

'Tis The Season ... For Holiday Parties And Harassment Complaints: What Employers Can Do To Reduce The Risks



Holding staff parties and social events is a great way to celebrate the holiday season and to thank employees for their hard work over the preceding year. Amid all the excitement, employers must take care to protect themselves from potential liability. The following is a brief guide for employers on how to avoid legal liability arising out of harassment complaints and motor vehicle accidents involving intoxicated employees. This guide is not a substitute for specific legal advice. The lawyers at McCarthy Tétrault would be pleased to advise you and answer any specific questions you may have regarding potential liability arising from employer-sponsored social events.

Employer Liability for Harassment

An employer is generally liable for harassment, including sexual harassment, that occurs within the workplace and may also be liable for harassment that occurs outside working hours at employer-sponsored social events. Employers should consider taking the following steps to reduce both the risk of harassment at social events and the risk of liability if harassment occurs:

- Develop and communicate a harassment policy that clearly states that the policy extends to employer-hosted social events, such as holiday parties, client receptions and similar types of social events.
- Ensure that the policy includes an obligation to bring forward knowledge of conduct that is contrary to the policy and clearly sets out the process for bringing a complaint. The policy should also set out options for dealing with the complaint.
- Managers, in particular, should be reminded of company policy and expectations. Managers need to know that the company expects them to set an example of professionalism at the holiday party. Moreover, as part of their harassment training, managers should be given real-life examples of sexual harassment, including holiday party scenarios.
- Written invitations or notices about social events may include a reminder that the usual guidelines for conduct apply.
- Consider inviting spouses and significant others. This can greatly reduce the incidence of harassment or offensive behaviour.
- Take steps to limit the consumption of alcohol (see below).

Employer Liability for Injuries Resulting from Alcohol-Related Motor Vehicle Accidents

As a general rule, a social host does not owe a duty of care to a person who is injured in a traffic accident by a guest who has consumed alcohol at the social host's residence. An employer that hosts a party for its employees is not an ordinary "social host." Canadian courts have suggested that the duty of care owed by an employer to its employees at a party is closer to that of a "commercial" host. A commercial host has a greater duty to protect intoxicated individuals and the public, based on the close proximity or relationship between the commercial host and the customer. If an employer hosts a party where alcohol is served, it should take the following precautions:

- Make sure employees know they are not required to attend the party.
- Limit the amount of alcohol that is available to a reasonable amount per person. Many employers issue drink tickets for a "reasonable" number of drinks (determined by the length of the event and whether food is consumed) and then operate a cash bar, which has the effect of curbing consumption.
- Offer an array of non-alcoholic choices.
- Offer food to slow the pace of drinking.
- Hold the party offsite.
- Consider holding the party at a hotel, where guests may be able to stay the night.
- Appoint managers to casually monitor guests' alcohol intake.
- Have managerial staff watch for any employees who appear to be intoxicated, and not only caution these employees against driving, but arrange for taxis for them.
- Stop serving alcohol one hour before the end of the party.
- Provide taxi cabs (or taxi chits), at the employer's expense, to and from the party. Before the party, communicate to all employees that they should use taxis if they will be drinking at the party. Make a similar announcement during the party.
- If an open bar is provided, limit the time that the bar is "open." This discourages overindulgence and makes it easier to manage alcohol intake.
- Do not conduct business at the party.
- Use certified or experienced bartenders who are independently insured.
- Avoid drinking with employees at other sites once the party has ended.

Please note that the duty of care does not exist in the province of Quebec and that Quebec has a no-fault car insurance system. However, we recommend that the same precautions be taken by employers in Quebec.

Insurance

Most businesses have liability insurance that provides coverage for injuries sustained by employees or guests; however, not all policies include coverage for injuries sustained during activities conducted outside the workplace or during activities outside the scope of employment. A review of the terms of your company's insurance policy is advised to ensure that adequate coverage is available in the unfortunate event that a claim is made.

Conclusion

Employers hosting staff parties must take the necessary precautions to avoid potential liability. By following a few simple steps, employers can feel confident that a safe and enjoyable time will be had by all.

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