Holiday Party Sexual Harassment & Liability Risks Management Game Plan

'Tis the season for holiday reveling and company-wide office parties for your staff where the alcohol and for many attendees the libido will flow freely. While getting drunk and lustful at the holiday party may be a venerable tradition, it's also a liability nightmare. All too often, the fun and games and seemingly good-natured flirting turns into sexual harassment. And that exposes you to a host of legal risks, including:

- OHS fines;
- Workers comp claims;
- Human rights laws violations; and
- Civil lawsuits for money damages.

Here's a 7-step game plan HR directors can implement to shield their companies from harassment and other holiday party liability risks.

The Holiday Party Is a Work Setting

The starting point for managing liability risks is to recognize that the holiday parties and other social events you host aren't private matters but an extension of the workplace where OHS, human rights and other laws banning workplace harassment apply. **Result:** You're legally responsible for the things that take place during these events—even if they take place away from the worksite and outside normal work hours. Sexual harassment of employees by their bosses and co-workers at holiday parties is a common theme for litigation and liability:

Example: BC court finds psychiatric practice liable for doctor's harassment of a medical assistant that began at the Christmas office party where the doctor was overly attentive to the assistant, rubbed her leg, played "footsie" with her and whispered in and kissed her ear [*Bartman v. Twohey et al*., 2004 BCSC 1211 (CanLII)].

Example: Alberta Human Rights Commission awards $6,000 in damages to receptionist who got fired after complaining that her boss made inappropriate sexual remarks and touched her on the thigh and breast at the company Christmas party [*King v. St. Denis*, 1999 CanLII 35070].

And it's not just sexual harassment. Employers may be held liable for other forms of misconduct engaged in by employees during company events, including harassment based

on race, religion and other personal characteristics protected from discrimination by human rights laws, acts or threats of violence and negligence, including injuries caused by allowing visibly intoxicated guests to drive home.

Take 7 Steps to Minimize Holiday Liability Risks

Having recognized your legal responsibility, HR directors should ensure their companies take appropriate measures to minimize liability risks stemming from the holiday parties and other social events they host.

Step 1A. Keep the Event Alcohol-Free

Serving alcohol at a holiday party increases the risks of misbehaviour and liability. **Explanation:** Under the theory of "host liability" and negligence, employers may be liable for injuries caused by employees who drive home drunk after the holiday party. While it may not be a popular decision, keeping the party dry takes the risk of host liability out of the picture. It should also go a long way in ensuring that guests behave themselves and no harassment or other harmful incidents occur.

Step 1B. Appoint Monitors If You Do Serve Alcohol

If there are compelling reasons to serve alcohol at the holiday party, at least take action to minimize risks of host liability. Your basic duty is to monitor guests' alcohol consumption and make reasonable efforts to ensure they don't drive if they're impaired. Actions to consider:

- Appointing monitors to keep track of how much guests consume and intervene to ensure they don't drive if they've drank too much;
- 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.

Also be sure to verify that your general liability insurance policy protects you against potential host liability.

Step 2. Implement a Code of Conduct for Holiday Parties

Add language to your sexual harassment, nondiscrimination, professional respect and other HR policies governing conduct in the workplace stating that the policy's requirements apply to all workplace settings, including holiday parties and company social events. In addition, you should create and implement a specific code of conduct for such events that lays down the basic principles of good behaviour and provides for discipline of those who commit violations. Other things you can do to ensure guests keep their sexual appetites to themselves during the party:

- 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.

Step 3. Investigate Complaints & Take Disciplinary Action, If Necessary

Treat complaints of sexual harassment and other misconduct at holiday parties the same way you would as if they arose at your physical workplace. Carry out a full and fair investigation, preferably by a third party from outside your company and, in no event, a person involved in by the complained of conduct. If the investigation reveals that an employee did engage in harassment, take appropriate disciplinary action while offering support to the victim.

Step 4. Invite Everyone but Make Attendance Voluntary

Hosting holiday parties and other company events may have subtle and dangerous liability implications under human rights laws, starting with the guest list. Those who don’t receive an invite are apt to feel resentment. And if the excluded staffers are of a particular race, religion, national origin, etc., they might sue you for discrimination.

On the flip side, individuals that you do invite and who don’t want to go might feel as if they’re being forced to attend. That, too, may result in a discrimination lawsuit. 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: Try to invite all staffers to your holiday party and other major company social events. If that’s not possible, be sure you have a legitimate, nondiscriminatory justification for exclusion. For example, not inviting an office building security guard staff that’s predominately black will look less like racial discrimination if the reason is that the party is taking place offsite and the staff needs to be on duty at the building while it takes place.

In addition, make it clear that attendance is voluntary and that employees who choose not to attend will suffer no reprisal, repercussion or recrimination of any kind.

Step 5. Keep the Holiday Party Secular

There are many who feel that Christmas has gotten too secular and strayed from its true meaning in commemorating the birth of Jesus Christ. It’s a fair question for debate—but not in an employment and HR context. With the exception of church and other Christian religious organizations, employers seeking to avoid potential liability for religious discrimination need to ensure that end of year holiday parties are inclusive and nondenominational:

- Call the event a holiday and not a Christmas party;
- Avoid religious-themed décor and decorations or, if you feel that such décor has a rightful place, display décor associated with all religions represented at your workplace and not just Christianity; and
- Ensure the menu includes kosher, vegetarian and other dietary options for all.

Step 6. Guard Against Liability for Wage & Hour Claims

There’s another good reason to require employees to attend the holiday party: If attendance is mandatory, the party may be deemed an employment-related function.

Result: You'll have to compensate them for their time in attending at their regular wage rate and maybe overtime depending on the total hours they worked during the pay period the holiday party takes place. So, it's imperative not to mix business with pleasure. Try to hold the party outside normal business hours at an off-site location. Things to avoid during the event:

- Asking or allowing employees to engage in any work-related activity;
- Making or allowing speeches about business matters during the event; and
- Announcing or distributing bonuses or performance awards.

Step 7. Guard Against OHS Liability & Workers Comp Claims

The employer's duty under OHS laws to ensure all workers a safe workplace applies to holiday parties and other company social events, even when they're held at an off-site location. So, select a location that's safe by having your OHS director or other competent person perform a hazard assessment of the site. In addition to the normal risk factors, the assessment should take into account that what might be safe under normal conditions may become hazardous to guests who consume alcohol.