

Serving Alcohol at Holiday Parties: The Liability Risks & How to Manage Them



What's At Stake

Like many employers, you may be hosting a party for your employees this holiday season. And chances are that liquor will be served at that party. That's fine, as long as you recognize the liability risks and take steps to manage them. Here's what you need to know and do to protect your company. [Click here for a Model Policy on Company-Sponsored Social Events](#) that you can adapt.

The Law of Host Liability

Many companies don't realize that they can be liable for injuries caused by employees who drive drunk after an office party—or any company-sponsored event in which alcohol is served. Even companies that know the risk exists don't fully understand the exact nature of their potential liability and how to manage it.

Certain persons who serve alcohol to guests can be liable for negligence if the guests get drunk and cause injuries to themselves or others. This is called "host liability" and it extends to employers who furnish alcohol to their employees. Rather, it comes from court cases, specifically negligence law.

It all started in 1974 when the Canadian Supreme Court decided a case called *JordanHouse Ltd. v. Menow*,. Long story shorth: 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 take care of 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, not a workplace. 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 for the victim's injuries 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.*].

The *Nike* principles apply equally to employers who host parties where liquor is served. 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 Ontario high court, the Court of Appeal [*Hunt v. Sutton Group Incentive Realty Inc.*].

3 Ways to Limit Liability Risks

There are 3 things that employers can do to limit liability for losses that employees and other guests inflict as a result of getting drunk at a company 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 party, 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 party. "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 a guest is impaired based on how many drinks he's 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 states and provinces, individuals can be charged with a crime if they drive with a Blood Alcohol Content (BAC) over .08 or .10%.

But here's where things get tricky. To make "reasonable assumptions" about intoxication, monitors need to estimate a guest's BAC level by observing how many drinks he's 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 they've had but on their gender and weight (among other things).

3. Prevent Intoxicated Guests from Driving

If you know or have reasonable grounds to suspect that a guest is impaired, you must make an effort to prevent him/her from getting behind the wheel. This is fine when the guests cooperate. But what happens if they put up a fight? How far does an employer have to go to keep an intoxicated guest from driving? Although Canadian courts haven't specifically addressed the issue, US courts have held that simply asking guests who appear intoxicated if they're OK to drive home isn't enough. Employers must go further, either by taking their car keys, calling a cab or requiring them to stay until they sober up.

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 the stick, too, including:

- Adopting a zero tolerance policy for drinking and driving;
- Sending employees a note a day or two before the policy reminding them that they should behave responsibly during the event;
- Collecting the names and phone numbers of employees' spouses or, if they're unmarried, other person who can pick them up if they get drunk;
- 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;
- If necessary, disciplining intoxicated employees who don't cooperate; and
- If all else fails, calling the police.

Caveat: Don't Rely on Waivers to Limit Your Liability

One of the other things employers may do to try and limit their liability is have guests sign a waiver promising not to hold the company responsible if they get drunk at the party 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 guest has started drinking. "The alcohol washes away the guest's capacity to enter into a binding waiver," explains one lawyer. Moreover, the waiver doesn't bind third parties that the guest might injure.

One Final Strategy

Of course, there's a much simpler way to manage host liability risks: Don't serve alcohol at your holiday party (or at picnics or other company affairs during the year). In fact, lots of companies have decided to keep their parties dry. But alcohol remains a staple at most holiday parties. Your company has every right to make the decision to serve alcohol. But, as HR director, you should ensure that your company understands the legal risks it assumes when it

exercises that right and that it takes the appropriate steps to manage those risks.