

DECEMBER 11, 2017 | DISCRIMINATION, HARASSMENT & RETALIATION

The Office Holiday Party: Best Practices to Avoid Legal Trouble

✘ The holiday season is here, and employees are looking forward to celebrating with their family and co-workers. However, the office holiday party – an anticipated yearly tradition in many workplaces – has now become a cause for concern for employers, especially amidst the current national conversation about workplace sexual harassment.

What is the result? Many companies are cancelling holiday party plans, or hosting alternative parties with less alcohol and more day light.

There is certainly nothing wrong with hosting a holiday party, and employers should not be discouraged from doing so. Hosting a holiday party for your employees is beneficial, as it helps boost employee morale and demonstrates that you appreciate their hard work. However, prior to the holiday party, employers should consider the following best practices to avoid any legal problems:

Steps to Avoid Sexual Harassment Claims

One common misbehavior at holiday parties is employees making inappropriate comments, gestures, or physical advances toward other co-workers. Outside of the office context, there will naturally be a more relaxed atmosphere, and people will behave different than if they were in the workplace. With the addition of alcohol, the degree of informality only increases. However, employers can implement policies and procedures to ensure that the office holiday party is a hit without the fear of a costly lawsuit. Employers can take the following steps to reduce the risk of harassment at the office holiday party.

- *Review Company Behavioral Policies and the Employee Handbook with Employees*

Employers should review their employee handbook, and, if necessary, update it so it expressly states that employees are subject to the anti-harassment policy at company-sponsored events. Employees should also be reminded, through an email or company newsletter, of the company's anti-harassment policy, and that it applies to social events both inside and outside of the office equally – including the holiday party. Establishing an expectation of how employees should behave at the holiday party and informing them of the potential consequences for inappropriate behavior conveys a message that the event is intended to be an enjoyable, but professional environment.

- *Encourage Employees to Invite Guests*

Inviting guests will certainly add costs to the party budget, but it will also decrease the potential for inappropriate behavior. Spouses, significant others, and family members should be a welcomed addition because they will naturally temper employee behavior, and help maintain a more professional atmosphere.

- *Promptly Investigate Complaints of Harassment or Inappropriate Conduct and Respond Accordingly*

Employers need to be aware of any incidents that occur at the holiday party, and have procedures in place to address them. Employers have a legal duty to prevent harassment in the workplace, and this duty extends to work-sponsored events, such as holiday parties, and even to the appropriateness of gifts for a holiday gift exchange. An employer can evade liability if it can demonstrate that it took reasonable steps to prevent the harassment or that the employee did not use the employer's complaint procedures to inform the employer of the harassing behavior. Therefore, if an employer learns of inappropriate behavior at the holiday party, an investigation should be promptly initiated, and appropriate discipline should be provided.

Non-Denominational Venue and Decor

Choosing an appropriate venue is important to avoid disability and religious discrimination claims. It is natural to associate the holiday season with several religious or cultural traditions that many of your employees likely celebrate. However, religion should not play any part in the office holiday party whatsoever. One of the protected categories under Title VII, the federal anti-discrimination statute, is religion. The perception that an employer favors a particular religion, celebration, or ritual could be ripe for a religious discrimination lawsuit. As a result, employers should ensure that the venue is not religious or exclusive to certain groups of people, and steer clear of any religious decorations that symbolize religion or convey a religious message.

Additionally, employers should make sure that the facility is accessible for disabled persons in order avoid disability discrimination claims under the Americans with Disabilities Act ("ADA"). Ultimately, all of your employees should feel comfortable and welcomed at the party.

Limit Alcohol Consumption

Despite conveying an expectation of good behavior at the holiday party, there may be a few employees who simply fail to adhere to that expectation. Alcohol may be a contributing factor to such misbehavior, and it can create a host of issues for employers. In addition to the potential Title VII harassment issues that may be exacerbated by alcohol, employers also need to be aware of potential tort liability.

State law varies on whether an employer can be held liable for injuries that occur due to an intoxicated employee's actions. Therefore, it is important for employers to carefully review their state law before serving free alcohol at the office holiday party.

Finally, employers should remind employers that the holiday party is completely optional. An employer may be found liable for an employee's actions if the holiday party is found to be "within the scope of employment," which varies on a case-by-case basis, as interpreted by state law. If the party is considered to be business-related or within the scope of employment, an employer may be responsible for workers' compensation if an employee is injured at the party.

Given these potential risks associated with serving alcohol, if an employer decides to serve alcohol at the party, it should take consider taking the following steps:

- Explain to employees that the party is optional, and that employees are not required or expected to attend
- Hire a third-party vendor to serve alcohol
- Provide plenty of food
- Avoid serving underage employees and guests
- Provide transportation to and from the party

These five steps will go a long way to limit potential tort claims for employee misconduct – both during the event and after it has ended.

Employees can also limit the amount of alcohol that employees are able to consume. If employers are concerned about over consumption, one option to limit this concern is to host the holiday party during the day time in the middle of the week. Employees will enjoy a half-day of work, and they will be less likely to over indulge during the day on a Tuesday or a Wednesday, as opposed to a Friday evening. Employers can also implement a cash-only bar, or a token system in which employees can only receive a certain amount of drinks at the party.

Do Not Engage In Business Activity

Employers could be responsible for paying non-exempt employees for time spend at the holiday party if certain steps are not taken. As explained above, employers should ensure that employees understand that the event is optional, and that it is not within the scope of their employment. Ultimately, the party must just be about the party.

To limit the risk of potential wage and hour claims, employers should ensure that it reminds all employees that the party is optional. Additionally, the office holiday party is a time for celebration – not work. Therefore, employers should not engage in any business activities during the party.

Taking these steps may seem like a tall task. However, no one wants to begin 2018 with a costly lawsuit, bad press, and low employee morale. Mitigating the risks of potential legal liability will certainly help employers avoid a bigger headache in the long run.