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'Tis the Season—For Potential Employer Liability

By Helene Wasserman

The holiday season is upon us—a time when many companies (and/or managers) may be organizing holiday parties, decorating offices, throwing off-site parties or holding secret gift exchanges among coworkers. Many employers, however, do not realize the risks involved with celebrating the holidays and its festivities, including the potential for inadvertently involving religion or culture-specific activities and discussions in company-sponsored events.

There are several issues employers should proactively watch and plan for during this holiday season.

Party Behavior

What would the holidays be without the traditional holiday party? While holiday parties are festive (and should be), each holiday party holds a veritable minefield of potential embarrassment, regrettable behavior, and, in worst case scenarios, discrimination and harassment lawsuits.

Employers can safeguard against these claims in many ways. For example, it is recommended that employers send a memo to employees before the holidays reminding them that the company's dress and behavior codes—and harassment policies—still apply to an off-site, after hours, company-sponsored event.

Employers should be aware of the potential for accidents and liability. If it is not realistic to ban alcohol completely from the festivities, consider creating a drink ticket system so as to limit employees' alcohol consumption. Always have plenty of non-alcoholic drinks and food available. In addition, offering taxi vouchers to employees could help minimize potential risks. Another option is to direct several supervisors to refrain from drinking and to monitor the party for inappropriate behavior. The designated monitors' responsibilities should include arranging cab rides for employees too intoxicated to drive.

Religious/Cultural Sensitivities

The holiday festivities often overshadow the fact that holidays are, in fact, religious events. Christmas, Hanukkah, Kwanzaa—all are reasons to celebrate. What about Jehovah's Witnesses, who do not participate? Employers should consider various options to minimize hard feelings. Make sure that gift giving and holiday parties are voluntary in nature so that those who choose to abstain from celebrating for religious or cultural reasons are not made uncomfortable. Also, employers should be conscious of religious symbols in the workplace. Do not quash private expressions of "Merry Christmas," or "Happy Hanukkah," etc., but do not adopt these phrases as company messages.

Consider excluding religious symbolism from decorations and entertainment. The laws prohibiting discrimination do not require employers to avoid trees or wreaths, but the decorations on them should be secular. Call the events “holiday parties,” and make attendance at the holiday social events optional.

Time Off

Along with the holidays come issues related to time off. As employees take extra time off to shop and prepare for the holidays, long lunches, leaving early, and arriving late could become a problem. Take this opportunity to note the importance of timekeeping and recordkeeping. While there is no need to be a “Grinch,” employers must ensure everyone is treated equally and consistently to help guard against potential claims, including discrimination and harassment claims.

Taxes and the New Year

Many employers provide holiday gifts to employees. While such generosity is by no means discouraged, employers should be mindful that there may be tax consequences to holiday gifts. Gifts such as holiday turkeys, hams, gift baskets and other tangible goods of a *de minimis* value—\$25 or less, and definitely not more than about \$50—can be given by employers to employees without implicating tax issues. But beware of giving cash or “cash equivalents” such as gift cards, which are always treated as taxable wages by the IRS.

Finally, the fact that it is the holiday season means that the New Year is upon us. All employers should make sure they are aware of all the new laws taking effect on January 1 that impact their workplace.

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