

Conduct Outside Business Hours: Guidelines for Minimizing Risk

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Disciplining employees for conduct outside of work can be tricky territory and highly dependent on the specific nature of the incident. Consider both of the following scenarios. At an after hours dinner following a company annual meeting, several off color jokes are told about the shape of food on employees' entrees after a few rounds of margaritas. Everyone is laughing at the jokes and no one reports being uncomfortable with the conversation. Since attendance is required, almost all employees are there, including human resources employees. What should they do?

In the second scenario, employees playing on the company softball team go for happy hour after the game. An employee starts coming on to a co-worker and, after she rebuffs his advances, the co-worker follows her home and repeatedly knocks on her door asking to come in. At work the following Monday, she tells another co-worker about the incident but says it didn't happen on work time and she doesn't want to report it. The co-worker reports it to human resources, but doesn't want anything to be done because she promised her co-worker she wouldn't tell anyone. One event is a company-sponsored dinner following a company event, and the other is not. Is there a difference? What are the best practices to limit liability and, if necessary, discipline employees as the result of conduct outside of work hours?

Employers are in a tough position since, on one hand, parties and sports teams can be a great way to encourage employee morale and relationship building. On the other hand, they are fraught with potential legal issues, risks, and concerns. The first issue to consider is whether the event is company sponsored, because there is a difference between company-sponsored events and voluntary social opportunities. If an employee gets hurt while traveling to, or during the course of a company-sponsored event, the injury is likely to be considered work-related for workers' compensation purposes. A company could be held responsible for any accidents or injuries resulting from employer-sponsored events. Ways to minimize this risk include:

1. eliminating alcohol at company-sponsored events and informing employees that attendance is completely voluntary;
2. require employees to pay for drinks, or provide drink tickets for a limited number of drinks;
3. stop serving alcohol one hour before the event ends; and
4. provide a taxi or other designated driver service or encourage employees to car pool and choose a designated driver.

What about employee behavior, whether at a company sponsored event or otherwise, and its impact on the workplace? In both of the above scenarios, there are potential issues implicating harassment/hostile work environment policies. What else can companies do to minimize risk in these situations? In the first scenario, potential measures prior to the event could include sending a company-wide e-mail explaining the parameters on alcohol, along with specific language about dress code and a reminder of the harassment/hostile work environment policy as a guide for appropriate behavior. After the event, the human

resources employees could recirculate the company policy on harassment and have everyone sign an acknowledgement of receipt. In the second scenario, similar precautions regarding the parameters and rules of voluntary participation, alcohol use, and appropriate behavior could be circulated among employees before the softball season begins—handed out along with the team t-shirts. The company should immediately investigate the report on the potential harassment issue with the co-worker, even though neither party was at work when the event took place and there were requests not to do anything. Company response to issues is critical to defenses in the event of a harassment lawsuit. The co-worker's report places the company on notice that potential issues exist, whether an employee wants its addressed or not. If warranted under company policy, disciplinary action could be appropriate, even for off duty conduct.

While legal issues and concerns are a reality, there are creative ways to minimize risk while pursuing the goal of workplace cohesion and relationship building.