

Office Holiday Parties: Legal Do's and Don'ts



All rights reserved. These materials may not be reproduced without written permission from NBI, Inc. To order additional copies or for general information please contact our Customer Service Department at (800) 930-6182 or online at www.NBI-sems.com.

For information on how to become a faculty member for one of our seminars, contact the Planning Department at the address below, by calling **(800) 777-8707**, or emailing us at speakerinfo@nbi-sems.com.

This publication is designed to provide general information prepared by professionals in regard to subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. Although prepared by professionals, this publication should not be utilized as a substitute for professional service in specific situations. If legal advice or other expert assistance is required, the services of a professional should be sought.

Copyright 2018
NBI, Inc.
PO Box 3067
Eau Claire, WI 54702

81344

Can training your staff be easy **and** individualized?

It can be with NBI.

Your company is unique, and so are your training needs. Let NBI tailor the content of a training program to address the topics and challenges that are relevant to you.

With customized in-house training we will work with you to create a program that helps you meet your particular training objectives. For maximum convenience we will bring the training session right where you need it...to your office. Whether you need to train 5 or 500 employees, we'll help you get everyone up to speed on the topics that impact your organization most!

Spend your valuable time and money on the information and skills you really need! Call us today and we will begin putting our training solutions to work for you.

800.930.6182

Jim Lau | Laurie Johnston

Legal Product Specialists
jim.lau@nbi-sems.com
laurie.johnston@nbi-sems.com

Office Holiday Parties: Legal Do's and Don'ts

Author

Jill R. Cohen
Eckert Seamans Cherin & Mellott, LLC
Princeton, NJ

Presenter

JILL R. COHEN is an employment attorney with Eckert Seamans Cherin & Mellott, LLC, who bases her practice in Princeton, New Jersey. She regularly represents, counsels, and trains employers regarding a wide variety of employment matters, including discrimination, retaliation, harassment, accommodations, protected leave, compensation, employee disciplinary issues, individual and group termination, and wage and hour issues. Ms. Cohen's expertise includes conducting internal workplace investigations on behalf of clients faced with potential employment law liability. She practices before New Jersey and New York federal and state courts, including significant appellate practice, and represents clients before an array of governmental and administrative agencies and arbitration associations, including the U.S. Equal Employment Opportunity Commission, New Jersey Division of Civil Rights, U.S. Department of Labor, New Jersey Department of Labor and Workforce Development, and the Occupational Safety and Health Administration. Ms. Cohen earned her B.A. degree, cum laude, from Barnard College, Columbia University and her J.D. degree from Fordham University School of Law.

NATIONAL BUSINESS INSTITUTE™ (NBI)
Live Teleconference from Princeton, New Jersey

***HOLIDAY PARTIES:
LEGAL DO'S AND DON'TS¹***

Presented by:
Jill R. Cohen, Esq.
Eckert Seamans Cherin & Mellott, LLC
jcohen@eckertseamans.com

¹ The information contained in this document does not constitute legal advice nor establish an attorney-client relationship. This document provides information that is current at the time of publication, however, legal opinions and laws can change. You should not act upon this information without seeking professional counsel.

Holiday Parties Legal Do's and Don'ts

I. Introduction

With Halloween and candy-hangovers behind us, we can collectively start to look forward to Christmas and other winter holidays. For many it is a time of year to reflect, unwind, and appreciate our family and friends. As a society, we look forward to a peaceful end of the year, filled with joy, contentment, with everyone arm-in-arm, singing Auld Lang Syne by a fireplace's warm glow.

Of course, not all holiday gatherings have such rosy endings. The winter holidays can also be a time of great stress for some, as issues involving money, expectations, disappointments, relationship discord—and often fueled with too much alcohol-- can lead to the Christmas tree proverbially spontaneously catching fire.

For most, the experience of the winter holidays does not fit snugly into either one extreme stereotype, but rather falls somewhere in between. The joys and stresses in these depictions apply no less to companies as a whole, than they do to individual workers who comprise the companies. The winter holidays and holiday parties in particular, can lead to real hangovers and company headaches. Here are some legal considerations to help your company ensure that all employees are enjoying the holiday spirit and toasting each other with a glass of bubbly, rather than sending your company- and it's legal bills- into flames.

II. Horror Stories

When I was first asked to give this presentation, one of the first things I did was reach out to friends on social media and ask them to tell me their stories of company holiday parties gone awry. As an employment lawyer, it takes a lot to shock me about things that can happen in a

workplace. Yet I was amazed at the outpouring of truly horrible horror stories that flooded my inbox. I include a sampling here to demonstrate that just when you think that employee behavior can't get worse, be forewarned, it can, and why it is important to properly plan a company holiday party to avoid these scenarios.

