

Have A Holly Jolly Holiday Party Without Getting Sued

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Common Pitfalls

- Religious Discrimination
- Sexual Harassment Claims
- Liability for Alcohol-Related Incidents
- Workers' Compensation Injuries
- Claims for Unpaid Wages

Religious Discrimination

MEMO

FROM: Pat Lewis, HR Director

TO: Everyone



I am happy to inform you that the company Christmas party will take place on December 23, starting at noon in the banquet room at Luigi's Open Pit Barbecue.

No-host bar, but plenty of eggnog! We'll have a small band playing traditional carols ... feel free to sing along. And don't be surprised in our CEO shows up dressed as Santa Clause

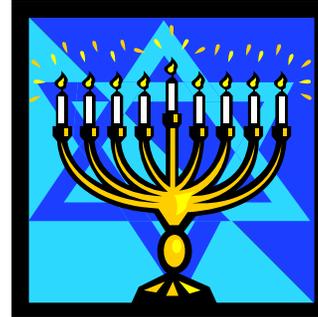


Religious Discrimination

MEMO

FROM: Pat Lewis, HR Director

RE: Holiday Party



In no way was yesterday's memo intended to exclude our Jewish employees. We recognize that Chanukah is an important holiday which often coincided with Christmas, though unfortunately not this year.

However, from now on we're calling it out "Holiday Party." The same policy applies to employees who are celebrating Kwanzaa at this time.

Religious Discrimination

MEMO

FROM: Pat Lewis, HR Director

Re: Holiday Party

Regarding the note I received from a member of Alcoholics Anonymous requesting a non-drinking table ... you didn't sign your name. I'm happy to accommodate this request, but if I put a sign on a table that reads, "AA only"; you wouldn't be anonymous anymore. How am I supposed to handle this? Somebody?

Religious Discrimination

MEMO

From: Pat Lewis, HR Director

Re: Holiday Party



What a diverse company we are! I had no idea that December 20 begins the Muslim holy month of Ramadan, which forbids eating and drinking during daylight hours. There goes the party!

Seriously, we can appreciate how a luncheon this time of year does not accommodate our Muslim employees' beliefs. Perhaps Luigi's can hold off on serving your meal until the end of the party – the days are so short this time of year – or else package everything for take-home in little foil swans. Will that work?

Religious Discrimination

MEMO

From: Pat Lewis, HR Director

Re: Holiday Party

People, people, nothing sinister was intended by having our CEO dress up like Santa Claus. Even if the anagram of "Santa" does happen to be "Satan," there is no evil connotation to our own "little man in a red suit." It's a tradition, folks, like sugar shock at Halloween or family feus over the Thanksgiving turkey or broken hearts on Valentines' Day. Could we lighten up?

Religious Discrimination

MEMO

FROM: Pat Lewis, HR Director

RE: Holiday Party

Vegetarians!?!?! I've had it with you people!!! We're going to keep this party at Luigi's Open Pit Barbecue whether you like it or not, so you can sit quietly at the table furthest from the "grill of death" , as you so quaintly put it, and you'll get your stupid salad bar, including hydroponic tomatoes ... but you know, tomatoes have feelings, too! Tomatoes scream when you slice them. I'm hearing them scream right now!!

Religious Discrimination

Memo: Teri Bishops, Acting HR Director
RE: Pat Lewis and Holiday Party

I'm sure I speak for all of us in wishing Pat Lewis a speedy recovery from her stress-related illness and I'll continue to forward your cards to her at the treatment center.

In the meantime, management has decided to cancel our Holiday Party and give everyone the afternoon of the 23rd off with full pay.

Religious Discrimination

Question:

ABC Company has an after-hours Christmas party at the restaurant down the street. The party is decorated with Christmas trees and "Away in the Manger" plays on repeat over the sound system. Has ABC Company violated federal law?

Religious Discrimination

Answer: **No.**

Oakley v. Orthopaedic Assocs. of Allentown, 742 F. Supp. 2d 601, 609 (E.D. Pa. 2010)(noting that a company's practice to observe only Christian holidays by closing its business only on Christmas and Good Friday did not amount to religious discrimination under Title VII).

