

EAT, DRINK AND BE LIABLE

Moving away from the potential minefield that is the traditional office party

Now that the holiday season is behind us do you have eggnog on your face? That is to say, did something run afoul at a recent office party that caused management some level of distress. Perhaps someone drank too much or perhaps there was unwanted conduct between your employees. In either event, the two most prominent forms of social host liability are intoxication and sexual harassment. Nowhere are the hazards of workplace celebrations more apparent than at office parties, particularly those held at night. In a perfect world, office parties are a built-in opportunity to visit and to meet with friends and colleagues. The reality is, that for many companies, office parties have become problematic and, in many cases, very costly.

A. Alcohol

The most common form of social host liability involves serving alcohol. Social host liability expands the legal responsibility for the consumption of alcohol beyond the person who consumes it to those who furnish it. In Massachusetts, the Supreme Judicial Court has recognized the doctrine of social host liability for injuries caused by an intoxicated guest, such as an employee, whether the host-employer either knows or should know that the guest is intoxicated. The three part test devised by the Supreme Judicial Court includes 1) Whether the host knew or should have known that the guest was intoxicated 2) Whether the host gave permission to the guest to continue drinking and 3) Whether the guest/employee negligently injured a third-party. The question of whether or not a company sponsored “open bar” constitutes permission under this test has not been directly decided by an appellate court in this state. Imposing liability on the social host/employer reflects the modern view that the provider of alcohol has an obligation to the public to reduce risky behavior by furnishing alcohol safely and responsibly. Unless and until employers completely prohibit alcohol at office parties, awareness of potential problems by employees remains important.

B. Sexual Harassment

Sexual harassment can come in many forms and the office party can provide a perfect environment for most of them. By combining a relaxed, party atmosphere with alcohol, your office festivities can quickly erode inhibitions. According to a recent national office survey, about 41% of employees said they would flirt back if a co-worker hit on them during a holiday party. There have been cases, for example, where a senior executive assaulted his employee during a car ride home from a party. Not all of the issues, however, emanate from men. As an employer, you need to watch the conduct of both men and women. In the case of [Stringfellow v. Wyckoff Heights Medical Center](#), a male employee filed a sexual harassment claim in federal court after his female supervisor harassed him at two office parties. Of course, as in the workplace, inappropriate touching at an office party can be actionable under Title VII. The dynamics of this environment become even more clouded when the office party has clients in attendance.

This firm has been fortunate to have received the input of several human resources professionals as to the following guidelines employers can utilize in preventing social host liability in advance of their next office event:

1. Remind everyone of the *policies* by circulating a memo as it relates to applicable corporate sexual harassment policies and that the policies do apply to events outside of the office and that employees will be subsequently disciplined if they fail to comply. The policies as they apply to conduct and behavior at social events should be implemented, in the first instance, by all managers and supervisory personnel.

2. Insist on a *dress code*.

3. Make the party into a *family event*. By doing so, the complexion of the party will change but so too will your likelihood for being liable.

4. Have the party during *the day*. In this way, you will avoid any need for alcohol and employees will likely be better behaved knowing that it is back to work once the party is over.

5. Change the focus of the party from one of self-indulgent behavior to one of *charitable giving*. Present a theme at the party each year and build the party around the theme.

6. Check your applicable company *insurance policy*. If you are going to be serving alcohol, the Independent Insurance Agents and Brokers of America, Inc. (www.iiaba.net) suggests checking your comprehensive general liability policy to be sure that it covers third-party liquor liability. Depending on the size of your company, the number of parties and the frequency of alcoholic consumption at those parties, procurement of such coverage may not be a bad idea. At the same time, however, beware that many insurance policies carry major exclusions and many carriers will deny coverage if they conclude that the employer did not act reasonably.

7. *Eliminate or limit alcohol*. By so doing, your company will curtail social host liability as well as potential claims for sexual harassment.

8. Use a *cash bar*. The open bar is always a recipe for disaster. The cash bar will not eliminate liability but will, as a practical matter, reduce consumption where employees have to pay.

9. Hold the party *off premises*. If you decide to serve alcohol at your next office shindig, have the party off site at premises that have servers that have a liquor license. In this way, you transfer the liability to the provider of the liquor.

Going forward, office parties must be viewed with both an eye toward protecting the interests of the corporation while, concurrently, allowing employees to interact in social settings without eating, drinking and being liable.