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FEATURE, CAREFUL WITH THAT EGGNOG: PERILS AND PITFALLS OF THE OFFICE HOLIDAY PARTY

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Reporter

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Text

[*13] The holidays are coming. It is time to give some thought to hosting an office party. Office parties can be a great opportunity to relax, mingle, and celebrate with employees and sometimes clients, but they can be fraught with pitfalls, both legal and social.

Holiday party conduct can expose the employer to complaints of discrimination under Title VII of the Civil Rights Act of 1964 or similar state laws. Employee complaints may arise from potentially sexually harassing behavior but also harassment based on any other protected characteristic such as religion, race, or national origin. Employees tend to relax their inhibitions at holiday parties, especially if alcohol is served, and this relaxed behavior may open the door to allegations relating to a potentially "hostile work environment." As a result, sexual and other harassment incidents may be more likely to occur during a holiday office social event than during any other workday.

[*14] Employers may also face the risk of civil liability for injuries or damages caused by an intoxicated partygoer after an office holiday party. This may include harm to the employee, to his or her guest, or to an unrelated third party. Employee injuries resulting from the employer-sponsored office party may result in a workers' compensation claim. Depending on state law, the employer may have liability as a social host serving alcohol. (See "Alcoholic Beverage Law and Hospitality Law" on page 16.) To avoid or mitigate these risks, you should give some thoughtful consideration to your office holiday party plans.

KEY DECISIONS WHEN HOSTING AN OFFICE PARTY

Whom do I invite? Do you host an employee-only party? Do you include spouses and guests? What about children? Do you include clients? There is no single right answer. It depends on your workplace and your motivation. Do you want to provide a simple, heartfelt thank-you to the employees who have worked hard all year? Then perhaps a low-key holiday luncheon is the way to do so. Do you want the opportunity to extend that gratitude to the employees' spouses, domestic partners, and significant others who have supported them through the year? Then an evening gala with spouses and guests may be more appropriate. Does your employee base include a lot of families? Maybe you want to host a holiday craft or charitable outing that includes the children. Do you want to acknowledge your clients and provide an opportunity for your employees to mix and mingle with these clients in a more informal setting? Then perhaps a dinner for employees, clients, and guests is in order.

The primary legal concern about the invitation list is that it is not discriminatory to your employees. If your plan is to invite all employees, then invite all employees. Do not exclude certain employees; this exclusion may be used against you later as a basis for discrimination. For example, not extending the invitation to the employee who doesn't drink ("he won't come anyway, you know he doesn't drink"), the single parent ("she probably can't get a babysitter"), or the Muslim employee ("they don't celebrate the holidays") can lead to liability.

If you are inviting spouses, be sure the invitations include spouses, domestic partners, or other guests. If the event is for adults only, the invitation should say so. If families and children are welcome, keep in mind that families come in all shapes and sizes. And in all cases, the invitation should make clear that employee attendance at your holiday party is voluntary. Employees should never be penalized for opting out.

What do I call it? Employers ask all the time whether they can call their gathering a "Christmas party," or does it have to be something else? Can they decorate for the holidays? Should they schedule the party to avoid Hanukkah, Kwanzaa, or other religious holidays? The short answer is an employer-sponsored holiday party is an extension of your workplace, so what you call it, how you decorate it, and when you schedule it should not be discriminatory -- based on religion or any other factor. As a practical matter, keep it respectful and representational of the diversity in your workplace. The office party must never be used as a time to proselytize. Talk with your employees and get their input or contribution on the holiday theme and party decorations.

Scheduling the holiday party can pose difficulty. For that reason, some employers choose to host an after-holiday party, in part to avoid being seen as promoting or excluding any one holiday tradition over another. This can also be a good way to avoid the crush of business and social events that occur near the end of the calendar year. Whenever you schedule it, be aware that there will always be some employees who are unable to attend.

Do I serve alcohol? There is no one right answer. Each work environment is different. Do you have employees who are under age 21? Will any of your employees be returning to work after the party? Are your employees transportation workers who drive for a living? These are workplace factors that may weigh against serving alcohol.

