

# Have Yourself A Merry Little Party

## Important Considerations for Employers at Holiday Time

By: Jennifer Platzkere Snyder

For the five-week period from Thanksgiving through New Years, the mood is bright and bustling, due in no small part to the anticipation of happy events and celebrations to come – both at and away from work. However, holiday time can be the most dangerous time of the year for employers, particularly those who are not prepared. Here are my top 7 considerations for planning a litigation-free event.

### 1. A Party by any Other Name

The first step is whether you are going to host a party. This seemingly simple event can be fraught with HR minefields, starting with what to call it. Most employers now opt for a “Holiday” moniker rather than referencing “Christmas,” so as to be more respectful of the various religious observances of company employees. An employer who is going to the expense of funding a celebration certainly does not want to offend people by the title of the event before it even happens!

### 2. Making a List and Checking it Twice

Second, is attendance going to be mandatory? Naturally, employers

should want all of their employees to partake in the festivities. However, if employees feel pressured that attendance is mandatory, non-exempt employees may need to be compensated for time spent at the function as “working time.” Further, employees who cannot attend due to family caretaking responsibilities may feel as though they are the victims of discrimination if they feel compelled to choose work over family. In short, encourage employees to attend, but be respectful of personal preferences of those who may not want to join in the fun or cannot be there for another reason.

### 3. Location, Location, Location

Once you decide to have a party, the next question is where (and when) to host it. During the day? In the evening after work? During the week? On a weekend? At the company offices? A restaurant? Banquet room? Obviously, some of these considerations depend on the size of your workforce and the amount you want to spend. However, an office party is still a “work” event even if it takes place away from the office. Thus, conduct of employees at the party is still considered “workplace” conduct and can subject you to any number of

legal claims. Which claims, you may ask? Keep reading...

### 4. A Toast to the Year that Was

The next consideration is whether alcohol will be served at the function. In most circumstances, it is perfectly legal to serve alcohol at such an event, even if hosted on company property. (The main exception is based on whether minors will be present at the festivities.)

Presuming you can serve alcohol, the next question is whether you should, given the potential effects that alcohol will undoubtedly have on your employees. It is no secret that alcohol reduces inhibitions and can impair judgment. As such, it is often the catalyst for inappropriate conduct at a party. The overly aggressive employee who throws a punch at a co-worker. The supervisor who sidles up a bit too close to his attractive female subordinate and “accidentally” touches her breast or rear end, or pulls her in for a slow dance. The inebriated employee who leaves the party and gets into a fender bender

(or worse) en route home.

So ... if you are going to serve alcohol, make some plans to avoid all of these outcomes:

**Offer options:** Have plenty of non-alcoholic drinks and food available. You certainly wouldn't want a recovering alcoholic to claim that you are responsible for undoing his sobriety due to the lack of beverage options. You also do not want to have to defend against tort claims that result from a drunken employee's behavior that takes place at, or following, your party.

**Offer limits:** Decide if drink tickets will be passed out before the party, entitling each employee to one to two drinks on the house but no more unless the employee pays. This won't preclude drunkenness but can certainly create a psychological (and financial) barrier.

**Offer transportation:** Under no circumstances should you let any questionably sober employee drive after the party. Perhaps a few designated managers can all agree not to drink alcohol and be responsible getting for inebriated employees home safely. Cab vouchers are also a good idea. A super-organized manager will even notify a cab company ahead of time about the event and ask for cabs to be present around the time that the event is scheduled to end.

### 5. Deck the Hall

At the event, consider appropriate decorations. Everyone loves twinkling lights. Seasonal non-denominational items that speak to the winter season can be in good taste. If you are going to make a nod to Christmas with a tree, perhaps you can also incorporate symbols of Hanukkah and Kwanzaa so that employees with different religious backgrounds all feel included. Just make sure that all of the decorations are appropriately sized, and a tree does not dwarf a menorah. One no-no: please do not hang any mistletoe!

### 6. Rockin' Around the Christmas Tree

Next on the agenda – music and dancing. This largely depends on the time of day and venue. However, if you have space for a dance floor, make sure the music is upbeat and festive. Try to limit music that would lead to slow dancing among co-workers, let alone supervisors and subordinates. Like alcohol and mistletoe, slow dancing can be a catalyst for inappropriate behavior. A subordinate may not feel like he can say no to a supervisor who invites him to join her for a dance. If that is the case, he certainly will not feel that he can control where wandering hands may get placed. Often, there are one or two employees who want to use the holiday party as an opportunity to “get close” to an attractive colleague. Better to avoid that scenario all together.

### 7. I Saw Who Kissing Santa Claus

This is no time to ignore your company's anti-harassment policy. In fact, a prudent employer would redistribute or re-post it in advance of the party as a reminder to employees that the policy remains in force and effect. There is no such thing as a “free pass.” Conduct that would

never be sanctioned at any other time of the year is not suddenly acceptable as a “one time per year” occurrence merely because it takes place at the holiday party.

While New Jersey law provides protection for employees against discrimination and harassment based on a myriad of protected classifications, sexual harassment tends to be the most common HR issue at this time of year.

Notably, sexual harassment is not limited to unwelcome sexual advances or requests for sexual favors. It can include visual conduct such as leering, making sexual gestures, or displaying sexually suggestive objects or pictures. It can include verbal conduct such as making or using derogatory comments, epithets, slurs, or jokes, graphic commentaries about an individual's dress or body, sexually degrading words to describe an individual, or suggestive or obscene notes or invitations. It can also include physical conduct such as touching, assaulting, or impeding or blocking movements. Sexual harassment can take place between members of opposite genders or the same gender, between supervisors/subordinates or co-workers, or even between employees and third parties, such as customers or vendors.

Since you are reviewing your policy, make sure it contains an appropriate complaint procedure with multiple avenues for employees to use to present complaints. You do not want an employee to feel constrained that she can only complain about her boss' conduct at the holiday party directly to her boss the morning after. You also want to be sure there is a prohibition on retaliation, so that employees know they are protected if they complain about conduct that occurs at or after the party (despite your best efforts).

### 8. The Party's Over – Or Is It?

Just because the festivities end without incident does not mean you can breathe a sigh of relief just yet. With Facebook boasting more than 6 million members, the ease and frequency with which employees can tell the world about their lives – including events at a company function – grows daily. If you combine the party spirit in the air with alcohol served at company parties, Facebook postings can become the 21st century equivalent of drunk dialing. Only now, a poorly thought out post on a social networking site is no longer a private communication but is available for all the world to see. While employers cannot limit every posting that employees make on their personal weblogs, a Social Media Policy can be used to remind employees that even their on-line activities – particularly if involving one or more co-workers – could later become fodder for claims of workplace harassment if they fail to exercise common sense and good judgment.

Despite these potential pitfalls, the holidays are a time to celebrate the year that was and the year that is about to start. Best wishes to you and yours for a happy and peaceful holiday season!

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