many instances, use them to bolster morale after a long year of work, the unfortunate reality is that holiday parties create an increased risk of liability and danger for both employers and employees.

Although there is no perfect answer, here are some fairly basic tips for both employees and employers to undertake to reduce the risk of liability associated with holiday parties, while allowing the merriment to continue in the spirit intended.

The safest recommendation is, of course, to skip serving or drinking alcohol at the annual holiday party. There have been limited problems from holiday parties that did not involve the serving and consumption of alcoholic beverages. However, we recognize that, as responsible adults, that is unlikely. So, if you choose to serve or consume alcohol at the annual holiday party this year, here are some helpful ways in which you can be guided:

- Drink alcohol in strict moderation.
- Have service providers handle all alcohol and bartending duties. No employees should be allowed to serve alcohol to themselves or to others.
- Instruct bartenders to cut off service to employees who appear to be intoxicated or acting inappropriately.

- Do not drink on an empty stomach and serve food throughout the time that alcohol is being served. In other words, avoid the cocktail only hour.
- Consider serving and/or drinking only beer or wine at the party.
- If serving or drinking spirits, request that the bartender prepare low-alcohol mixed drinks.
- Offer a wide variety of non-alcoholic drinks.
- Consider limiting the number of free drinks per person.
- Ask co-workers, especially those who are not drinking themselves, to monitor your alcohol intake or to inform you if your behavior becomes unprofessional.
- Consider limiting the hours that alcoholic beverages are served. For example, stopping alcohol service at least an hour before the holiday party is scheduled to end (this is a practice employed at most sporting events and has proven an excellent deterrent to employees leaving the holiday party in a state of diminished capacity.)
- Serve dessert and coffee after you stop serving alcohol and encourage people to stay for coffee and dessert. This may be a good time to schedule any speeches or presentations.

Transportation can be an issue for employers and employees regardless of whether alcohol is being served at the holiday party. Transportation after a holiday party should be a priority no different than any other day traveling to and from work. In any event, when it comes to transportation, here are some helpful tips employers and employees can follow:

- Remind employees not to drive if they intend to drink at the party.
- Employees should be reminded of the requirement that they be as responsible for themselves on the holiday party night as they would on any other night they are out of the office and responsible for their own safety and well-being.
- Provide transportation options for all employees and, if necessary, at company expense. It's a small price to pay and should be factored into any holiday party budget.
- Consider using a car service or a shuttle service for multiple riders to be dropped off at home or at public transportation destination sites like Grand Central Station or the Port Authority. Car services should not be used to shuttle employees to bars or nightclubs.
- Encourage the use of prearranged designated drivers or public transportation, where appropriate.
- In all instances, an employee who appears to be intoxicated should be provided with a ride home. Again, employees should monitor their drinking so they avoid being unable to safely travel home.
- Inform employees, in advance of the party, that they will not be allowed to drive or to take public transportation if they appear intoxicated.
- Invite employees' spouses and partners to attend the holiday party, to encourage the availability of designated drivers. The inclusion of spouses or partners will also help ensure "good behavior" at the holiday party.

Holiday parties and workplace celebrations sometimes bring with them the notion that reveling and fun trump good judgment and common sense. This should never be the case for either employers or employees. For whatever reason, however, holiday parties tend to encourage employees to behave in ways that they normally would not when in the workplace. Despite best intentions and efforts, someone at the holiday party is bound to forget about the anti-discrimination and anti-harassment policies and general code of conduct laws that govern the workplace, all of which apply equally in the holiday party setting and must be strictly adhered to in any employer-sponsored event. When in doubt, use your better judgment and common sense.

Employers and employees should consider the following steps to reduce the risks of liability and danger arising out of the holiday party:

- Employers should confirm that their insurance policies cover the holiday party, regardless of the site of the party.
- Employees should re-read the employer's code of conduct as well as its anti-discrimination and anti-harassment policies the week before the holiday party and employers should consider republishing them or circulating them to employees around this time of year.
- Employees should be reminded and understand that these policies apply to employer-sponsored social events both inside and outside of the office.
- Employees should be reminded and understand that they will be subject to discipline if they violate these policies during the holiday party, including possible termination.
- Employees should be reminded and understand that any "after-party" festivities are not encouraged nor are they sponsored by the employer.
- Employers should remind managers and supervisors of these policies and what to do if they learn of or witness any potential violation of these policies at the holiday party or afterwards.

Regardless of the steps taken, there are occasions when employers or employees may have "one too many" and believe that their inebriated state somehow excuses them from polite and acceptable behavior with their employees or work colleagues. Diminished capacity, however, is never an excuse for disrespecting others or ignoring the law.

Although there is no surefire way for employers or employees to completely avoid the risks associated with hosting or attending the annual holiday party, adhering to some or all the suggestions outlined in this article may help employers and employees alike to avoid the next sexual harassment scandal or other potential claims and liability.

If you require any additional information on avoiding holiday party liability, or about any other employment-related issues, please contact:

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