

Eat, Drink and Be Wary...The Aftermath of Holiday Parties is Not So Merry

November 23, 2015

It's that time of year. Stores are playing holiday music on a non-stop loop, and peppermint-flavored coffee is being served in red cups. With the merriment of the holiday season, many employers celebrate the year's accomplishments and thank their employees by throwing a holiday party. Unfortunately, the holiday cheer, coupled with a cocktail or two (or three) and being away from work often results in employees engaging in some "reindeer games" that may result in liability for the employer. An employer's duty to provide a working environment free from harassment or discrimination extends to employer-sponsored events in or out of the office. From allegations of sexual harassment or religion discrimination to workers' compensation claims, an unprepared employer can easily find themselves in a post-holiday party "hangover" dealing with a potential lawsuit.

Make clear that attendance at the holiday party is voluntary and that employees are not required to attend. If holiday attendance is completely voluntary, the employers do not have to compensate employees for attending. If a holiday party is mandatory or if you hold it during regular work hours, then you will need to pay your non-exempt employees for the time they spend at the party. Keep in mind, if non-exempt employees are asked to plan a holiday party or work during the event, they must be paid, even if the request to do the work indicated it was voluntary. Avoid conducting any "business" at the holiday party, such as giving awards, distributing bonuses, discussing yearly goals, etc.

Be Careful of Holiday Spirits – Avoid Liability Associated with Alcohol Consumption

Alcohol is the single biggest contributor to holiday party headaches. The best advice for avoiding those issues: don't serve alcohol. But if your answer to that advice is "Bah, Humbug," then there are some important considerations that can help to limit potential problems when there will be alcohol at the party.

- Monitor partygoers.
 - Hold the event at an off-site location, and hire professional bartenders who have their own insurance and are certified for alcohol service. Speak with the vendor to determine what protocols it employs for keeping minors from being served and preventing people from being over-served while intoxicated.
 - Assign designated managers to remain sober and monitor the intoxication of employees. Develop guidelines ahead of time for the management group, and meet with them so they understand their responsibility to be role models.
- Limit consumption and provide alternatives.
 - Consider some sort of limitation on alcohol consumption, such as placing restrictions on the type served, the time available (such as by closing the bar well before the party ends) or the number of drinks served (such as through drink tickets).
 - Make sure there are plenty of non-alcoholic beverage options available. Do not serve punch or other concoctions that mask the alcohol.

- Ensure that plenty of food is available. Starchy and high-protein snacks will help slow the absorption of alcohol into the bloodstream, while salty or greasy foods should be avoided as they encourage more drinking.
- Provide alternative transportation that may include free cab or Uber rides, designated drivers or even offer to pay employees for hotel expenses.
- The more the merrier...
- Consider opening the party to spouses/partners/significant others, which tends to reduce alcohol intake in addition to providing a possible designated driver.

Ho Ho Ho, the Mistletoe Has to Go – Avoiding Harassment and Discrimination

Sexual harassment is probably the greatest personnel risk at the annual holiday party. An office holiday party is still a work-related activity, so employers should ensure that they set the boundaries of acceptable behavior by employees. In the environment of a holiday party, people are more relaxed. Add alcohol into the mix, and "relaxed" can result in inappropriate comments or some touchy-feely-oh-no-that-didn't-happen behavior. Also, given the diversity of our workforce, it is important that a holiday party not focus on any specific religious tradition. To avoid religious discrimination claims, focus on a winter-themed secular party that celebrates all of your employees, regardless of their faith.

- Before the holiday party, re-distribute and remind employees about the company's policies on harassment, discrimination, drugs and alcohol, social media, etc. Give employees advance notice that all workplace rules and policies will still be enforced during the party. Remind employees that while you want everyone to have fun, these policies still apply.
- Avoid activities or items such as mistletoe, a game of Twister, or inappropriate music that could lead to physical contact, unwanted social pressure or inappropriate conversation.
- Any complaints made as a result of a holiday party should be taken seriously. Document, investigate and treat the complaint like a workplace incident.

Plan ahead and take some precautions, and you will keep your party on the "nice" list.