



Holiday Party Liability Prevention Checklist

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A Checklist to help employers avoid the legal risks presented by employer-sponsored holiday parties.

The festive atmosphere combined with the consumption of alcohol at an employer-sponsored holiday party make it a potential venue for inappropriate behavior and may lead to employee or third-party claims based on injuries suffered during or after the event. While planning and having the event, employers should take steps to:

PREVENT SEXUAL HARASSMENT

- **Ensure that human resources policies address employer-sponsored social functions.** Employers may want to amend their harassment policies to specifically address employer-sponsored social events. In particular, employers may want to provide specific examples of conduct at holiday parties that is unacceptable. For example, the policy may remind employees that risqué or adult-themed gifts should not be exchanged with co-workers.
- **Keep holiday customs appropriate to the workplace.** In planning an employer-sponsored holiday party, employers should avoid including customs that have the potential to create romantic or sexually-charged situations, such as hanging mistletoe.
- **Consider allowing guests to attend.** Although the addition of guests raises the cost of a holiday event, employees may be more reserved and less likely to engage in offensive behavior when accompanied by their significant others or surrounded by unfamiliar faces.

For a collection of resources on sexual harassment prevention and response, see Sexual Harassment Toolkit (<http://us.practicallaw.com/3-502-7984>).

AVOID HARMS RELATED TO ALCOHOL CONSUMPTION

UNDERSTAND POTENTIAL LIABILITIES ASSOCIATED WITH ALCOHOL CONSUMPTION AT EMPLOYER-SPONSORED EVENTS

While an employer's potential liability for injuries caused by employees who consume alcohol at company functions varies from state to state, possible theories of liability include:

- Common law theories of negligence.
- Respondeat superior, which holds employers responsible for the acts of employees undertaken in the course of their employment.
- Social host or Dram Shop liability, which holds the provider of alcoholic beverages who served alcohol to visibly intoxicated individuals liable for injuries those individuals may cause while intoxicated. Social host and Dram Shop laws vary from state to state. Different state approaches include:
 - providing clear statutory grounds on which employers may be liable;
 - limiting Dram Shop liability to commercial vendors of alcohol; or
 - limiting Dram Shop and social host liability to those who provide alcohol to minors.

REDUCE THE RISK OF ALCOHOL-RELATED ACCIDENTS

- **Hold the event at a restaurant or other off-site location.** Employers may want to hold holiday events at establishments with a liquor license and where alcohol is served by professional bartenders who know how to respond to guests who are consuming alcohol to excess.

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- **Hire a professional bartender or caterer for on-site events.** If the event is held on the employer's premises, the employer should consider hiring a professional bartender or caterer to serve any alcoholic beverages. The employer may want to confirm that the caterer carries liability insurance and instruct bartenders or wait staff not to serve drinks to anyone who is visibly intoxicated. Employees should not be permitted to stand in as bartenders or otherwise serve drinks to co-workers.
- **Limit the amount of alcohol that will be served.** Employers may try to control alcohol consumption by:
 - providing a limited number of drink tickets or limiting the time during which alcohol will be served;
 - scheduling the party for earlier in the day, when it is more socially acceptable not to drink and employees may be less likely to drink to excess;
 - providing entertainment to shift the focus of the event away from alcohol to something else; and
 - making a variety of non-alcoholic beverages and food available as an alternative to alcoholic beverages.
- **Provide alternative transportation.** Employers should consider providing transportation for employees leaving employer-sponsored events at which alcohol is served.
- **Encourage employees to look out for intoxicated co-workers.** Employers should:
 - encourage employees to notify management if another employee appears overly intoxicated; and
 - consider designating certain employees as "spotters" to look out for colleagues who may have had too much to drink, but be sure not to designate employees who may be non-exempt from the Fair Labor Standards Act (<http://us.practicallaw.com/5-501-9884>) (FLSA) to avoid claims that they were required to work off the clock and therefore are entitled to additional compensation (see Prevent Wage and Hour Claims by Non-exempt Employees).
- **Determine whether the company is insured.** Employers may purchase insurance covering Dram Shop or liquor law liability in states that recognize those causes of action. Companies should review their existing coverage before purchasing a new policy because a comprehensive general liability policy may provide sufficient coverage.

MINIMIZE THE RISK OF WORKERS' COMPENSATION LIABILITY

Although the law varies from state to state, workers' compensation benefits may be available to employees who are injured during, or because of, an employer-sponsored event. To minimize this risk, employers should:

- **Disassociate the holiday function from employee jobs.** This can be done by:
 - letting employees know that there is no business purpose for the event and attendance is not mandatory; and
 - hosting the event off employer premises.

- **Confirm that service or venue providers are properly licensed.** Injuries associated with contaminants in food or drink may create legal exposure for employers if their providers are not properly licensed. Third-party licensing reduces risks because licensed establishments are subject to inspection and protected by additional insurance coverage.

PREVENT WAGE AND HOUR CLAIMS BY NON-EXEMPT EMPLOYEES

- Inform employees that attendance at the party is voluntary.
- Hold the party outside normal business hours.
- Refrain from engaging in any business during the event, including:
 - speeches about business matters; and
 - distribution of bonuses or performance awards.
- Avoid asking employees to perform any specific functions at the party for the benefit of the employer to avoid claims that they were required to work off the clock.

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