

## No Regrets: 10 Tips to Avoid Holiday Party Liability

'Tis the season for company holiday parties: co-workers of diverse backgrounds and religious beliefs interact in a social setting while partaking of spiked libations under the mistletoe. What could possibly go wrong? Particularly given the stories that have been rampant in the press lately—plenty!

Office holiday parties can boost employee morale and demonstrate appreciation for employees' work throughout the year. However, there are inherent risks that accompany any company-sponsored party, particularly during the holidays and when inhibitions are lowered with alcohol and a festive atmosphere. No need to fret—we've outlined 10 tips to avoid legal "hangovers" from company-sponsored holiday parties and mitigate the risks of your company fête, both in the planning stages and at the event itself.

### 1. Ensure policies and training are up-to-date

The Harvey Weinstein situation and the seemingly endless barrage of similar scandals monopolizing press coverage in recent weeks have propelled sexual harassment issues to the forefront. Employees likely are sensitized to these issues, but may not fully understand their obligations and the potential repercussions of their actions. Companies should ensure that applicable policies (such as harassment, retaliation, drug and alcohol use, workplace violence, wage and hour, and dress code) are up-to-date. It may be useful to provide examples (in policies and/or in training related to those policies) of unacceptable behavior with co-workers, whether at company-sponsored social events or otherwise. In addition, managers should be trained on how to handle any party-related issues that may arise, such as inappropriate behavior and overconsumption of alcohol, in accordance with company policies.

### 2. Consider having the event off-site

Ideally, the party should be held off-site, at a venue with its own liquor license, insurance and appropriate ambiance (e.g., nonromantic; more business-oriented). If the event will be held on-site for cost or other reasons, consider whether the company's insurance covers potential event liabilities or whether procuring additional coverage would be prudent. Additionally, review vendor contracts (such as for venues or bartending services) carefully for things like "hold harmless"/indemnification clauses, and negotiate around these if possible.

### 3. Exercise good judgment in party planning

Employees of diverse religious beliefs and backgrounds likely will be attending and interacting at your company event. Lessen the risk of offending individuals by following these guidelines:

- Check calendars to ensure that the planned event does not fall on a religious holiday.
- Choose a nondenominational theme such as "holiday party," "winter celebration," "annual banquet," "recognition event," or "year-end get-together" instead of "Christmas party" or the like.
- Likewise, avoid religious-based party decor (Christmas trees, nativity scenes, angels, crosses); given the broad range of holidays employees may celebrate, it could be difficult to be all-inclusive and nonoffensive.
- Discourage exchanges of gifts through traditions like "Secret Santa," whether meant to be sincere or humorous ("gag gifts"); it's difficult to predict what some employees may find offensive or overly personal.
- Eschew traditions like hanging mistletoe, having employees sit on Santa's lap (yes, this really happens), etc.; they are an invitation to engage in bad behavior.

November 14, 2017

- Ensure that food offerings do not conflict with anyone's religious beliefs or customs by offering a variety of options (vegetarian, kosher, etc.).

#### **4. Lessen the risk of inappropriate liaisons**

Consider allowing employees to bring a spouse or other guest, or perhaps make the party a family event. Although expanding the guest list increases costs, it also may result in employees behaving more appropriately with their co-workers. Generally, people are less likely to engage in offensive behavior when they are accompanied by their significant other/family members and when they are surrounded by more unfamiliar faces than when they are socializing "stag" with colleagues. Likewise, having soft background music instead of lively music and a dance floor reduces the risk of employees getting overly physical with co-workers.

#### **5. Ensure safe transportation and/or lodging options**

The company should encourage responsible drinking, use of designated drivers and public transportation options. Companies commonly offer free or discounted vouchers for taxis or ride-sharing services. Employers also often negotiate discounts with nearby hotels to offer an alternative to traveling home after the event, and can offer shuttles or other transportation to those hotels. (But note that offering lodging options without permitting spouses/significant others to attend the event actually tends to promote often-problematic romantic liaisons among co-workers.)

#### **6. Plan to keep it social**

To avoid having the event be considered compensable working time for non-exempt employees, it should be made clear that the event is voluntary, and it should be held outside of working hours. Avoid asking non-exempt employees to perform duties at the event for the benefit of the employer—this includes picking up party supplies, setting up at the event, acting as a DJ, making or passing food, tending bar, restocking tables, cleaning up, and similar activities. If you do need employee help, consider whether the assistance being provided is compensable (and pay for the time worked, including overtime if applicable). Alternatively, use exempt staff to assist, or hire outside help.

