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PERSPECTIVE

## Tis the season to be smart about holiday parties

By Scott Liner

It's that time of year again, when we get busy shopping for holiday gifts, planning for the kids' winter break, and of course, the scheduling of the annual company holiday party. Most companies typically schedule their party without putting too much thought into the risks and possible liabilities that can arise from these company events. However, by taking just a little time to consider key aspects of the holiday party, employers can avoid potential exposure and ensure that the holiday party proceeds without risk.

### Keep Religion Out of It

Once the decision has been made to have a holiday party, it's important for employers to remember to not exclude or ostracize other religions by either identifying the party as one for example as a "Christmas Party" or other use of religious decorations or references. A failure to heed this caution could not only cause some employees to feel left out and uncomfortable, but also could potentially lead to a religious discrimination claim if an employee complains and then is not provided a reasonable accommodation (such as an opportunity to include their religion or simply allowing them not to come to the affair at all.) Also, while the Equal Employment Opportunity Commission has held that a wreath or Christmas tree are secular and not religious objects, further decorations of a religious nature should be avoided both out of respect for people of different faiths, and also to avoid the specter of an endorsement of a particular religion and in turn a religious discrimination claim.

### Serving Alcohol?

Most celebrations tend to include alcohol of some variety. Unfortunately, alcohol has a tendency to bring out the side of employees that would be best left away from company functions. Consequently, when it comes to company holiday parties, consider limiting alcohol consumption to avoid the likelihood of inappropriate liquor induced behavior. For



example, have a holiday lunch (where no alcohol is typically served) or an evening event with significant others (which tends to keep behavior in check) either at the office or off site. Consider providing limited drink tickets, incentivizing designated drivers, or offering Uber or taxi services to anyone who wishes to use it. Additionally, consider limiting alcohol to beer and wine and to have bartenders watch for excessive drinking. Be aware that employers will be held vicariously liable for damages arising from when employees who consume alcohol at a work related event and then leave and engage in alcohol related accidents such as a DUI resulting in third party injuries or damages. See *Purton v. Marriott Int'l Inc.*, 218 Cal. App. 4th 499 (2013).

### Company Policies Apply

Companies should remind managers and supervisors that their conduct off the work site and after work hours must still be in accordance with company rules and policies and in particular observance of the company sexual harassment policy is imperative. Under state and federal harassment laws, employers are strictly liable for the harassment by supervisors towards employees, and companies are also liable for all conduct between co-employees about which it knew or should have known. Therefore, reminding party attendees, or at least supervisors, to comply with all company policies will ensure that

they avoid compromised situations that could result in harassment claims.

### Secret Santas and Mistletoe

In lieu of a holiday party or sometimes in addition to it, some employees engage in a gift exchange through a "Secret Santa" holiday exchange. While often done out of view of employers, this type of surprise gift exchange and others can lead to gag gifts, including those of a sexual nature, that could result in embarrassment and people taking offense to another's attempt to have fun. Unfortunately, a simple misstep in giving a gift in poor taste can lead to hurt feelings, and embarrassment, as well as complaints of harassment. Therefore, consideration should be given to remind people participating in such exchanges to keep things in good taste and be aware of the sensitivities of others.

Also, ensure that holiday pranks and "fun" such as mistletoe are not used to the discomfort of employees who feel forced to participate when they should not be required to do so.

### Mandatory Attendance?

Employers should not require their employees to attend the holiday party, otherwise non-exempt employees who attend will be entitled to compensation for all time spent at the party. By simply avoiding language in the invitation or in conversations with employees about the party, that their attendance is required, employers are safe from claims of unpaid wages associated with attendance at the holiday event. Besides, most employees will attend the event anyway.

In sum, it is important to remind supervisors to act appropriately and professionally at all company events, including the holiday party. Also, be careful whenever alcohol is being served and limit its consumption. By observing these simple reminders, the holiday party can proceed without risk and related employment problems.

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