

Guard Against Liability from Alcohol Consumption at Team-building Events



Companies are relying increasingly on teams of individuals working together within the organization to meet shared objectives. But teams aren't typically found in nature. They have to be built and nurtured, particularly when team members come from different departments and operations. Social events and functions, both on and away from the site, have proven effective in team building. However, they also expose the company to tricky liability risks. Here's an overview of those risks and [how to manage them](#).

The Risks of Host Liability for Alcohol Consumption

Risks are especially great when alcohol is served at team-building events. What many companies don't realize is that they may be legally responsible for injuries caused by employees who drive drunk after a company event. So-called "host liability" comes not from legislation but court cases. It all started in 1973 when the Canadian Supreme Court decided a case called [Jordan House Ltd. v. Menow](#), (1974) D.L.R. (3d) 105 (S.C.C.). A customer walked into a bar, drank too much and got run over by a car after stumbling into the street while walking home. The customer sued the bar for serving him to the point of intoxication and then letting him leave knowing that he couldn't properly care for himself.

The Court found the bar guilty of negligence. Bars, restaurants and other commercial establishments that serve alcohol have a duty to protect their patrons, it said. Essentially, the Court was saying that a bar can't just serve customers until they get drunk and then turn them loose on the streets.

The *Menow* case involved a commercial establishment. But in 1996, the BC Supreme Court applied host liability to an employer. A supervisor brought a cooler of beer to a crew erecting a trade show display on a hot day. A crew member got noticeably drunk and drove into a ditch on the way home. As a result, he became a quadriplegic. The Court found the company 75% responsible and ordered it to pay the victim \$2.7 million in damages.

Holding the employer responsible might seem unfair. After all, the victim was a responsible adult capable of making his own decisions. But the Court said that the employer in this case was just like the bar in *Menow*. It supplied the beer; the supervisor also knew the victim was drunk but didn't try to stop him from driving

home. Employers have an obligation to guard employees against unreasonable risks, the Court said, just as bars have a duty to protect their customers [[Jacobsen v. Nike Canada Ltd.](#), [1996] B.C.J. No. 363 (B.C.S.C.)].

The *Nike* principles apply equally to employers who host team-building events and parties where liquor is served. **Example:** In 2001, an Ontario company was held 25% responsible for injuries caused by an employee who got into an accident after drinking wine at the company Christmas party. Keeping an employee from driving home drunk after a party it hosts is part and parcel of the duty to ensure workers a safe workplace, according to the court [[Hunt v. Sutton Group Incentive Realty Inc.](#), 2001 CanLII 28027 (ON SC)].

3 Ways to Limit Liability

There are 3 things you can do to limit liability for losses that employees and other guests inflict as a result of getting drunk at a team-building event where alcohol is served.

1. Monitor Alcohol Consumption

Keep track of how many drinks each of your guests has. Monitoring the number of cocktails consumed will be much simpler if you have a closed bar as opposed to one that's open, unlimited and unsupervised.

What to Do: Before the event, designate one or more persons to serve as drinks monitor, advises lawyer and alcohol liability consultant Shelley Timms. One possibility is to designate your own people as monitors. Caution them not to drink during the event. "Monitors need to be sober to do their job," Timms explains. Another possibility is to hire professional bartenders who are trained to keep an eye on how much customers drink.

In either case, issuing drink tickets to each guest enables you to not only track but control consumption. The same is true of a cash bar. This is Timms's preferred solution. "The problem with tickets is that the guests who don't drink give their tickets to the guests who do," she cautions.

2. Determine Whether Guests Are Intoxicated

The second thing a host must do is try to figure out if a guest is intoxicated. No, you don't have to administer blood tests and breathalyzers. According to court decisions, you need to make "reasonable assumptions" about whether guests are impaired based on how many drinks they've had.

What to Do: The person monitoring how much a guest has drunk should probably make the call on intoxication. You'll also need to tell your monitors what "intoxication" means. You don't have to make up a definition. Just use the legal limits for impaired driving. In most provinces, individuals can be charged with a crime if they drive with a Blood Alcohol Content (BAC) over .08 or .10 percent.

But here's where things get tricky. To make "reasonable assumptions" about intoxication, monitors need to estimate guests' BAC level by observing how many drinks they've had. That's asking a lot, especially when you consider that individuals get impaired at different rates. It depends not just on the number of drinks but also other factors such as gender and weight.

To help you overcome these problems, there's a [briefing paper](#) on the HR Insider site that shows monitors how to identify impairment based on drinks consumed, gender and

body weight based on data from the U.S. Department of Health. And while it's not 100% precise, it should enable your monitors to make the "reasonable assumptions" required by negligence law.

3. Prevent Intoxicated Guests from Driving

If you know or have reasonable grounds to suspect that a worker or guest is impaired, you must make an effort to prevent him from getting behind the wheel. This is fine when the guest cooperates. But what happens if he puts up a fight? Simply asking employees that appear impaired if they're fit to drive may not be enough. It might also be necessary to take the employee's keys, call them a cab or have them arranged to be picked up by a friend or family member.

What to Do: Use carrots such as appointing designated drivers, giving out taxi vouchers and even reserving hotel rooms where drunk guests can go to "sleep it off." But be prepared to use sticks, too, including:

- Adopting a zero tolerance policy for drinking and driving;
- Sending employees a note a day or two before the event reminding them that they should behave responsibly during the event;
- Collecting the names and phone numbers of spouses or other persons who can pick up the employee if they're impaired;
- Making guests turn in their car keys if they plan to drink;
- Appointing a monitor to watch the parking lot in case an intoxicated guest tries to sneak out;
- Disciplining impaired employees who don't cooperate; and
- If all else fails, calling the police.

Strategic Pointer: Don't Place Too Much Stock in an Employee Waiver

One way employers may try to limit their liability is have employees sign a waiver promising not to hold the company responsible if they get drunk at the event and get hurt driving home. Such a waiver isn't worth much. Courts aren't likely to enforce them especially if the waiver is signed after the employee has started drinking. "The alcohol washes away the employee's capacity to enter into a binding waiver," explains one lawyer. Moreover, the waiver doesn't bind third parties that the employee might injure.

Consider Keeping Team-Building Events Alcohol-Free

Of course, there's a much simpler way to manage host liability risks: Don't serve alcohol at your team-building events. The key thing is to make an informed decision one way or another weighing the benefits of serving alcohol against the liability risks it entails and ensuring that you have an effective game plan in place to manage those risks.

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1. Make guests pay for their drinks
2. Don't let employees buy drinks for clients
3. Limit the number of drinks each guest can consume
4. Offer a wide selection of non-alcoholic drinks

5. Serve food—it absorbs alcohol, especially if it's sugary, and may cut down on the drinking
6. Don't serve salty foods that make people thirsty
7. Close the bar at least an hour before the event ends
8. Stop serving alcohol to guests that appear to be impaired
9. Hire a professional bartender to run the bar
10. Provide rides home for anyone unfit to drive