

## The Holiday Party Season—Celebration or Employer Nightmare?

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As we move past Thanksgiving, many companies will hold parties to celebrate the holiday season. These parties are a great morale booster and provide a means to recognize outstanding employees, as well as celebrate and give thanks for your company's many accomplishments over the past year. However, holiday parties can also present some practical and legal issues that should be considered, as discussed below:

### **Holiday or Christmas Party?**

Do you refer to your event as a Holiday or Christmas Party? Workplace environments continue to become increasingly diverse. One size no longer fits all. If you refer to the event as a Christmas Party, you risk alienating employees who do not celebrate Christmas. Therefore, many companies choose to refer to the event as a Holiday Party, recognizing the many different holidays occurring during the general time period at issue.

### **Who to Invite?**

Do you invite employees and significant others, contractors, vendors and/or customers/clients? The scope of the guest list will obviously matter for expense and oversight purposes, but it also may dictate the level of control you appear to exercise over attendees. Remember, if you work with independent contractors, you want to make it clear that such contractors are not employees simply referred to by a different name. A favorite deposition question to an individual alleged to be improperly classified as an independent contractor is, "were you invited to the company Holiday Party?"

Holiday parties also seem to be events where inappropriate comments are most prevalent. One way to minimize this inappropriate conduct is to invite employees and their significant others to your holiday event. Employees tend to be better behaved when their significant other is in attendance and watching their actions.

### **When Do You Hold the Event?**

Do you hold the event on a weekday or during the weekend? If you hold the party during the week, do you hold the event during the work day or after normal business hours? Determining when you hold the party can have important implications on whether you are required to pay non-exempt employees for attending the event. If the party is held during normal work hours, you must pay employees for attending the party even though they are not technically focusing on their job duties. If the event is held after normal work hours or on a weekend, whether or not employers must pay non-exempt employees depends on whether the party is mandatory or voluntary. If the party is mandatory, non-exempt employees should be compensated for attending. If the party is voluntary, non-exempt employees need not be compensated for attending. However, if an employer is claiming the party is voluntary, make sure it is truly voluntary. Do not hand out bonus checks or raises at the party so that employees feel that they must attend the event to receive this information.

### **Should You Serve Alcohol?**

Many employers elect to serve alcohol at holiday events. While we would like to think that employees can act responsibly, this can be a recipe for inappropriate conduct as some individuals will invariably display different conduct after drinking alcoholic beverages than commonly displayed in the workplace environment. Employers should be careful to attempt to limit overconsumption of alcohol. Rather than having an open bar, employers should consider whether to institute a cash bar. Generally, employees are likely to drink less alcohol if they are forced to buy their own drinks rather than the company paying for the alcohol. Another more direct option is for an employer to have an open bar, but to distribute drink coupons to employees. This allows an employer to limit the number of drinks each particular employee can consume. Of course, employees can always work to manipulate this system, but, at a minimum, the system makes it less likely and more difficult for employees to overindulge. Regardless, if employers elect to serve alcohol at a company event, they should always close the bar at least an hour before most guests are expected to leave.

Employers should always hire a third-party to serve alcoholic beverages. The employer should provide clear, written instructions to the third-party vendor not to serve any guests who exhibit signs of intoxication. Employers may also be wise to offer complimentary valet services. This takes car keys out of employees' hands and allows employers to station representatives near the valet area to watch over employees as they leave the event. Employers would also be wise to arrange alternative modes of transportation for employees who may not be capable of driving themselves home. Further, if the event is being held at a hotel, employers should attempt to negotiate rooms at a discounted rate to allow employees to stay on-site without the need of driving home after the event. The overriding point is that caution should be used when serving alcohol at any company event, especially during the holiday season.