

# **SURVIVING THE HOLIDAY PARTY SEASON: AN EMPLOYER'S QUICK REFERENCE GUIDE**

Insights  
Nov 30, 2016

As 2016 winds down, we are entering into the prime season for holiday gatherings. Based on a recent study by the Society for Human Resource Management, approximately 65% of employers plan to host a holiday or end-of-year party. Although these parties can be a lot of fun, they can be hotbeds for potential employer liability. So, what can you do to reduce the potential for mishaps?

There is no surefire way to eliminate legal exposure, but there are some proactive steps you can take to reduce their risk. Think of this article as a roadmap, so you can focus on what is really important: having fun and celebrating with your employees!

## **1. SERVING ALCOHOL IS A RISK**

People enjoy an occasional holiday alcoholic beverage – cocktails, beer, wine, eggnog, etc. Nevertheless, alcohol consumption adds another layer of complexity and potential risks for employers. Alcohol often causes people to “let their hair down,” which can be bad news for the workplace. Letting one’s hair down can (and often does) lead to harassment, inappropriate comments, and many other potentially illegal behaviors.

## **Service Focus**

Counseling and Advice

If you decide to serve alcohol, you should consider a few things. You should limit the amount of alcohol an employee can consume. This can be accomplished by using a ticket-system, restricting each employee to a certain number of drinks. You should not serve alcohol-based punch or eggnog, which makes it difficult for employees to tell how much liquor they are consuming.

You should hire professional bartenders to serve beverages. You should close down the bar at least one hour prior to the end of the event. You should also consider having a drawing for a prize or some other activity to encourage people to stick around during the last hour.

Finally, make sure you have non-alcoholic beverages available as an option for employees who choose not to drink, or realize they have had enough for one night.

## **2. VOLUNTARY, NEVER MANDATORY**

If you decide to host a holiday party, attendance at the parties should be voluntary – not mandatory. The voluntary nature of the party should be explicitly stated, preferably in writing. You should not put pressure on employees to attend. When holiday parties are mandatory, employers face a greater risk of wage and hour and workers' compensation claims. Also, since this is a party, you should refrain from turning the event into a de facto meeting – leave the business component out of it.

## **3. THIS IS A (WORK) PARTY**

Holiday parties are often held offsite and after regular working hours. That is why it is critically important that employees must understand that work rules are still applicable. There are a few ways for you to relay this message to employees.

You can circulate a memo or email to all employees outlining the purpose of the event, its voluntary nature,

and that professional behavior is mandatory. As an alternative, you might provide a refresher training session to all employees regarding discrimination, harassment, and other applicable company policies before the date of the event. This memo or training session will provide another reminder to employees of applicable policies. It should also add another level of insulation for you in the event of legal action.

#### **4. “FEED ME SEYMOUR!”**

You certainly do not want to serve alcohol to people on empty stomachs. So, once the decision is made to serve alcohol, you need to determine what kinds of food will be served. Serve foods that slow the absorption of alcohol, such as those high in protein or starch. Greasy or salty foods tend to encourage more alcohol consumption, so avoid them.

Also, some employees will have food preferences or allergies, some of which may be tied directly to a religious belief (Title VII), or a medical condition (Americans with Disabilities Act). Make sure you understand whether any accommodations are necessary by asking your guests ahead of time.

#### **5. ADULTS NEED CHAPERONES, TOO**

Alcohol + adults = a potentially combustible environment. People tend to be more open, honest, and potentially inappropriate when they consume alcohol. Sometimes people forget (at least temporarily) that they are married, or that they have a significant other.

For these reasons, it makes sense to encourage employees to bring their significant others to the event. The hope is that these guests will encourage employees to be on their best behavior, and will reel in their spouses or significant others should they drink too much of the party juice.

You should also instruct some of your senior managers to refrain from drinking alcohol on the night of the

event. Make sure at least one of them is stationed near the exit at the end of the party. This person will thank guests for coming to the event, but most importantly, make a final determination regarding whether employees are fit to drive themselves home.

## **6. UBER. LYFT. TAXI. PRIVATE DRIVERS.**

No matter how careful you handle serving alcohol, someone will consume too much at your party. That someone should not drive away from your party. What can you do to stay ahead of this potential problem?

There's an easy answer: you should offer transportation from the event for your employees and guests. Some employers might get frustrated hearing this suggestion, figuring this is just another expense that will not be recouped. But, for at least two reasons, it is well worth the cost. First and foremost, it will enable you to protect your most important assets – your employees. The safety and wellbeing of your workers, their guests, and the general public should be on the forefront of your mind at all times. Second, it will provide another layer of insulation should any of your employees injure another person as a result of alcohol consumption. Many transportation companies offer group deals to defray the cost of this service.

## **7. SOCIAL MEDIA COULD MAKE YOUR PARTY (IN)FAMOUS**

We are living in an era where almost every person has a smartphone. Most people subscribe to some sort of social media platform. That said, there is a great chance that your company holiday party – in its entirety or in part – will be uploaded to Snapchat, Facebook, Instagram, Twitter or any number of social media platforms.

As an employer, this sounds pretty scary for a number of reasons. If you have any reservations about adopting any of the suggestions listed above, just imagine how embarrassing (or legally troublesome) it would be to

have your party broadcast to the world or digitally preserved for all time.

## **8. PROMPT CORRECTIVE ACTION**

No matter how much you plan, bad things will happen. Sometimes an inebriated employee makes a racially, sexually or otherwise discriminatory comment, or does something that is generally unprofessional or inappropriate. Unfortunately, no matter how many steps you take to protect your interests, situations like this sometimes cannot be avoided.

Nevertheless, part of your obligation under Title VII is to make prompt corrective action in the event you become aware (directly or indirectly) of potentially troublesome behavior. You must ensure that management and executives attending these events are setting a good example. They also need to function as watchdogs on high alert for inappropriate behavior. The sooner this behavior is reported and investigated, the less likely you will face continuing legal exposure.

## **9. MISTLE-NO**

Finally, what's the biggest mistake you can make? Hanging mistletoe! Do not use mistletoe as décor at your company party.

This article has covered many tips for mitigating exposure in a holiday party setting. None of these tips will guarantee that you will avoid legal action. However, implementing some or all of the tips discussed should reduce your risk of legal exposure.

Keep these guidelines in mind, so you and your employees can focus on enjoying the event. Happy Holidays!

---

*This Legal Alert provides an overview of a general workplace situation. It is not intended to be, and should*

*not be construed as, legal advice for any particular fact situation.*