



Holiday Parties

Who, What, Why . . .

Who does it apply to: This one is pretty straight forward. It applies to all employers contemplating any type of holiday gathering for its staff.

What are the legal issues: Holiday parties potentially implicate a variety of employment laws: Discrimination, Fair Labor Standards Act (“FLSA”), Workers’ Compensation, and liability associated with providing alcohol.

How is discrimination an issue: Discrimination is probably the biggest concern for an employer planning a holiday party. The primary two issues employers need to watch out for are sex discrimination (in all its forms), and religious discrimination.

Sex discrimination can take the form of harassment or treating a male or female comparably unfair in comparison to her male or female counterparts. At holiday parties, it most often is the result of one employee touching another or propositioning another inappropriately. What might even appear to be consensual during a party could be described as an unwanted advance once the employee makes it home to a spouse in need of explanation. All incidences of inappropriate comments or conduct should be closely watched for and broken up.

Religious discrimination also rears its head during the holiday season. Christians commemorate the birth of Jesus. Muslims celebrate Eid al-Adha, or the Feast of Sacrifice. Some African-Americans celebrate Kwanzaa. Buddhists celebrate Buddha’s Enlightenment with Bodhi Day. The Jewish celebrate Hanukkah and the Festival of Lights. Some Seinfeld devotees celebrate Festivus, and there are many others. With so many different points of view, employers must be careful as they plan for a holiday party.

That said, employers should keep an eye out for portions of the holiday party plan that might affect the other protected classes: race or color, national origin, age, genetic information, pregnancy, military status, and disability. Drinking alcohol is not usually involved in the work environment, but it is often available

at holiday parties and a surprising number of people do not keep personal control when alcohol is available. This can lead to improper comments that an employee would have been smart enough to avoid without alcohol.

How is the FLSA an issue: Holiday parties conducted during work hours or which have a mandatory attendance requirement may result in the time being considered compensable for non-exempt employees. If the employees are required to attend, or feel required to attend because of some event at the party, they should be paid for the time including any applicable overtime.

What is the issue with workers’ comp: Employees are covered for injuries sustained while in the “course and scope” of their employment, which means furthering or carrying on the business of their employer. If attendance at a holiday party is required, the employee can make a workers’ compensation claim for injuries sustained – as long as those injuries do not result from horseplay or intoxication. Avoiding a workers’ compensation claim, however, may not be the right ticket because employees may then have a claim for negligence, which will not be covered by your carrier.

How can I be liable for providing alcohol: Under Texas law, an employer is generally not responsible for injuries to an employee or anyone that employee might injure, as a result of providing alcohol to that employee. One exception to this rule is providing alcohol to a person under the age of 18.

Common Situations:

Office staff only: Jimmy, decides to have a “Holiday Party” for his office staff at Jimmy’s Janitorial Service. Jimmy decides that the actual crews would be too cumbersome to invite so he does not include them. Has Jimmy screwed up? Yes. It wasn’t religious discrimination and there was no sexual harassment, but Jimmy failed to take into consideration the fact that 98% of his office staff is white or black and 98% of his cleaning crews are Hispanic. While sexual harassment and religious discrimination are most

likely to create a problem with a holiday party, employers must be mindful of unanticipated consequences.

But you assumed responsibility: Arnie, owner of Arnie's Beer Goggles, decides to host a Christmas party for his staff at his home. Because he knows the dangers of sending inebriated employees home after a party, he decides that everyone must stay at his home overnight to avoid leaving drunk. After a fun filled evening, Arnie calls it a night about 2 a.m. and goes to bed leaving his employees apparently asleep in the living room. Around 3 a.m., one of the most heavy drinkers, Saul, decides to head home with his wife. On the way home, Saul hits a tree and is grievously injured. Does he have a case against Arnie or the company? Maybe, but not for providing the alcohol. Setting aside the fact that Arnie should not have called it a "Christmas party," he made the mistake of taking responsibility for the safety of his employees. By making them stay at his home, but doing nothing to ensure they would do so – such as taking away their keys, Arnie may have engaged in a "negligent undertaking."

What should I do:

Instead of good, better, and best, this month, consider these remedies for the particular concern:

Sexual Harassment: Remind all employees of anti-harassment policies and applicability at a company party. Designate a hall monitor and put all supervisors on watch duty for any issues. React to complaints and politely break up any potentially dangerous decisions right away.

Religious Discrimination: Avoid decorations and themes associated with a particular religion. Make the focus of decorations wintry.

FLSA: To avoid the risk of paying employees to attend the party, have it during regular business hours you would have paid them for even without the party, or make attendance strictly voluntary. And, if you use voluntary attendance, be sure not to include any activities an employee might feel a need to be present for – such as handing out bonuses.

Worker's Compensation: Minimize activity at the party. Dancing and drinking can make for accidents.

Social Host Liability: Setting aside the fact that skipping alcoholic beverages will lessen the risk, consider the following. Hire a bartender and instruct them who the minors are, if any, and to warn you if anyone appears to be over-served. Consider using the dreaded drink tickets to limit consumption or closing the bar early. Serve starchy food that will soak up alcohol more quickly. Offer to reimburse for taxi service.



Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executive employees. He recognizes that the cost and expense of litigation make resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at mkelsheimer@grayreed.com or by phone at **469.320.6063**