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As Holiday Party Season Approaches, Tips for Employers To Stay Out of Trouble

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This time of year is full of festivities, good cheer, and time away from the office. However, one thing many people look forward to in the workplace is the office holiday party. As the holiday season arrives, employers should consider the following steps to avoid legal problems that could arise from the yearly office party.

1. Uphold Company Behavioral Policies and the Employee Handbook.

Outside of the office, there will naturally be a degree of informality that makes people behave different than they otherwise would in the office. This degree of informality may be heightened even more so by the consumption of alcohol. While alcohol tends to be commonplace at many work parties, it is important to uphold company behavioral policies and remind employees to act appropriately at work functions both inside and outside of the office. The overconsumption of alcohol could quickly turn a fun and celebratory night into a situation that puts not only intoxicated employees at risk, but the company as well.

For example, holiday-related sexual harassment and related lawsuits stemming from events that occurred at workplace parties are not a new phenomenon. Under federal and state law, employers have a legal obligation to prevent harassment in the workplace. This duty extends to work-sponsored events, like holiday parties, and even to the appropriateness of gifts for a holiday gift exchange. When an employer does not abide by this duty, it can be vicariously liable for employee behavior committed in the course of employment. However, employers can typically evade liability if it can demonstrate that it took reasonable steps to prevent the sexual harassment or that the employee did not use the employer's complaint procedures to alert the employer of the problem.

One recent example of the troubles employers may face from employee's inappropriate behavior at the office holiday party can be found in [Dall v. St. Catherine of Siena Medical Center](#). In this case, a complaint of sexual harassment stemming from an employee's behavior at the holiday work party resulted in that employee's termination. The terminated employee then filed a lawsuit against the employer for gender discrimination, hostile work environment, and retaliation under Title VII of the Civil Rights Act of 1964.

In light of the many issues that may arise, employers should take time to review their employee handbook, and, if necessary, update it so it expressly notes that employees are subject to the anti-harassment policy at company sponsored events. This may be a good time of year to explicitly remind employees of the anti-harassment and

reporting policies, and inform them that the policy applies to social and non-social events inside and outside of the office equally.

2. Do Not Mix Business Celebrations with Religious or Cultural Traditions.

While it may seem strange to gather around the holidays and not think about the religious or cultural traditions that play a role in many people's lives this time of year, employers should not celebrate any religious or cultural traditions at all in the workplace – including the holiday party.

A holiday party that focuses on a particular religious celebration could be grounds for an employment discrimination lawsuit. Religion is a protected category under Title VII, and favoring any type of celebration or ritual, or purposefully excluding another, could spell trouble for your company. The holiday office party should steer clear of any traditional religious and cultural symbols, décor, themes, and even foods. With such a diverse workforce, it is important to make everyone feel welcome and comfortable. Employers should simply put the emphasis on celebrating what every employee has in common – the workplace.

3. Be Careful when Providing Alcohol and Do Not Make the Office Party Mandatory.

Alcohol, as noted above, may create problems for employers that otherwise would have never happened. Outside of the potential Title VII issues that may be exacerbated by the consumption of alcohol, employers should also consider taking precautionary measures to limit its tort liability. State law varies on whether an employer may be held liable for injuries that occur due to an intoxicated employee's actions. Employers would be wise to look into their respective state law before serving free alcohol at work events.

Even though a party host may not be liable for the behavior of a guest depending on the state law, employers should nonetheless be careful when organizing and planning the party. As an employer, you may be liable for the behavior of an employee who is acting within the scope of his employment. Whether attending a company holiday party is "within the scope of employment" varies on a case-by-case basis. For example, if attendance is mandatory, a court may find employees to be acting within the scope of their employment. In [*Kum Ja Kim v. Sportswear*](#), an employee was struck and killed by another employee while leaving an office holiday party.

Attendance at the party was not technically mandatory but the employer allowed workers to leave work early on the day of the party and strongly encouraged employees to attend with their families. The Virginia Court of Appeals used the doctrine of *respondeat superior* in finding the employer liable, ultimately holding that the work party was closely connected and associated with employment. The court emphasized that the party took place on the employer's premises, employees were reasonably expected to attend, the employer sponsored the party, the employer supervised the conduct, and the employer used the event to its benefit.

If you want to serve alcoholic beverages, there are many ways to mitigate the associated risk. Here are a few examples to monitor alcohol consumption and prevent employees from drinking too much:

- Offer a limited number of drink tickets to each employee.
- Hire professional bartenders to serve alcohol.
- Provide plenty of food.
- Set a last-call for alcohol well in advance of the end of the party.
- Hold the office holiday party during the day. Employees will benefit from getting a half-day off from work and

perhaps drink less during the middle of the day.

- Invite significant others can also help, as it makes the entire affair less intimate and can influence employee's behavior.

Finally, employers should encourage designated drivers or even consider subsidizing transportation from the holiday party. In anticipation of the holiday party, many employers send a Holiday Party Office Memorandum laying out the pertinent information for the parties as well as the employer's policies and expectations from its employees. This can be an effective way of sending a message to employees to behave appropriately while having fun.