

## Client Alert

### **'TIS THE SEASON TO BE SUED: AVOIDING THE HOLIDAY PARTY LAWSUIT**

While many of us look forward to the holiday season and celebrating with our co-workers, sometimes too much holiday cheer can result in trouble. Unfortunately for employers, sexual harassment allegations, assault complaints or other related claims stemming from the annual holiday party have become more and more prevalent over the years. Thus, as much as we enjoy them, the unfortunate reality is that company sponsored holiday parties create an increased risk of liability for employers. Here are some fairly basic steps to reduce the risk of liability while allowing the holiday merriment to continue.

#### **Serving Alcohol**

The most basic recommendation, of course, is to skip the alcohol altogether. Indeed, very few complaints stem from holiday parties that did not involve the consumption of alcohol. However, if you choose to permit alcohol to be served (in strict moderation) at a company sponsored event, as most employers do, here are some ways in which you can minimize your potential liability:

- Retain outside service providers to handle all alcohol and bartending duties.
- Instruct bartenders to cut off service to employees who appear to be intoxicated.
- If the party is at a restaurant or bar that is open to the public, provide employees with bracelets or stamps so that bartenders can identify and distinguish your employees from other guests.
- Never allow a company supervisor or manager to serve drinks to other employees.
- Consider serving only beer and wine at the party, as avoiding the service of spirits that tend to intoxicate people more rapidly can also minimize the possibility of employees acting in ways that they might believe are "excused" after a few drinks.
- If serving spirits, request that the bartender prepare low-alcohol mixed drinks.
- Consider having a cash bar or limiting the number of free drinks per person.
- Consider distributing drink tickets to limit alcohol consumption.
- Offer a wide variety of nonalcoholic drinks.
- As is done by many professional sports and other venues, stop serving alcohol at least an hour before the party is scheduled to end.

#### **Serving Food**

By serving food in conjunction with alcohol, employers can help diminish the effects of alcohol and prevent employees from becoming intoxicated at the holiday party. Here are some steps employers can follow:

- Have food available at all times so that employees do not drink on empty stomachs.
- Serve finger food that is easier to eat while celebrating with co-workers.
- Avoid serving salty food that encourages people to drink more.
- Serve dessert and coffee after you stop serving alcohol.

### **Providing Transportation**

Transportation can be an issue for employers regardless of whether alcohol is being served at the holiday party. In any event, when it comes to transportation, here are some steps employers can follow:

- Remind employees not to drive if they intend to drink.
- Provide alternative transportation options for all employees at your expense.
- Consider using a car service or a shuttle service provider.
- Encourage prearranged designated drivers and encourage public transportation.
- Any employee who appears to be intoxicated should be provided with a ride home. Inform employees in advance that they will not be allowed to drive if they appear intoxicated to avoid any scene at the party.
- Invite employees' spouses and partners to attend the party to encourage designated drivers.

### **Potential Claims**

No matter how well intentioned, office parties tend to encourage employees to behave in ways that they normally would not at work. Despite your best efforts to train supervisors and instruct your employees, someone is bound to forget about the employer's anti-discrimination and anti-harassment policies as well as its more general code of conduct that apply and are to be enforced at any company sponsored holiday party. Employers should consider the following steps to reduce the risk that an employee may violate these policies at the holiday party:

- Confirm that your insurance policies cover your holiday party.
- Remind employees of the company's code of conduct as well as its anti-discrimination and anti-harassment policies the week of or week before the holiday party.
- Remind supervisors of these policies and what to do if they learn of or witness any potential violation of these policies during the holiday party.
- Remind employees that these policies apply to company sponsored social events both inside and outside of the office.
- Remind employees that they will be subject to discipline if they have violated these policies during the holiday party.
- Remind employees that any "after party" is not sponsored by the company.
- Consider inviting spouses and partners of employees to the party.
- Consider implementing a dress code that maintains a professional environment.

As indicated, regardless of the steps taken, there are occasions in which employees may "have one too many" and believe that their inebriated state somehow excuses them from polite and acceptable behavior with their colleagues. Diminished capacity, however, is never an excuse for strict adherence to the rules. While there is really no way for employers to completely avoid the risks associated with hosting a holiday party, implementing some or all the above suggestions

may help an employer minimize the risks, avoid liability and help ensure that your firm and its employees enjoy a safe and happy holiday season.

Happy and Safe Holidays from Morrison Cohen LLP to you and yours!

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