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An Employment Lawyer's Top Ten Tips to Avoid Holiday Party Headaches

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Tis the season to be jolly. Employer-sponsored holiday parties are meant to be fun morale boosters for a company. However, Santa Claus can quickly turn into the Grinch if certain precautions aren't taken when a company throws a holiday party. Holiday parties should be unforgettable because of the festivities and fun, not because of the legal consequences that follow.

Holiday parties are at the root of many employment lawsuits. As one court stated in *Place v. Abbott Laboratories* (7th Cir. 2000) 215 F.3d 803, "At the risk of playing the Grinch... we note that office Christmas parties also seem to be fertile ground for unwanted sexual overtures that lead to Title VII complaints." Employer-sponsored holiday parties can lead to claims beyond just sexual harassment – they can lead to claims of religious harassment or discrimination, respondeat superior or vicarious liability, wage and hour violations, and for workers' compensation benefits. These claims come from a variety of typical holiday party scenarios. For example, an employee gets in an accident driving home from the holiday party after drinking, a manager or a co-worker touches another employee inappropriately or makes lewd comments, or an employee feels left out or forced to participate.

The case of *Harris v. Trojan Fireworks Co.* (1981) 120 Cal.App.3d 157 told a tragic holiday party story. The employer held a holiday party at its manufacturing plant during business hours where large quantities of alcohol were served. Following the party, an employee drove home intoxicated and was involved in an auto accident, killing one and injuring two others. The victims sued not just the driver, but also the employer under a "respondeat superior" theory. The court found that the drinking occurred in the course of the employee's employment; therefore the employer could be financially responsible for the injuries caused by the employee's accident.

The same result was reached more recently in *Purton v. Marriot International, Inc.* (2013) 218 Cal.App.4th 499. There, an employee started drinking at home prior to coming to the company's holiday party. Bartenders (company employees) at the party were supposed to serve only beer and wine, but later in the evening they also began serving liquor. Bartenders also apparently failed to enforce the two drink limit set by the company. During the party the employee at issue consumed liquor provided by the company and also drank from a flask he brought from home. The employee got home safely but then got in the car and drove to another employee's home. It was during this trip that he struck another vehicle, killing the driver. Again, the court found that the drinking occurred during the course of the employee's employment, and the case proceeded against the employer.

The facts behind *Brennan v. Townsend & O'Leary Enterprises, Inc.* (2011) 199 Cal.App.4th 1336 are not tragic, but still lead to serious financial consequences for the employer. In that case, a female employee sued her employer alleging sexual harassment arising in part out of incidents at two separate employer-sponsored Christmas parties. At one Christmas party, a supervisor dressed as Santa Claus asked three female employees to sit on his lap while asking them personal questions about their love lives. Then, at another Christmas party, the chief executive officer wore a red and white Santa hat with derogatory language written across the brow. An Orange County jury returned a quarter-million dollar verdict for the employee based on these and other allegations. While the verdict was later overturned because the conduct was not sufficiently severe or pervasive to constitute sexual harassment, the employer likely spent hundreds of thousands of dollars defending the lawsuit.

Consider the following holiday party best practices when trying to protect your company and your employees from a big holiday bah humbug:

1. Avoid using religious terms when describing office celebrations. Rather than referring to a party as a "Christmas party," it should be referred to as a "holiday party" or "annual celebration."
2. Make clear that employee attendance at the holiday party is voluntary and that employees are not required to attend.
3. Schedule the party outside of work hours and off work premises to make it clear that the party is not in the "course of employment."
4. Invite spouses, significant others and families. Inviting employees' families can change the atmosphere of a company party and discourage inappropriate behavior. A spouse's watchful eye is more powerful than a printed anti-harassment policy! Including families can also bolster the argument that the event

was not attended "on the clock" or in the "course of employment."

5. The time and place of the party will go a long way toward setting the tone, and choosing wisely can help eliminate problematic behaviors. A daytime event may be less likely to result in excessive drinking, or otherwise result in employees behaving inappropriately. Additionally, an event on a weekday, when employees know they have to work the next day, is likely to be tamer than one on a weekend. As far as location goes, if alcohol is being served at the party, the employer is better off hosting an event offsite.

6. Don't let anyone sit on Santa's lap and don't decorate with mistletoe. Holiday parties can present situations for unwanted sexual overtures that could also lead to complaints of sexual harassment. Employers have a legal duty to prevent harassment at holiday parties, just like they have a legal duty to prevent harassment in the office. Therefore, publish or re-publish your sexual harassment policy before holiday parties take place. Remind employees that holiday festivities do not offer an excuse for violating a sexual harassment policy. If you do not have a written policy, implement one. In addition, given the instant access to social media sites such as Twitter, Instagram, and Facebook, employers should be aware of, and take immediate action to prevent, any "techno harassment" at holiday parties and in the office.

7. Beware of alcohol! It is the root of most evil at holiday parties. If alcohol is served, keep consumption in check. Limiting access to alcohol by placing restrictions on the type served (only beer and wine), the time available (close the bar well before the party ends) or the number of drinks served (use drink tickets) may reduce the possibility that employees will drink to excess. But as the *Marriot* case described above shows, these restrictions must actually be enforced. Providing food is important, as it typically slows the absorption of alcohol into the bloodstream. Providing plenty of non-alcoholic beverages is also a wise choice.

8. Hire professional bartenders and require IDs from guests who do not appear to be 21 years of age or older. Ask the bartenders to keep their eyes open for obviously intoxicated employees.

9. Arrange designated drivers or cabs to ensure that all persons have a safe way to get home. Consider offering incentives to employees who offer to be designated drivers and reimbursing employees who wisely take a cab home.

10. Most importantly, if there is a problem, deal with it promptly! Every act of harassment—whether by a co-worker, client or supervisor – should be taken seriously. Prompt action designed to stop any further harassment not only demonstrates that the employer does not condone such behavior, but may prevent certain behavior from being imputed to the employer. Also, a record of consistent and effective response to incidents is important because the employer's entire record of dealing with such matters is considered when evaluating liability.

Conclusion

When getting ready for the holidays, do not forget the potential for liability, as compliance with the law takes no holiday. Have a safe and enjoyable holiday season. We have made the list to help you achieve that goal – now it's up to you to check it twice!

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