Religious Discrimination

Where do employers get into trouble?

- **Favoring one religion over the other in terms and conditions of employment.** *Siddiqi v. New York City Health & Hospitals Corp.*, 572 F. Supp. 2d 353, 363 (S.D.N.Y. 2008)(denying requests for leave to observe religious holidays).
- **Requiring an employee to participate in a holiday activity which violates his or her belief.** *Velez-Sotomayor v. Progreso Cash & Carry, Inc.*, 279 F. Supp. 2d 65 (D.P.R. 2003)(requiring employee to wear Santa hat in violation of religious beliefs); *Kentucky Comm'n on Human Rights v. Lesco Manuf.*, 736 S.W.2d 361 (Ky. App. 1987) (Secretary Jehovah's Witness who refused to answer phone with "Merry Christmas" based upon religious beliefs was discriminated against based upon her religion).

Religious Discrimination

Best Practices to Avoid Religious Discrimination Claims

- Do not require employees to participate in holiday festivities or practices.
- Consider others' beliefs when planning a holiday party.
- Be careful when selecting employee gifts.
- Treat employees of all religions equally in requests for days off and in other terms and conditions of employment.
- Remind employees to respect their co-workers' beliefs.

Sexual Harassment

Question: **True Or False.**

Company Sponsored Holiday Parties Often Lead To Sexual Harassment Complaints.

Sexual Harassment

ANSWER: **TRUE.**

As noted by the Seventh Circuit Court of Appeals:

“At the risk of playing the Grinch, however, we note that office Christmas parties also seem to be **fertile ground** for unwanted sexual overtures that lead to Title VII complaints.” *Place v. Abbott Labs.*, 215 F.3d 803, 805 n.1 (7th Cir. 2000)(citing 21 different cases in which company Christmas party led to sexual harassment claim).

Sexual Harassment

Why Do Parties Lead to Sexual Harassment Claims?

- Alcohol
- Dancing
- Casual Environment
- Alcohol
- Manner of Dress
- Did we mention alcohol?

Sexual Harassment

Best Practices to Avoid Sexual Harassment Claims

- Think about time of day and venue when scheduling party.
- Consider making the party a family-friendly event or invite clients.
- Carefully select party activities (games, gift exchanges, dancing).
- Notify employees of appropriate dress.
- Send employees a friendly reminder about expectations.
- Forget the mistletoe!
- Carefully consider whether or not to serve alcohol.

Alcohol Consumption

Ala. Code 6-5-71 (Alabama Dram Shop Act) reads as follows:

(a) Every wife, child, parent, or other person who shall be injured in person, property, or means of support by any intoxicated person or *in consequence of the intoxication* of any person shall have a right of action against any person who shall, by selling, giving, or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person for all damages actually sustained, as well as exemplary damages.



Alabama Dram Shop Act Continued

(c) The party injured, or his legal representative, may commence a joint or separate action against the person intoxicated or the person who furnished the liquor, and all such claims shall be by civil action in any court having jurisdiction thereof.



Dram Shop Act Continued

- The supreme court has held that a sale that violates the rules and regulations of the Alabama Alcoholic Beverage Control Board (“ABC Board”) constitutes selling alcohol “contrary to the provisions of law.” *See Ward v. Rhodes, Hammonds & Beck, Inc.*, 511 So.2d 159, 160 (Ala. 1987). The section of the ABC Board’s regulations relied upon by most plaintiffs reads as follows:

... No ABC Board on-premises licensee, employee or agent thereof shall serve any person alcoholic beverages **if such person appears, considering the totality of the circumstances, to be intoxicated.**

Ala. Admin. Code § 20-X-6-.02(4) (emphasis added).

Dram Shop Act- When will my firm be liable?

Scenario 1: Holding an event at the company's office where alcohol is served by employees and families are invited

- Potential liability?
 - Employee's 20 year old son comes to the party, is served alcohol, drives drunk, and hits a minivan carrying a family of four. The surviving members of the minivan family, as well as the estates of all have causes of action against the company.
- This liability also extends to minors getting into fights after consuming alcohol, or any other tort the minor goes on to commit. *Ward v. Rhodes, Hammonds, & Beck, Inc.*, 511 So. 2d 159 (Ala. 1987).

