

Holiday Activities Might Increase Risk Of Liability

*'Twas the night before Christmas and all
through the plant
Not an employee was working, not even a
scant
Instead they were nestled all tight in their
cubes
Comparing their bonuses; not being
amused
When out of the closet there arose such a
clatter
A "too friendly" Santa had received quite
a batter.*

The holiday season is a wonderful time of year, but employers should take steps to prevent an unwanted present — a lawsuit — in the New Year.

Areas where problems can occur include holiday parties, gift exchanges and year-end bonuses.

Holiday Parties

A holiday party is a festive way to reward employees for a year of hard work.

Serving alcohol is not illegal; however, prudent employers will take steps to ensure that excessive drinking does not occur.

If employees drink too much not only is there a risk if they drive home from the party, but their behavior at the party can support or lead to harassment claims if the behavior is inappropriate.

If the party is held at a restaurant, the



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staff is trained on how to deal with an individual who has had too much to drink.

At a private party, there are fewer controls over employee drinking. Certainly, having plenty of non-alcoholic drinks and food available is important. Using professional bartenders rather than self-serve or employee-serving is also a good idea.

Employers should let employees know ahead of time that you want them to have fun, but you also want and need them to behave responsibly. (Yes, these are not mutually exclusive concepts.) This can be achieved in person or by memo giving the holiday party details, but including the caveats that — attendance is voluntary, appropriate and responsible conduct is expected at all times, and excessive drinking or other inappropriate behavior can result in discipline.

Remember, your reaction to an employee's behavior at a holiday party will create a precedent and employees tend to remember incidents like this

for years to come.

Gift Exchanges

A department in your company organizes its own Secret Santa or Yankee Gift Exchange.

The first gifts are opened and they are the traditional fruitcakes and Longaberger baskets.

Then Johnny opens his and receives a pinup calendar or other sexually explicit gift. There is an awkward (or hardy) laugh and the next person opens their gift. The scenario causes concern because it can be "unwelcome conduct" under Title VII, the federal anti-discrimination law, whether you are Johnny or a person watching Johnny open the gift.

While standing alone, this event would not support a Title VII claim; it could begin to set the groundwork for a hostile work environment claim.

Any gift exchanges should follow the same guidelines as holiday parties. They should be voluntary and employees



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should be reminded that while joke gifts are acceptable, sexually explicit gifts, gifts with sexual innuendos, or gifts that would be offensive to an individual because of their gender, race, religion or disability are prohibited.

Remember, your company's harassment and discrimination policy never takes a holiday.

Bonuses

Better than holiday parties are holiday bonuses. If they are discretionary, management should review to make sure that passive gender or other biases are not influencing their allocation.

Management also needs to comply with wage-and-hour law, determining whether a bonus needs to be included in overtime calculations. While the typical discretionary holiday bonus does not, a year-end production or attendance bonus usually needs to be included in overtime calculations.

With the above guidance, employers should be able to "settle down for a long winter's nap" without "visions of law-suits" dancing in their heads. Happy Holidays!

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