Guests should be reminded that this is a social event in order to dissuade business talk and avoid claims that time spent at (and traveling to and from) the event is compensable. Similarly, inviting customers, clients or vendors, having speeches about business matters, or handing out bonuses or performance awards may turn the event into compensable work time for non-exempt employees, so exercise caution in combining social and work aspects at the party.

#### **7. Communicate expectations in advance**

Well before the bar opens and the music begins, employees should be reminded of your policies (along with any updates) and their applicability to company-sponsored events and other situations where co-workers are present. An effective way to do this is by circulating a communication to employees a week or two prior to the event reminding them of the details (time and location, etc.) and clearly outlining expectations, including:

- Reminding employees of the applicability of company policies at the event, especially the policy against harassment;
- Cautioning that alcohol should be consumed only in a safe and responsible manner;

November 14, 2017

- Identifying transportation and lodging options, if applicable, to encourage responsible choices; and
- Confirming that attendance at the event is voluntary and is not compensable work time.

With careful drafting, this can be done in a way that does not evoke Ebenezer Scrooge proclaiming “Bah, humbug!”

## **8. Serve alcohol responsibly, if at all**

One of the simplest ways to mitigate risk is to avoid serving alcohol at all. For example, volunteering for a local charity and then going to a group lunch could be a viable alternative to an evening party with alcohol service. Understanding that many respond to the suggestion of foregoing alcohol at a holiday party with gasps of horror, there are less drastic ways to reduce potential alcohol consumption, including holding the event on a night other than Friday or Saturday, limiting the number of drinks per person (e.g., by providing one or two drink tickets to each person with a cash bar thereafter, as opposed to unlimited open bar), and/or offering only beer and wine.

Alcohol should be served only by insured professionals who will check IDs and respond appropriately to guests who may be consuming excessive amounts of alcohol (and potentially combining that with drugs, whether state-legal marijuana or otherwise). Employees should not be permitted to stand in as bartenders or otherwise serve drinks to co-workers.

Nonalcoholic beverages should be readily available and encouraged. Adequate amounts of food should be offered to offset alcohol consumption. It is advisable to close the bar an hour or so before the party ends, and serve only coffee, tea and soft drinks thereafter. Entertainment or activities can also provide a diversion from over-imbibing. And employers should be cognizant that some guests may have religious aversions to alcohol or may have alcohol-related addictions; peer pressure to drink (for instance, supervisors ordering rounds of shots) should be discouraged.

## **9. Chaperone the event like a high school dance**

Managers and HR representatives should be encouraged to attend the holiday party and monitor the event closely to head off any inappropriate conduct as soon as possible. (Note that if non-exempt employees act as monitors at the event, they should be paid.) These individuals should refrain from drinking alcohol altogether, or at least limit alcohol intake, and should remain alert throughout the event. They also should be trained on how to handle inappropriate conduct (e.g., whether to intervene personally and attempt to de-escalate a situation, call security, etc.) and proper post-party follow-up procedures, such as reporting incidents to HR, writing up offenders or initiating investigations. Examples of conduct warranting prompt intervention include unwelcome groping on the dance floor, over-imbibing and resulting improper behavior, excessively rowdy conduct such as threats or fighting, and attempting to leave and drive while impaired. Employees also should be encouraged to keep an eye on each other and notify management promptly of troublesome issues.

## **10. Set a hard-stop end time**

The event should have a definitive start and end time. Consider having a management employee provide concluding remarks at the appointed end time and thank everyone for coming, so it is clear when the party is over. This also provides an opportunity to reiterate the message to travel home safely and lay out alternative methods of transportation/lodging rather than driving under the influence. The company should not sponsor after-hours events, and managers should be discouraged from attending any after-party activities that do take place to minimize the risk of liability for any mishaps that may occur.

November 14, 2017

While following these tips cannot guarantee an issue-free event, it certainly can minimize the company's risk. With careful planning and oversight, it is possible to have a great—and fully appropriate—office party. Happy holidays!

**Christine A. Samsel**

Shareholder

[csamsel@bhfs.com](mailto:csamsel@bhfs.com)

303.223.1133 (CO)

310.500.4622 (CA)

**Hannah M. Caplan**

Associate

[hcaplan@bhfs.com](mailto:hcaplan@bhfs.com)

303.223.1258

*This document is intended to provide you with general information regarding the potential liability associated with company-sponsored holiday parties. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*