

Client Alert

‘TIS THE SEASON TO BE SUED: AVOIDING THE HOLIDAY PARTY LAWSUIT

Although many of us look forward to holiday celebrations with our co-workers, sometimes too much holiday cheer can result in trouble for an employer. Unfortunately for employers, sexual harassment allegations, assault complaints and other related claims stemming from the annual holiday party have become more and more prevalent over the years. Thus, as much as we enjoy them, the unfortunate reality is that company-sponsored holiday parties create an increased risk of liability for employers. Here are some fairly basic steps to undertake to reduce the risk of liability, while allowing the holiday merriment to continue in the spirit intended.

Serving Alcohol

The safest recommendation is, of course, to skip the alcohol altogether. Indeed, very few complaints stem from holiday parties that did not involve the consumption of alcohol. However, if you choose to permit alcohol to be served (in strict moderation) at a company sponsored event, as most employers do, here are some ways in which you can minimize your potential liability:

- Retain outside service providers to handle all alcohol and bartending duties.
- Instruct bartenders to cut off service to employees who appear to be intoxicated.
- If the holiday party is at a restaurant or bar that is open to the public, provide employees with bracelets or stamps so that bartenders can identify and distinguish your employees from other guests.
- Never allow a company supervisor or manager to serve drinks to other employees.
- Consider serving only beer and wine at the party, as avoiding the service of spirits that tend to intoxicate people more rapidly can also minimize the possibility of employees acting in ways that they might wrongly believe are “excusable” after a few drinks.
- If serving spirits, request that the bartender prepare low-alcohol mixed drinks.
- Consider having a cash bar or limiting the number of free drinks per person.
- Consider distributing drink tickets to limit alcohol consumption.
- Offer a wide variety of non-alcoholic drinks.
- As is done at many professional sports venues and other venues, stop serving alcohol at least an hour before the party is scheduled to end.

Serving Food

By serving food in conjunction with alcohol, employers can help diminish the effects of alcohol and prevent employees from becoming intoxicated at the holiday party. Here are some steps employers can take:

- Have food available at all times so that employees do not drink on empty stomachs.
- Serve finger food that is easier to eat.
- Avoid serving salty food that encourages people to drink more.
- Serve dessert and coffee after you stop serving alcohol and encourage people to stay for dessert. This would also be a good time to schedule any speeches.

Providing Transportation

Transportation can be an issue for employers regardless of whether alcohol is being served at the holiday party. In any event, when it comes to transportation, here are some tips employers can follow:

- Remind employees not to drive if they intend to drink.
- Provide alternative transportation options for all employees at company expense.
- Consider using a car service or a shuttle service.
- Encourage the use of prearranged designated drivers or public transportation.
- Any employee who appears to be intoxicated should be provided with a ride home. Inform employees, in advance of the party, that they will not be allowed to drive if they appear intoxicated.
- Invite employees' spouses and partners to attend the party, to encourage the availability of designated drivers.

Using Good Judgment and Common Sense

Holiday events and celebrations sometimes bring with them the notion that reveling and holiday fun trump good judgment and common sense. This should never be the case. Notions of costume parties, theme parties and similar events where employees are encouraged (or worse, directed) to wear clothing which is inappropriately revelatory or which suggests that the normal boundaries of good taste and decency are in some manner suspended should be avoided at all costs. What may seem humorous and harmless to many, may induce discomfort for some and provide an unnecessary "breeding ground" for employment-related claims. Moreover, to the extent that your firm has previously been the target of employment-related claims — even if successfully defended or resolved — extra care should be employed in designing and holding holiday events.

Potential Claims

No matter how well intentioned, office holiday parties tend to encourage employees to behave in ways that they normally would not when at work. Despite your best efforts to train supervisors and instruct your employees, someone is bound to forget about the employer's anti-discrimination and anti-harassment policies as well as its more general code of conduct, all of which apply and must be enforced

at any company-sponsored holiday party. Employers should consider the following steps to reduce the risks of an employee violating these policies at the holiday party:

- Confirm that your insurance policies cover your holiday party.
- Remind employees of the company's code of conduct as well as its anti-discrimination and anti-harassment policies the week before the holiday party.
- Remind employees that these policies apply to company-sponsored social events both inside and outside of the office.
- Remind employees that they will be subject to discipline if they violate these policies during the holiday party.
- Remind employees that any "after party" is not sponsored by the company.
- Remind supervisors of these policies and what to do if they learn of or witness any potential violation of these policies during the holiday party.
- Consider inviting spouses and partners of employees to the party.
- Consider implementing a dress code that maintains a professional environment.

As indicated, regardless of the steps taken, there are occasions when employees may have "one too many" and believe that their inebriated state somehow excuses them from polite and acceptable behavior with their colleagues. Diminished capacity, however, is never an excuse for strict adherence to the rules. Although there is really no way for employers to completely avoid the risks associated with hosting a holiday party, implementing some or all the above suggestions may help an employer minimize the risks, avoid liability and help ensure that your company and employees enjoy a safe and happy holiday season.

Happy and Safe Holidays from Morrison Cohen LLP to You and Yours!

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