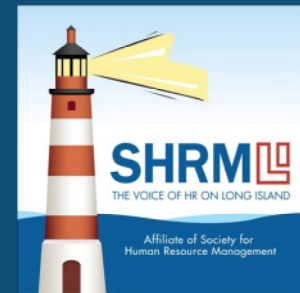


**Last Fridays “Lunch and Learn”
Webinar:
THE HOLIDAY PARTY – LAUGHS,
LIBATIONS AND LIABILITY
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Introductory Statement

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Potential Legal Issues Associated With Company-Sponsored Holiday Parties

- ◆ Sexual harassment
- ◆ Religious discrimination
- ◆ Libation liability
- ◆ Disability discrimination
- ◆ Wage/Hour issues
- ◆ Productivity issues

What Employers Should Do To Limit Sexual Harassment Liability

- ◆ Employers should have and disseminate a strong policy prohibiting sexual harassment at work and at work-sponsored events such as parties, picnics, etc.
- ◆ Employers should remind employees, prior to the event, that sexual harassment is prohibited. Policy distribution and enforcement are essential.

Religious Discrimination

- ◆ Although not necessarily unlawful, hosting an office “Christmas Party,” where attendance is impliedly mandatory, may offend employees who do not celebrate Christmas and, potentially, lead to claims of religious discrimination or a religiously hostile work environment.
- ◆ An office “Christmas Party,” in and of itself, generally will not support a claim for religious discrimination. However, it may be used as evidence to support a broader claim of religious discrimination.
- ◆ To limit exposure, keep celebrations secular.

Workers' Compensation/Issues

- ◆ Under New York law, where an employee's social activities are "in connection with and incidental to his employer's business" such activities become a part of his employment.
- ◆ Some NYS Courts have awarded benefits to employees who sustained injuries as a result of becoming intoxicated at sales meetings and company-sponsored social functions.

Wage / Hour Issues

- ◆ Short breaks are compensable work time (5-20 minutes).
- ◆ Is the party during business hours, is attendance “voluntary?”
- ◆ “Voluntary” activities for sponsored parties likely are compensable: Decorating for party, shopping for supplies, etc. (party planning committee).
- ◆ Charitable and volunteer activities by employees at the employer’s request or direction or for which employees are required to be on the premises are compensable.

Suggestions For Limiting Liability At The Holiday Party

- ◆ Be honest with employees. Make sure your employees know your workplace substance abuse policy and that the policy addresses the use of alcoholic beverages in any work-related situation or office social function.
- ◆ Post the policy. Use every communication vehicle to make sure your employees know the policy. Prior to an office party, use break room bulletin boards, office e-mail and paycheck envelopes to communicate your policy and concerns.

Suggestions For Limiting Liability

- ◆ Reinvent the office party concept. Why have the typical office party? Try something new like an indoor carnival, group outing to an event or volunteer activity with a local charity.
- ◆ Make sure employees know when to say when. If you do serve alcohol at an office event, make sure all employees know that they are welcome to attend and have a good time, but that they are expected to act responsibly.
- ◆ Make it the office party of choice. Make sure there are plenty of non-alcoholic beverages available.

Suggestions For Limiting Liability

- ◆ Eat...and be merry. Avoid serving lots of salty, greasy or sweet foods which tend to make people thirsty. Serve foods rich in starch and protein which stay in the stomach longer and slow the absorption of alcohol in the bloodstream.
- ◆ Designate party managers. Remind managers that even at the office party, they may need to enforce the company's alcohol and substance abuse policy.

Suggestions For Limiting Liability

- ◆ Arrange alternate transportation. Anticipate the need for alternative transportation for all party goers and make special transportation arrangements in advance of the party. Encourage all employees to make use of the alternative transportation if they consume any alcohol.
- ◆ Serve none for the road. Stop serving alcohol before the party officially ends. (Guideline: 1-2 hours before the party officially ends).

Suggestions For Limiting Liability

- ◆ Send out a memorandum separately or with the invitation to the party which states that no one should drink alcohol at the party and then drive. The memorandum should discuss drinking responsibly at the party and set forth that arrangements can be made for alternative transportation for intoxicated individuals. Further, the memorandum should advise all employees that the company will pay for taxis from the party to their home, if necessary.
- ◆ Post gatekeepers to monitor attendees as they exit the party.

Suggestions For Limiting Liability

- ◆ Consider having the party off-site and have that establishment share responsibility (and, potentially, liability) for consumption of alcohol.
- ◆ Hire a professional bartender for the party. Do not let anyone pour their own drinks. That professional bartender should have exclusive authority to pour drinks and cut people off or that person has authority to cut people off after consultation with the person in charge of throwing the party.
- ◆ Limit the open bar to a period of time and enforce a “no shots” rule.
- ◆ Monitor conduct and don’t be afraid to intervene if conduct becomes inappropriate or alcohol consumption becomes excessive.

Thank You

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