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'TIS THE SEASON: HOW TO AVOID HOLIDAY PARTY LIABILITY

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'Tis the season for mistletoe and menorahs, presents and parties, sexual harassment complaints and social host liability lawsuits. Wait, what? Yes, it's true. As much as we love them, holiday office parties create an increased risk of liability, and a "party gone wrong" can result in a host of legal problems for the unprepared employer. But don't despair. You can take some fairly easy steps to reduce the risk of liability and let the merriment commence.

Alcohol

Although we hate to spoil the fun, we would be remiss if we did not suggest that you skip the alcohol altogether. Just don't serve it. Very few infamous holiday party dramas – the ones that get whispered about in the halls until July – begin with the ingestion of too much hot apple cider. Alcohol is the root of so many office party evils that you could skip most of our suggestions below if you simply skipped the alcohol. However, if you or your employees want some spirits to help you get into the holiday spirit, there are still ways for you to reduce potential liability.

- Hire bartenders. Even if you have an open bar, let only professional bartenders serve (and control) the alcoholic drinks. Never let a supervisor pour drinks.
- Instruct bartenders to cut off service to intoxicated employees and other partygoers. Let them make the judgment calls and be the "bad guys."
- If the party is at a restaurant or bar open to other patrons during the party, consider providing ID badges or other identifiers to employees so that bartenders can identify and follow your instructions with respect to your guests.
- Consider having a cash bar or limiting the number of free drinks per person. Consider distributing "drink tickets" to limit alcohol consumption.
- Ask the bartender or caterer to prepare low-alcohol mixed drinks or punches that look and taste as festive as their high-alcohol counterparts.
- Offer a wide variety of nonalcoholic drinks. Provide soda, bottled water, juices, and other appealing nonalcoholic options. Place them where employees can pour for themselves. You might

even offer alcohol sub-stitutes, such as nonalcoholic beer.

- Stop serving alcohol at least 30 minutes to an hour before the party ends.
- If necessary, confirm that your general liability policy covers liquor liability.

Food

What does food have to do with potential party liability? Not surprisingly, it goes hand in hand with alcohol. The right food at the right time can reduce the chance of employees becoming intoxicated.

- Have plenty of food available at all times (including the period before a sit-down meal) so that employees do not drink on empty stomachs.
- Serve "finger food" that is easy to eat while standing and mingling. Employees who have to choose between holding a drink and holding a plate of food may choose the drink only.
- Avoid serving too many salty foods that encourage people to drink.

Transportation

Transportation can be an issue whether you hold a party in the office or off-site. Generally, transportation issues relate to alcohol consumption, the big question being how employees will get home or back to the office after drinking. Of course, if the weather is bad or the party is at a location that makes travel difficult, you might offer transportation to employees regardless of alcohol consumption. If you do serve alcohol, consider taking the following steps:

- Before and during the party, remind employees not to drink and drive.
- Make alternative transportation available for any employee who needs or wants it.
- Consider paying for taxis or a shuttle service. Make the offer in advance so that employees can plan ahead. Announce during the party that transportation is available, even for employees who did not make an advance request.
- Encourage prearranged designated drivers and/or carpools. Help coordinate the arrangements, if necessary.
- Designate certain employees to stay sober. Have them watch people as they leave the party and insist that they take a taxi or arrange for another form of transportation if they've had too much to drink.
- Any employee who is intoxicated should be cut off from further alcohol

service and provided with a ride home. Inform employees in advance that they will not be allowed to drive if they appear intoxicated.

- Remind employees who drive company vehicles that they may not drive them if they are intoxicated.
- Invite employees' spouses/partners to attend the party and encourage them to serve as designated drivers.

Sexual Harassment

No matter how well planned, office parties tend to encourage employees to behave in ways that they normally would not when at work. And despite your best efforts to train employees, someone is bound to forget – unless reminded – that the company's antiharassment policies apply equally to parties and to nonemployees. Prior to the party, consider taking the following steps to reduce the risk that an employee will cross the line in the name of "holiday fun."

- Remind employees of the company's antiharassment and reporting policies. Let them know that the policies apply to events outside of the office and to social events in the office.
- Remind employees that they will be subject to discipline if they are involved in harassment during the party. Do it nicely. It is the holidays, after all.
- Remind supervisors of the company's antiharassment policies and what

to do if they learn of or witness potential harassment.

- Invite employees' spouses/partners or families to the party. Consider also inviting clients or business partners. Their presence will (hopefully) encourage appropriate behavior.
- Consider implementing a dress code that maintains a professional environment. There is nothing wrong with a "business casual" holiday party. Santa hats are optional, but the sequined miniskirt should stay at home.
- Don't be a slave to traditions, particularly those that could contribute to a harassing environment. Don't hang mistletoe. Don't have a supervisor dress up as Santa and invite employees to sit in his lap. It's only funny until the lawsuit is filed.
- Discourage "after parties" and inform supervisors that they must not attend them.

Although there is no way to completely eliminate the risk of liability that comes with hosting an office party, implementing some or all the above suggestions should greatly reduce your risk and, more important, ensure that you and your employees enjoy a safe and happy party. We wish you all the best for the season and the coming year. Happy Holidays.

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If you have any questions, please call Joy N. Eakley or any other member of Lowenstein Sandler's Employment Practice Group at 973 597 2500. We also would be pleased to provide you with assistance with respect to other employment practices and workplace compliance issues.

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