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## Health

# Holiday season can cause legal headaches

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By Cynthia Marcotte Stamer, Esq.

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As the 2009 holiday season moves into full swing, your company may want to take some common sense precautions to minimize the risk of waking up with a post-holiday liability hangover.

The music, food and game playing, coupled with serving alcohol and the celebratory atmosphere of an office party, may heighten the risk that certain employees or other business associates will engage in, or be subject to, risky or other inappropriate behavior that can create liability exposures or other business concerns for your business.

### HR hangover prevention

Company-sponsored holiday parties and other celebrations where employees celebrate with other employees or clients may fuel bad behavior by inviting fraternization, lowering inhibitions and obscuring the line between appropriate and inappropriate social and business behavior.

To minimize liability, employers should take steps to communicate and reinforce company policies and expectations about sexual harassment, discrimination, fraternization and other conduct viewed as inappropriate by the company.

For instance, an employer can send an e-mail stating that it expects workers, business partners and other guests to adhere to the company's policies against sexual harassment and other inappropriate discrimination while attending company-sponsored gatherings. The email can later serve as evidence in the event that an employee engages in an unauthorized violation of these rules.

Moreover, employers need to make it clear to workers that the firm does not expect or require them to tolerate unwelcome sexual or other inappropriate harassment when participating in parties or other social engagements with customers or other business partners.

To enhance the effectiveness of these reminders, a company may consider providing guidance about specific holiday-associated activities that create heightened risks. For instance, a business that anticipates its employees will participate in gift exchanges involving other employees or business associates may wish to specifically include a reminder to avoid selecting a gift that may be sexually suggestive or otherwise offensive.

Companies should also be vigilant in watching for signs of inappropriate patterns of discrimination in the selection of employees invited to participate in company-connected social events as well as off-duty holiday gatherings sponsored by managers and supervisors. This means that holiday parties, communications, gifts and other festivities held in December should be designed to reflect appropriate sensitivity to religious and other cultural diversity.

### Alcohol consumption

The prevalence of alcohol consumption during the holiday season also can create a range of business concerns. Most employers recognize that accidents caused by alcohol or other illegal drugs at work or work-related functions create substantial liability exposures both to workers and any third parties injured by a drunken employee.

Employers concerned with liability exposures should take steps to manage the potential risks that commonly

arise when employees, clients or other guests consume alcohol at company-sponsored events or while attending other business-associated festivities. To minimize these risks at company-sponsored events, many employers elect not to serve or limit the alcohol served to guests at such events.

Companies that elect to serve alcohol or anticipate that employees will attend other business functions where alcohol will be served should consider the potential liability risks that may result if the alcohol-impaired judgment of an employee or a guest causes an injury to that individual or someone else.

Any company that expects that an employee might consume alcohol at a company-sponsored or other business-associated event should communicate clearly its expectation that employees not drink too much and abstain from driving under the influence. Many employers find it beneficial to redistribute information about employee assistance programs along with this information.

When addressing alcohol consumption, companies will want to consider not only alcohol consumption at business-related events, but also off-duty alcohol consumption. Employers are likely to incur significant health and disability related benefit costs if an employee is injured in an alcohol-related accident.

Furthermore, even when no injury results, productivity losses attributable to excess alcohol consumption, whether on or off duty, can prove expensive to a business. Accordingly, virtually all employers can benefit from encouraging workers to be responsible when consuming alcohol in both business and non-business functions.

#### Special provisions

Businesses also may want to review their existing health and benefit programs, liability insurance coverage and employment policies to determine if they protect and promote the company's risk management objectives. Many health and disability plans incorporate special provisions on injuries arising from inappropriate alcohol use.

Similarly, many employers increasingly qualify for special discounts on automobile and general liability insurance based upon representations that the business has in effect certain alcohol and drug-use policies. Businesses can experience unfortunate surprises if they don't anticipate the implications of these provisions on their health benefit programs or liability insurance coverage. By reviewing the policies now, employers will be in a better position to respond effectively if an employee or guest is injured in an alcohol-related accident during the holiday season.

#### Gift giving

The exchange of gifts during the holiday season also can raise various concerns. As a starting point, businesses generally need to confirm that any applicable tax implications arising from the giving or receiving of gifts are appropriately characterized and reported in accordance with applicable tax and other laws.

Many businesses also voluntarily have established conflict of interest, gift giving or other policies to minimize the risk that an employee's loyalty or judgment will be comprised by gifts offered or received from business partners or other outsiders.

#### Performance, attendance and time off

Employers also commonly face a range of attendance and productivity concerns in December that result from the winter weather, the flu season and post-holiday illnesses and vacations.

Managing staffing needs around the legitimate requests for excused time off by employees presents real challenges for many businesses. Further complications can arise when dealing with employees suspected of mischaracterizing the reason for their absence or otherwise gaming the company's time-off policies.

Meanwhile, performance and productivity concerns also become more prevalent as workers allow holiday shopping, personal holiday preparations, and other personal distractions to interfere with their performance. Companies concerned with these challenges ideally will have in place well-designed policies concerning attendance, time off and productivity that comply with the Fair Labor Standards Act and other laws.

In December, however, employers should exercise care to follow the company's leave policies, to maintain thorough attendance/time records and to provide all required notifications and legally mandated rights to

employees taking legally protected leaves. In the event it becomes necessary to terminate an employee during December, careful documentation can help the business to defend this decision.

#### Timely investigation and notification

Employers faced with allegations of discrimination, sexual harassment or other misconduct also should act promptly to investigate any concerns and if necessary, take appropriate corrective action.

A delay in an investigation and redress of discrimination or other improprieties can increase the liability exposure of a company presented with a valid complaint and complicate the ability to defend charges that may arise against the business.

If a report of an accident, act of discrimination or sexual harassment or other liability-related event arises, remember to consider as part of your response whether you need to report the event to any insurers or regulatory agencies. Injuries occurring at company-related functions often qualify as occupational injuries subject to worker's compensation and occupational safety laws.

Cynthia Marcotte Stamer can be reached at [Cstamer@CTTLegal.com](mailto:Cstamer@CTTLegal.com).

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