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EMPLOYMENT LAW LETTER

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EMPLOYER LIABILITY

Wishing you a litigation-free holiday season

Employers often use the holiday season to show their appreciation for employees' hard work and celebrate with employees in the workplace. Unfortunately, however, even an office holiday party planned with the best of intentions can create legal liability for you or even turn tragic. Drunk driving, inappropriate conduct and behavior, and other issues can quickly ruin holiday spirits. Moreover, a bad experience or inappropriate situation easily can destroy whatever goodwill and appreciation a party was designed to demonstrate.

Most of you are prepared to accept some degree of legal risk to realize the benefits of celebrating a job well done throughout the year with employees. Even then, however, simple and practical steps can be taken to minimize the potential risks. Here are four tips for avoiding holiday party liability.

Tip 1: After-hours parties still can lead to harassment claims

Given the prevalence of sexual harassment claims year-round, it isn't surprising that employees increasingly are asserting claims against employers based on alleged sexual harassment by coworkers at holiday parties. Inappropriate behavior or offensive statements at parties by coworkers (or worse yet by supervisors, managers, or officers) can form the basis for employer liability under various federal and state laws.

To reduce the chances of that behavior occurring, you first should consider setting a tone of moderation before holiday parties. That can be done through internal communications and memos, pamphlets, paycheck inserts, and meetings reminding employees to be responsible, act professionally, and understand that misbehavior at employer-sponsored functions is against your rules and won't be tolerated. You also may want to use the party as an opportunity to issue a global employee reminder regarding your discrimination and harassment policies. To that end, sending a memo or other communication reminding employees of the

policies and providing them with additional copies may be well worth the effort.

Once the party begins, you should have leaders in the organization attend and provide oversight. While having the "HR police" patrol the party may dampen spirits, having key leaders in the organization attend, set the example, and pay attention for and react to inappropriate behavior is important. Employers that leave holiday parties unchecked in this regard run significant risks.

Tip 2: Some spirits can destroy others

Many hosts serve alcohol at holiday parties. The holiday party season amplifies the threat of drunk drivers. The safest approach, of course, is not to serve alcohol. Beyond that, however, you can take several steps to limit your liability:

- Provide a limited number of "drink tickets" or vouchers to employees and guests in an effort to limit consumption. Don't have open bars.
- Have taxis, car services, or other arrangements in place and available free of charge for anyone leaving the party who may need a safe ride. The cost pales in comparison to the immeasurable cost of a drunk-driving tragedy.
- Hold parties off business premises, and shift the responsibility for serving alcohol to liquor licensees and professional bartenders. Don't make employees responsible for serving drinks to coworkers.
- Reduce the risk of overindulgence by avoiding hard liquor entirely and serving only beer and wine at holiday celebrations along with a variety of nonalcoholic beverages so employees have a choice.
- Schedule the party to last only a few hours, and close the bar at least one hour before the function is scheduled to end.

- Schedule the party on a weeknight when employees presumably are less likely to overindulge.
- Provide additional entertainment to discourage drinking from becoming the central focus of the event.

Tip 3: Make sure the event is truly voluntary

As a general matter, an employee required to attend a party who's injured or harmed is going to have a better legal claim against you than an employee who wasn't required to attend but chose to do so voluntarily. For that and other reasons, you should make sure holiday parties are entirely voluntary (both in theory and practice).

Of course, there's also a practical employee relations issue to think about. Because of religious beliefs or other reasons, many employees may not want to attend and may feel uncomfortable if they're forced to do so. To that end, you also should remember to respect employee diversity. Holiday parties should be denomination-neutral.

Tip 4: Make wise decisions about guests

Whether to have parties structured for employees only or employees and guests is sometimes a difficult call. Some employers want holiday parties to build morale and camaraderie, so they opt for employees only. Others choose to permit spouses and guests. In some cases, allowing guests may help with regard to harassment claims if the theory holds true that individuals aren't likely to flirt or behave inappropriately if a spouse or significant other is present.

In addition, you should invite customers and clients only after careful consideration. The last thing you want is for overindulgence or poor judgment at a social event to damage or even destroy a business relationship.

Bottom line

In sum, careful planning now and implementation of these and other proactive measures can make this year's holiday party more enjoyable, safer, and litigation-free. ♣