Alcohol heightens the risk of legal liability resulting from the office party, but many employers decide it is a calculated risk worth taking for the employee morale and camaraderie that can come from a well-orchestrated holiday party.

If you do serve alcohol, make sure you hire a professional server. Serve only to those employees and their guests who are over 21, and ensure there are plenty of non-alcoholic beverages and food available, too. Consider a no-host bar at a restaurant or other venue, or provide employees with a fixed number of drink tickets to reduce the likelihood of over-consumption. Make arrangements ahead of time for safe transportation options for employees and their guests who have had too much to drink, such as encouraging public transit or providing cab rides. Communicate to employees about their available options and encourage them to plan ahead.

If you are hosting the party during work hours or in the workplace, make sure employees are informed of your workplace drug and alcohol policies. Set clear guidelines and expectations about returning to work following the party, if applicable.

If you are the host, make sure you and your supervisors set the example and keep it professional. This may be a celebration, but it is still an extension of the workplace. Alcohol may relax your [*15] employees' inhibitions. Some employees may engage in conduct that they might not otherwise pursue at work. This may include a wide spectrum of behavior such as overly friendly or overly aggressive behavior. Your conduct, and the conduct of your supervisors, can expose the employer to legal liability just the same as if the conduct happened in the office. Employees should be reminded ahead of time that the company's harassment policies are still in full force and effect.

Also be aware that the liability risk may not end when the party is over. Injuries or damages to third parties by an employee following a night of drinking at the employer-sponsored party are another potential risk. After-parties can give rise to claims, too. This is especially true if a supervisor or other management employee instigates the after-party or pays for after-party drinks as a business expense. Never, ever, should the after-party end up at a strip club, burlesque show, or similar form of adult entertainment.

ETIQUETTE AND CONDUCT ISSUES

Both employees and employers should remember to keep office party conduct professional. The employer and supervisory staff should set the standard. This starts with appropriate dress and attire. Dress can be festive but still professional. Keep in mind that these are your colleagues, and how you dress at the holiday party will be remembered all year. This is probably not the ideal time to bring out the crazy Santa sweater from 1975, nor is it the appropriate setting for that tight-fitting sequined cocktail dress.

The holiday office party is an important time to mix and mingle with employees, including those you don't often work closely with. Take advantage of the opportunity to chat but don't monopolize anyone's time. If you are the host, take the initiative to introduce yourself or others; don't assume that everyone knows everyone. Also use the time to thank, congratulate, and otherwise acknowledge the hard work of your employees and colleagues.

Remember basic confidentiality rules and the duty to maintain client confidences. Office parties can sometimes become an opportunity to swap stories with your colleagues about major successes or debacles from the previous year. Keep in mind that there may be non-employees present who are not and cannot be privy to the confidential information.

Keep everything in moderation. This starts with drinking but may also include dancing, singing, or expressing your undying love for a co-worker. Office parties can provide years of office gossip and lead to interesting employment case law. Don't be the employee who is always remembered for singing love songs to the boss's wife, doing the chicken dance on the conference room table, or passing out in the restaurant fountain. If you do see "that guy" or "that girl" making a fool of him or herself at the office holiday party, consider steering the employee in a better direction. Suggest a quiet moment over a cup of coffee or a cab ride home. Your colleague may thank you the next morning.

Also keep in mind that this is a smartphone and social media culture. You can set the tone by putting away your cameras and smartphones, but remember they are ever-present. What happens at the holiday party does not stay at the holiday party. It may not just be office gossip. In seconds, office party conduct may be posted online via Facebook, Twitter, Instagram, or YouTube for all to see, forever and ever. Both employees and employers must be cognizant of this fact. If you are the employer or management staff, it comes back to the number-one rule for office party conduct: Keep it professional. If you don't want your family, friends, or clients to see it on the Internet, don't do it. For employees, just because you have video of your colleague dirty dancing with her muscle-bound legal assistant does not mean you should post it for all to see.

HAPPY HOLIDAYS

Despite the legal risks and etiquette minefields, holiday office parties are important tools for building and maintaining a positive working environment. With adequate planning and a focus on professionalism, they can be a positive experience for all.

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