Office Parties - Watch out for Minors

- The easiest source of potential liability at office parties is accidentally serving a minor. This is because a Plaintiff can sue under either the Dram Shop Act or the Civil Damages Act, Ala. Code, § 6-5-70.



Further Office Party Potential Liability

- Practically and most commonly "contrary to the provisions of law" means that the ABC Board licensee (bar, restaurant, convenience store, etc.) sold alcoholic beverages to a person who was "visibly intoxicated." ABC Board Regulation 20-X-6-.02(4) specifically prohibits the sale of alcoholic beverages to persons "acting in a manner as to appear to be intoxicated."
- What does this mean if your business is not an ABC board licensee?
 - It means that your business is not strictly covered by the statute. However, courts may still find that serving "visibly intoxicated" employees and their guests is "contrary to the provisions of law." Specifically, it may contravene the common law surrounding negligence.

Off-campus Holiday Parties

- The next scenario is an off-campus holiday party at a bar or restaurant
- The first thing you want to ensure is that the bar or restaurant has a valid liquor license. Otherwise, your company could be facilitating the distribution of spirits “contrary to the provisions of law” and run into potential Dram Shop Act liability.
- You will also want to ensure that location you use for any company event where alcohol is served carries adequate insurance in the event of something going wrong.
 - This may seem unnecessary, but consider the following situation:

Off-campus Holiday Parties

- Acme Hardware has a holiday party at the local Bar n Grille. Several hours into the party, and after several employees have become visibly intoxicated, the lone bartender steps out for a smoke. Several drunk member's of Acme's IT department decide they will serve themselves and whoever else wants drinks in the bartenders' absence. After the party, a terrible car accident results. While a plaintiffs' lawyer will certainly sue the Bar and Grille, if it does not have adequate insurance or liquidity to satisfy a judgment, you can bet a plaintiffs' lawyer will come after the company as well for choosing an establishment without proper staffing and for not adequately supervising employees.

Other scenarios to consider

- Parties at individual employee houses
 - Does insurance cover these? If Dram Shop Act liability occurs, will the employee host seek indemnification from the company?
 - Who is responsible for ensuring guests are not overserved? The host or a company representative?
 - Should family members be ID'ed if they appear under the age of 30? 25?



Joint holiday parties with other companies

- Consider whether the other company will take appropriate safeguards to ensure that minors are not served, and that visibly intoxicated employees are not continually served.
- While your company may have several defenses available if the other firm's employees are over served by an independently licensed, insured ABC licensee, that does not mean your company will not have to undergo the expense of a lawsuit.



Best Practices To Avoid Getting Sued

- **1. DON'T SERVE MINORS.** Depending on the size of your company, and the nature of your planned event, this can involve:
 - Use a licensed, insured venue that already IDs all patrons getting alcohol at a bar. This will allow families to attend without expanding potential liability.
 - Get a guest list with names and ages of attendees from employees beforehand. This will let you tailor activities and fun events for different age groups, but also give your company idea of the number of 15-20 year-olds that may be attempting to get a hold of alcohol at the event.
 - At a house or office event, consider using a professional licensed, insured bartender/catering company. In the event of an accident, this will transfer the liability to them. In all cases when using a third party vendor, use a robust indemnification clause in all contract documents.

Best Practice Continued

- **2. DON'T SERVE DRUNK PEOPLE MORE BOOZE**

Simple right? Whether you have a professional bartender or merely a self-service wine and beer table, ensure that someone is responsible for keeping sober and vigilant to ensure that guests are not over-served.

- A potential problem with this approach is a low-level employee telling a principal or partner at the company that he or she has had too much to drink. This is one reason why using a professional company to handle holiday parties and other alcohol-laden corporate events is a smart idea.
- Consider using drink tickets (2 per person) to help limit intake.

