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Tip of the Month: Holiday Parties — Simple Precautions to Prevent Post-Holiday Problems

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As 2009 comes to an end, employers are preparing for holiday parties and events. Holiday parties are one way many businesses thank employees for their contributions over the year. They also provide an opportunity for employees to socialize and build esprit de corps. Nonetheless, there are certain risks associated with these events, particularly if alcohol is served. This Counseling Tip of the Month describes simple steps that employers can implement in advance of a holiday party to limit the potential for liability.

The Risks

There are two principal risks associated with holiday parties: (1) potential liability for employee misconduct (especially harassment) toward other employees that occurs at or after the party (with or without the influence of alcohol), (2) potential liability for employee conduct that injures other persons or their property.

Due to alcohol, dancing, and relaxed interactions that take place at a holiday party, some managers, supervisors and employees mistakenly believe that workplace policies are suspended or inapplicable to the party. Other employees, particularly those under the influence of alcohol, may simply disregard workplace policies. This can result in an employee making an unwanted sexual request or advance toward another employee, or engaging in unwanted sexual banter or other lewd or offensive conduct in violation of the employer's anti-harassment policy. Such unwanted behavior invariably leads to complaints of sexual or other types of harassment, which must be investigated and addressed through appropriate remedial action. If not proactively addressed, some employers, to their chagrin, have been entangled in expensive litigation – even criminal law allegations – arising from inappropriate conduct, particularly when such parties take place in hotels or motels.

Employees who drink excessively at a holiday party also can create liability for their employer if they injure someone while driving home from a party or if they damage someone's property through a respondeat superior theory of liability.

In addition to the above, employers who require attendance at a holiday party may unwittingly create additional liability under the wage and hour laws or under non-discrimination laws to the extent they do not make exceptions for employees who object to attending on religious grounds.

Strategies for Minimizing Risk

Before playing defense, employers should go on the offensive, before a holiday party, to minimize the risk that their employees will engage in the kind of conduct that could create liability. The following simple steps can go a long way in minimizing liability:

- Make attendance at the event voluntary. Mandating attendance may create an appearance that work is being performed "for the benefit of" the company and could obligate an employer to pay employees for their attendance. Employers also should be mindful that some employees, due to their religious beliefs, may not celebrate the holidays and may not attend a party for that reason.
- Include employees in the planning and be mindful of diverse views and beliefs concerning holidays. Events and associated decorations should be religion-neutral. Plan to have food options that accommodate employees with food restrictions due to religious beliefs or medical conditions. This could include vegetarian, kosher, gluten-free, and nut-free foods.

- Remind employees in advance about responsible use of alcohol at the event.
- Remind employees of existing standards of conduct and anti-harassment policies before the party. Reaffirm that company policies remain in full force and effect at company social events.
- Provide transportation if alcohol is served, or have alternate transportation services available for employees who overindulge. Providing transportation may appear costly. However, it is not as costly as defending a personal injury or harassment law suit.
- Act appropriately and swiftly if a complaint is made. A prompt and thorough investigation and appropriate remedial action are key to preserving the company's defenses and affirmative defenses against claims of harassment.

As always, if you have any questions about risk prevention strategies, or responding to complaints that may arise from holiday parties, please contact your Proskauer representative.

From everyone at Proskauer, happy holidays!

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