

5 Holiday Party Legal Traps to Avoid

written by Rory Lodge | November 20, 2019



What's At Stake

As with any company-sponsored social event, the annual holiday party can be an employer's liability nightmare. Here are 5 ways the company party can get you into legal trouble and what you can do to steer clear of danger. [Click here](#) for a Model Policy on Company-Sponsored Social Events that you can adapt.

1. Liability for Guests' Drunk Driving

Pitfall: If alcohol is served, recognize that you may be legally responsible for the post-party consequences. **Explanation:** Under the so-called rule of "host liability," persons who serve alcohol can be liable for negligence to guests who get drunk and harm themselves or others. This includes not just bars and restaurants but employers who serve alcohol at company functions.

Solution: Your basic duty is to monitor guests' consumptions and make reasonable efforts to ensure they don't drive if they're impaired. Steps you can take to avoid liability (other than simply not serving alcohol at the party):

- Warning guests beforehand of their duty to behave responsibly and avoid excessive drinking at the event;
- Appointing monitors to keep track of how much guests consume and take steps to intervene to ensure they don't drive if they've had too much;
- Holding the event at an off-site, properly licensed liquor establishment;
- Hiring professional bartenders to pour the drinks and keep track of consumption;
- Collecting the names and phone numbers of guests' spouses or other persons who can pick them up if they get drunk;
- Making guests turn in their car keys if they plan to drink;
- Refusing to return the keys to any guest who is or appears to be intoxicated;
- Closing the bar at least one hour before the end of the party;
- Providing alternate transportation or hotel rooms where guests who get wasted can sleep it off;
- Taking other measures to keep intoxicated guests from driving, even if they insist they're fine; and
- If necessary, calling the police to keep intoxicated guests from driving.

2. Liability for Sexual Harassment

Pitfall: Holiday parties are when people who go to great pains to behave

professionally toward colleagues all throughout the year throw away their inhibitions. The risks of sexual harassment are especially great if alcohol is served.

Solution: Things you can do to minimize the danger of sexual harassment at the party:

- Ensure your sexual harassment policy specifically addresses holiday parties and other company-sponsored events;
- Send out pre-party reminders that all guests are expected to behave professionally during the event;
- Specifically caution guests not to exchange adult-themed gifts, wear revealing costumes or engage in other romantic or sexually charged activity;
- Don't hang mistletoe;
- Let employees bring their spouses; and
- Monitor guests for sexually objectionable behaviour and intervene immediately if it occurs.

3. Liability for Discrimination

Pitfall: Holiday parties and other work-related social functions can have the indirect—and inadvertent—effect of excluding people on the basis of religion, disabilities, family status, sexual preference and other personal characteristics protected by human rights laws. For example, in a recent Ontario case, a Muslim employee who didn't drink sued his employer for pressuring him to attend post-work cocktail parties held at a local bar.

Solution: Be sensitive to and take measures to ensure that your holiday party is inclusive and doesn't indirectly discriminate, such as:

- Calling and running it as a holiday, rather than a Christmas party;
- Ensure the menu includes kosher, vegetarian and other dietary options for all;
- Allow employees to opt out of the holiday party without repercussion or any negative consequence;
- Invite spouses and children to avoid claims of family status discrimination, e.g., by employees who can't make the necessary childcare arrangements to attend;
- Hold the event at an easily accessible location.

4. Liability for Wages & Hours Claims

Pitfall: Many an employee has filed an employment standards claim demanding pay for the time they spent attending the holiday party and other company-sponsored events.

Solution: Be extremely clear that holiday parties are separate from and don't count as work-related employment activity for which compensation is due. Strategies:

- Clearly notify employees that attendance at the party is voluntary;
- Hold the party outside normal business hours and off-site;
- Don't engage in any business-related activity during the event;
- Don't make or allow speeches about business matters during the event;
- Don't distribute or announce bonuses or performance awards at the party;
- Don't ask employees to perform any job functions or duties that may be grounds for claims of being asked to work off the clock.

5. Liability for Workers' Comp Claims

Pitfall: Employees who get hurt before, during or directly as a result of the holiday party or company-sponsored event may claim workers comp benefits for a work-related

injury.

Solution: As with avoiding wages and hour claims, the best way to minimize workers comp liability risks is by maintaining a clear separation between the party and work, such as by:

- Making it clear that the party isn't work-related and that attendance is purely voluntary;
- Holding the party off-site and outside normal business hours;
- Refraining from engaging in any business-related activity or asking the employee to carry out any job function during the event.

Implementation Strategy

Make sure you have an HR policy on holiday parties and company-sponsored social events that includes a code of conduct explaining the rules of appropriate behaviour. [Click here](#) for a Model Policy on Company-Sponsored Social Events that you can adapt. And before the party, issue a Memorandum to employees that reviews the code of conduct and makes clear that employees are bound to comply with it during the event.