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**Verrill**

# Annual Update: Minimize Risks Related to Holiday Party Gatherings

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# *Remember the FA LA LA Standard*

Family Alcohol

Location Attendance

Liability (Insurance) Atmosphere

## Roadmap of Discussions of Areas of Concern

- Religious Discrimination
- Wage and Hour
- Workers' Compensation
- Sex Harassment

## What's the Risk? Religious Discrimination

- Relative to Secular Employers
- Title VII
  - Employers shall not discriminate as to the terms and conditions of employment on account of religion.
- State anti-discrimination laws related to religious beliefs
  - Similar standard as Title VII
- Decorations
  - Menorahs and Nativity Scenes
- Music
  - Grammy Got Ran Over by a Reindeer v. Ave Maria

## Reducing Religious Discrimination Claims

- “Holiday Party” versus “Christmas Party”
- Do I have to celebrate every December holiday at the party?
- Should I ask employees what holidays they celebrate in order to be more inclusive?
- Be aware of scheduling (ex. if the party is scheduled during a religious holiday, it may result in members of that religion not being able to attend if they are taking time off to celebrate)
- Stay away from terms that could connote a preference towards one religion or another
- Be aware of decorations (keep it secular)
- If music is playing, limit faith-based songs

## What's the Risk? Failure to Pay Wages

- Wage and Hour claims under the FLSA and state wage and hour statutes
- Hourly non-exempt employees (or salaried employees improperly categorized as exempt)
- Suffer or Permit to Work
  - Are you forcing employees to work by talking about year-end results
  - Are you permitting them to work by not having a jovial fun-filled environment?
- Failure to compensate for time worked; untimely payment of wages; failure to pay overtime
- Consequences?
  - Treble damages plus attorneys fees

## Reducing Wage and Hour Claims

- Keep the event voluntary
- Focus on the celebration, not on presentations or information sharing
- Get managers on the same page
  - *Bob tells Sally she HASSSS to be there so they can catch up, even though it's a voluntary event. Bob's statement makes it less voluntary*
- Consider hosting the event at an offsite location after-hours or on the weekend
- Consider inviting significant others/family members
- Indicate whether employees will be paid on the invitation

## What's the Risk? Injury

- Injury to Self
  - Twister
  - Slip and fall
  - Car accident
- Injury to Others
  - Car accident
  - Physical violence

## Mitigating Workers' Compensation Claims

- “Incurred in the pursuit of an activity, the major purpose of which is social or recreational”.
- Location & Time
- Alcohol
  - Consider not serving alcohol.
  - If serving alcohol, consider a ticket system and a “last call”, permitting for time before the event ends.
  - Offer food and other beverages.
  - Commercial General Liability Policy (re: alcohol consumption)
  - Beware of employees who arrive at the event intoxicated.
  - Provide safe ways for people to get home if they have over consumed (ex. Uber discounts, taxi phone numbers, designated drivers).

## Mitigating Third-Party Injury

- Most likely will occur when alcohol is involved
- How will people get from location A (party) to location B (home) and to location C (work) the next day.
  - Uber
  - Designated Drivers
- If you open up the party to spouses/guests, possibility of liability if company negligently maintains the premises.
  - Check to make sure there is appropriate insurance prior to hosting parties on site

## What's the Risk? Sex Harassment Claim

- Hostile Environment
  - Dancing
    - Improper touching/moves (individually or with others)
  - Close talking
  - Gifts
  - “Thank yous” that go too far
- Quid Pro Quo
  - I want to see you there or else
  - Whoever gets \_\_\_\_\_ employee drunk first gets a raise

## Mitigating Sex Harassment Claims

- Be direct with employees concerning expectations before the event.
- Ensure the venue does not create a hostile atmosphere, including locations that are viewed as provocative (ex. strip clubs, casinos, bars).
- Consider inviting spouses, significant others, family.
- Choose décor wisely (ex. mistletoe).
- Refrain from physical activities (ex. Twister + Alcohol = bad choice).

## Employer Responsibilities After the Party



Review the event and evaluate any areas of improvement to limit liability for future events.



Investigate any complaints in a timely manner.

*Because after the party it's the after party....*

Questions?