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The Employer's Holiday Handbook: Avoiding Workplace Troubles This Season

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The holiday season is here! Many companies decorate their offices, give gifts, and encourage employees to attend company-sponsored holiday parties or other events. Activities like these can boost employee morale, strengthen the workplace's culture, and offer a fun way to thank employees for their hard work throughout the year. However, employers should consider the potential liability that may arise when companies celebrate the holidays with their employees.

Holiday Décor: Know Your Audience

Companies can help spread the holiday cheer by adding more inclusive decorations, but it's important not to make assumptions about how other faiths celebrate their holidays. A large candle encased in glass with a Star of David generally is not a Chanukah decoration. It is most likely is a yahrzeit candle designed to be used by mourners upon the death of a close relative.

This real-world example teaches an essential lesson: do your research and ask questions about holiday décor.

Also, keep in mind that some employees may not celebrate the same holiday in December, any holiday in December, or any holiday at all. Before hanging holiday decorations on a coworker's office door or nameplate, make sure to get the coworker's okay.

When the (Wrongful) Thought Counts

Gifts are often part of a company's holiday celebrations. The company holiday party or department holiday lunch may include a gift exchange. Managers may give gifts to their teams at year-end. No matter the reason, the gift-buyer should give some thought to the gift given the context. In other words, don't forget this is a work-related gift.

While gifts can be all fun and games, sexually suggestive gifts expose (pun intended) the employer to liability for sexual harassment. Beer, wine or spirits may be appropriate gifts in some circumstances but not if the gift-

giver knows the recipient does not drink alcohol, particularly for religious reasons. In all cases, companies may wish to remind employees to refrain from sampling their newly acquired gifts of alcohol during work hours.

How Much Does This Party Cost?

Employers should be mindful of how they advertise the holiday party to their staff. If the event is mandatory, then the phrase "party time" also means "work time." Non-exempt employees must therefore be paid for their time at the party. Employers who fail to pay their non-exempt employees for all hours worked, including overtime at 1.5 times the employee's regular rate of pay, are liable for the unpaid wages, an amount equal to the unpaid wages as liquidated damages, and the employee's attorneys' fees and costs.

If the holiday party is not mandatory, the company does not have to pay employees for their time at the party. A company may opt to pay employees for some or all of the time at the party as a perk. These hours at the party are not considered work time and do not count in determining if an employee has worked overtime in that work week, unless the company chooses to count them.

Employers may wish to be clear about the company's expectations on party attendance and compensation when they explain how employees will (or won't) be paid for the party.

The Boss Said What?

Many times, holiday parties include a short (or not-so-short) speech from the owner, president or other member of management. These greetings are often expressions of gratitude to the team for a great year, but some company bosses use the microphone to show off what they believe to be their comedic skills. While this could be a G-rated performance, employers should be careful not to veer into ill-advised territory for a company event. Depending on the topics covered, the entire "act," which will most certainly be recorded on multiple employee cell phones, could become Exhibit A to the sexual harassment claim, the age discrimination claim, the disability claim, etc. against the company.

Is That Punch Spiked?

Florida courts have held employers liable for injuries to third parties due to car accidents caused by the drunk driving of an employee returning home from a work event where alcohol was provided. Despite this, the law does not prohibit providing alcohol at office or work-related holiday parties. That is true even if the party occurs during work hours and even if the employer requires or strongly encourages employees to attend.

An employer may get into legal trouble, however, if the company knows that a particular employee is intoxicated but still allows the employee to drive home from the party.

Additionally, a Florida employer could be held liable for injuries to employees themselves if they are injured after leaving the holiday party. For example, a theme park employee sued their employer after being injured in a car accident on their way home from an office party even though the employee caused the accident by driving while drunk.

In this case, the employee had planned to delay driving home by sleeping in their car after the party but was ordered to leave the parking lot by a representative of the theme park. The court held that the theme park had a duty to refrain from ordering the employee to leave, and thus, the theme park was potentially liable for the employee's injuries.

Employers should also consider the heightened potential for incidents of sexual harassment during holiday parties. Employees may be less aware of or concerned if they behave inappropriately when they are under the influence of alcohol or otherwise participate in an after-hours party. This reduced vigilance and focus may lead to unwanted advances or other sexually harassing behaviors that result in claims of sexual harassment, or worse.

To reduce the chance liability may arise because of conduct at or related to a company holiday party, employers can consider the following measures, which are not exhaustive:

- Remind employees the holiday party is an extension of the workplace and that employees will be held responsible for any inappropriate conduct at the party;
- Have a written sexual harassment policy in place and ensure employees understand the policy applies in all work-related settings, not just during ordinary or traditional work hours;
- To help keep employees from over-indulging in alcohol, hire a bartender or designate someone to serve drinks rather than permitting employees to mix or serve their own drinks;
- If alcohol is served, have fun or novel non-alcoholic beverages available at the holiday party, too, to give employees a wider selection of beverages to choose from and lessen the chances they will become intoxicated;
- Similarly, if alcohol is available, serve food to help reduce the chance employees become intoxicated;
- Provide other activities for employees to participate in during the party—if there are options for entertainment, employees may be less likely to drink constantly;
- Have a "Last Call" and shut down the bar approximately 30 minutes before the party concludes;
- Hire a trained bartender or task at least one of the company's managers to monitor any employees who appear or become intoxicated in order to ensure those employees obtain safe transportation home; and
- Pay for or offer to reimburse any employee who uses a rideshare service to go home after the party because they cannot safely drive home.
- Yes, there is a risk of liability to the employer if the rideshare driver gets into an accident or engages in bad behavior with the employee, but the risk of injury to the employee and third parties if the employee gets behind the wheel with a high blood alcohol content (BAC) above 0.8 is arguably much higher.

Countdown to 2023!

Ultimately, while it is important for employers to be aware of potential liability associated with the holiday season, celebrating the holidays with employees can be safe and fun with proper communication, planning, preparation, and precaution.

If you have any questions regarding this subject, please contact any member of the Lowndes Labor & Employment Law Group.