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'Tis The Season – How To Avoid Liability During The Most Wonderful Time Of Year!

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December 16, 2014

With Halloween and Thanksgiving behind us, and Christmas and Hanukkah just around the corner, it is time to consider how to have a merry season, while protecting both your employees and your company. Giving forethought to this time of year will help you reduce the number of potential pitfalls.

The first thing to keep in mind is not everyone celebrates Christmas. I was gently reminded of this when a Christmas prayer chain had been circulated among a community group to which I belong. One Jewish member of our group respectfully responded and requested that she be removed from the prayer chain. What if this had happened in the workplace? Could the Christian prayer email chain create a hostile work environment for your non-Christian employees? It certainly has that potential. So what do you do? Be cognizant of different backgrounds, and put the focus on the general holiday season, not a particular religious holiday. Also, remind your employees that company email should be used only for business purposes; emails of a personal nature should not be allowed.

Second, consider if and how your workplace should be decorated. Common areas should generally be religious neutral. Use bows, garland, wreaths, candy canes, etc. If employees have private work stations, the employer may allow each employee to display religious symbols to the extent that employees are allowed to display other personal objects (for example, pictures of children, diplomas, etc.). However, if the employer allows the Christian employee to have a nativity scene in his/her cubicle, the employer must allow the Jewish employee to have a menorah in his/her cubicle. The other option is to have a policy that no religious symbols are allowed at the workplace. At the end of the day, we must treat all employees equally; what is good for the goose is good for the gander.

Remember, though, that an employer can accommodate employee religious beliefs only if it knows there is an issue. As a legal matter, unless you as a manager are made aware that a display is religiously offensive you don't know to address the issue, so the employee has an obligation to inform management, and management can decide the appropriate response.

Third, consider requests for time off as a religious accommodation. To aid in this process, decide which days, if any, the employer will be closed over the holiday. Inform the employees of these dates, and consider requests for additional time off on a case-by-case basis while balancing the workforce needs of the company.

Fourth, consider party practicalities. Should the employer host a party? An appropriate party can be a great morale boost to the employees. These functions give employees in different departments and at different levels in an organization a chance to become better acquainted in a low pressure setting. Office parties can be a good opportunity to celebrate companywide success. There are also, unfortunately, some significant risks associated with sponsoring social functions, particularly those where alcohol is served.

Most of the time, a party or picnic will go without a hitch, but any social event brings the possibility, however slim, for personal injuries, third party injuries and unlawful harassment. Also, occurrences at a company-sponsored party may be subject to claims under both workers' compensation and general liability insurance.

To begin, consider whether the holiday party is mandatory and whether there are any rewards for attending that employees won't receive if they don't attend. Avoid mandatory religious observances (such as a pre-dinner blessing), mandatory participation in the party itself (to avoid potential wage payment claims), mandatory gift-giving and excessive use of alcohol.

Of course, employees are expected to always behave professionally at any such event and in a manner that positively reflects upon the Company. All Company rules of behavior and conduct are applicable to employees at such events. Moreover, if an employee is subjected to any inappropriate conduct by non-employees or employees at such an event, it should be reported to the Human Resources Department who should immediately investigate the complaint.

Fifth, consider whether alcohol should be served at the party. If so, remind employees before the party that overconsumption of alcohol at company events is not allowed. Take steps to limit the amount of alcohol any one employee can consume. Consider having a cash bar or drink tickets. Another good suggestion is to have a "host committee." The committee greets guests as they arrive and generally monitor employees to make sure an over-served employee does not drive. Ask for designated driver volunteers and offer to pay for taxi rides. A couple of \$40 taxi cab rides at the end of the party will be much cheaper than the potential liability of just one drunken employee hitting a pedestrian or other vehicle on the way home from the company party.

Sixth, consider solicitation of contributions. Most companies have a non-solicitation policy. If employees are soliciting for a particular cause, it may violate the non-solicitation policy. However, employees may be allowed to solicit voluntary contributions of nominal amounts from fellow employees on an occasional basis for items such as food and refreshments to be shared among employees. It is important to note that a contribution is not voluntary unless it is made in an amount determined by the contributing employee.

Seventh, consider gifts. From outside sources, we always want to avoid the appearance of impropriety. As such, employees should not solicit or accept a gift from a person or organization that has, or plans to have, business dealings with the employer. However, employees may accept nominal gifts of little value (\$20 or less) without creating much of a problem.

Gifts between employees can be more difficult. Generally, the employer should prohibit: 1) an employee from donating to, or soliciting contributions for, a gift to an official supervisor; and 2) a supervisor from accepting a substantial gift from an employee receiving less pay than himself/herself. Nominal gifts may be exchanged.

The season can, and should be, fun. With a bit of pre-planning and providing forewarning of expectations, potential areas of liability can be immensely reduced. It helps to remind employees of the company policies and expectations during this season. Cheers to a happy and safe holiday season!