Best Practices

- **3. If your company's budget allows it, spring for a car service**
 - In a negligence lawsuit by a plaintiffs' attorney trying to get around the Dram Shop Act, this will be a great defense
 - Depending on the location of your party, this may increase attendance and be seen a great perk by your employees
 - Beyond legal liability, this practice is seen as a responsible way to manage employees and only serves to increase regard for your company in the community and by Anti-Drunk Driving groups such as MADD.

Best Practices

- **4. Always use indemnification clauses in contracts with service providers, and always use licensed, insured caterers and venues.**
- **5. If possible, limit the hours of holiday parties to ensure that guests cannot keep drinking for an extended period of time. If your holiday party only provides 2 drink tickets and ends at 7, your company's liability is substantially limited if the guest keeps drinking at the bar after 7.**

Workers' Compensation for Injuries at Holiday Parties

- If an employee gets hurt at a work picnic or holiday party, they're probably not eligible for workers' compensation. It's generally seen as outside the boundaries of a compensable work injury.
- The exception is if they were required to be at the event. If so, they may have a good argument for benefits – medical coverage, lost wages, etc. If they simply felt obligated to be there, that's probably not enough.
- There are gray areas. If the purpose of the event was to entertain or speak with clients, they may be able to argue for workers' compensation benefits.

Workers' Comp Continued

- Aside from workers' compensation, there may be another potential claim in the case of a work party injury: if an employee was injured because of someone's negligence. If the employer was negligent in maintaining their property and an employee was injured, they may have a personal injury lawsuit.
- **Tips: If you don't want potential worker's comp liability at parties: DON'T MAKE ATTENDANCE MANDATORY, and DON'T USE THE EVENT TO ENTERTAIN CLIENTS AND MAKE SALES**
- However, the risk of potential workers' comp suits may be outweighed by the benefit of entertaining clients, so make that decision based on your company's needs.

Unpaid Wages

QUESTION

Smith & Smith Insurance Agency hosts an annual holiday party on Friday after work at the local banquet hall. The office manager sends an email out to all employees on Thursday afternoon stating the Agency expects many clients to attend and employee attendance is "strongly encouraged." Bob Jones works at the agency as a file clerk and is paid on an hourly basis. After working 40 hours, Bob spends three hours at the holiday party talking with co-workers and clients.

Is Bob entitled to overtime pay?

Unpaid Wages

Answer: Maybe.

Under the Fair Labor Standards Act, an employee must be compensated properly for all “hours worked” for the employer. Generally, all time spent on the employer’s premises or at a designated work place is hours worked when the employee is required or permitted to perform services of benefit to the employer. Also included in hours worked is any work which the employee performs for the employer’s benefit outside of work hours on or off the employer’s premises.

Unpaid Wages

QUESTION

The store owner of Lola's Clothing Store decides to sponsor a Thanksgiving meal night at a local homeless shelter and asks her employees to volunteer to help her cook and serve the meal on Saturday after the store closes for business. Must she pay the employees for the time they spent volunteering?

Unpaid Wages

Answer: No.

The DOL clarified that an employer lawfully may treat the employees as unpaid volunteers relative to its after-hours event, as long as the employees (i) volunteered freely, (ii) participated as volunteers after their normal working hours, and (iii) performed services that were not similar to their regular work duties. Conversely, the employer would have to pay minimum wages and overtime to any employees who were required to volunteer, who provided volunteer services during their normal working hours or who provided volunteer services similar to their regular duties.

Unpaid Wages

TIPS FOR AVOIDING CLAIMS FOR UNPAID WAGES

- Do not make attendance at any after-hours event mandatory
- Do not condition positive performance evaluations or bonuses upon attendance at the event
- Do not hand out bonus checks at the event
- Communicate to employees that their attendance is voluntary and no compensation will be provided for time spent at the event
- Pay employees for all time spent attending events during regular work hours
- Pay employees for time spent organizing and hosting the event

Conclusion

When planning your next company event:

- Think carefully about theme, location, venue and time of day
- If you plan to serve alcohol, take the necessary precautions to ensure everyone's safety
- Communicate clearly with employees about expectations for attendance and conduct

Conclusion

Do not be afraid to host a company party. Company-sponsored social events can boost morale and provide an opportunity to strengthen work relationships. With careful planning, you can reap the benefits without the risks.

Questions?