One surprising concept that emerged was companies having a theme to their holiday parties. One would think that the holidays themselves suffice as a theme, but many companies apparently choose a different specific theme for their soirees. If your company chooses to have a themed party, it is generally a good idea to avoid themes that might be misconstrued or easily offend, or for instance, lend themselves to obvious and trite, racist stereotypes. One company themed its year end party as "Cowboys and Indians," replete with employees encouraged to dress up as Native Americans. While Cleveland Indians fans may disagree, this is a practice that offends many.² Another example included a holiday party with the theme of "Africa." Mind you, not a specific African country- just Africa in general. While thankfully, no one showed up to that party in blackface, I am told that the use of "African" imagery for decorations and costumes could have been executed with greater sensitivity to diverse cultures and traditions, and as a result, offended

² "Chief Wahoo was the logo of the Cleveland Indians, a Major League Baseball (MLB) franchise based in Cleveland, Ohio. As part of the larger Native American mascot controversy, it has drawn criticism from Native Americans, social scientists, and religious and educational groups, but remains popular among many fans of the Cleveland Indians baseball team. The team considered replacing the logo in 1994 when it moved to Jacobs Field (later renamed Progressive Field), but it was ultimately retained. In 2014, Chief Wahoo was replaced as the team's primary hat logo with a block "C", but still appeared on the team's uniform sleeves and their home baseball caps. Although Chief Wahoo was most properly described as a logo, he was often recognized as a mascot due to the longstanding history of the team. On January 29, 2018, MLB commissioner Rob Manfred and Indians' owner Paul Dolan announced that Chief Wahoo would no longer appear on uniforms or stadium signs following the end of the 2018 season.[1][2][3] Merchandise featuring the logo will still be available at the Indians' ballpark and retail stores in Ohio, but will no longer be sold on the league's website." www.wikipedia.org.

some. Also, it begs the question, “Why?”³ Another theme chosen for a friend’s holiday party was “Grease Lightning” – like the 1978 John Travolta movie. While many love that classic film, it may not be the best idea to encourage employees to act like Danny Zuko putting the moves on Sandy in the 1950s. Here’s one memorable scene from the film to illustrate my point:

Sandy: [Danny is trying to make out with Sandy] No, Danny!

Danny: Sandy, don't worry about it, nobody's watching.

Sandy: Danny, get off me!

Danny: Come on, Sandy, what's the matter with you? I thought I meant something to you!

Sandy: Meant something to you! You think I'm going to stay here with you in this? this sin wagon? You can take this piece of tin!

[throws his class ring at him and runs away]

Danny: Sandy, you just can't walk out of a drive-in!

(www.imdb.com) It’s safe to say that the #MeToo movement had not yet taken hold when Grease was filmed, or in the decade in which it is set. And- this may be hard to believe- but the company in question with the Grease Lightning theme also posted a sign that pointed to the “Make Out Closet,” apparently to really go all in with the theme and emulate the movie. I think it is reasonable to assume that this company didn’t consult their employment lawyers when planning this fete.

³ Although not made explicit, some speculated that the “Africa” theme was potentially intended as an homage to Kwanzaa, because Kwanza is “a celebration held in the United States and in other nations of the African diaspora in the Americas and lasts a week. The celebration honors African heritage in African-American culture and is observed from December 26 to January 1, culminating in a feast and gift-giving. Kwanzaa has seven core principles (Nguzo Saba). It was created by Maulana Karenga and was first celebrated in 1966–67.” www.wikipedia.org. If this was the rationale underlying the Africa themed company party, it illustrates the point that even the best-intended celebrations can be tricky, and potentially executed in a way that give rise to thorny legal issues.

Another concept that emerged in my holiday parties gone awry query was the idea of employees roasting each other- whether the boss or the most junior staff among them. One friend told me of a departmental holiday party- which was separate from the main company holiday party. This smaller party took place in a private dining alcove of a fancy restaurant. Someone in the group wrote vulgar lyrics and choreographed a song. The group hired someone dressed like a gorilla to come and make lewd gestures to accompany the song and dance. They also planned to hand out blonde Barbie dolls intended to depict particular women the group had been working with, and encourage those in attendance to wave around the Barbies during the song. Fortunately, my friend who sent me this anecdote was in-house counsel, and got wind of this party before it went forth and quickly put a kibosh on these particular intended celebrations. (Aside, this friend was chastised for not having a sense of humor.)

Finally, it is hard to categorize this last series of anecdotes of holiday parties gone awry that one friend sent to me:

“[Many parties had] normal drinking/vomiting/swimming in the public fountain outside the office kind of thing. But [I’ve also seen] a whole other level – [a boss] making out with a junior member of the team (in front of the rest of the team and managers), duct taping the arms of two colleagues together so one of them couldn’t leave, throwing up in a fish tank at the aquarium (apparently it cost a couple thousand dollars to clean and save the fish), propositioning two colleagues for a threesome, doing a flip off a hotel bed and landing on the TV, asking a female Italian manager how to say [[a particular sex act] in Italian. Oh, and I’ve definitely seen a colleague’s [private parts] . . .”

I don’t know what company this is, and I’m pretty sure I don’t want to know.

Now that we’ve contemplated some of the varied ways a company can open itself up to liability at a holiday party, let’s move on to concrete ways to avoid these scenarios, and hope that

the biggest faux pas at your company's holiday party is that someone brings pumpkin pie instead of apple even though it is already December.⁴

III. Common Sense Considerations

It makes sense to start out with the low-hanging fruit, common sense pointers in planning company holiday parties. These tips should not be considered mandatory nor one-size-fits-all, but are options to be considered when planning a company party, as ways to reduce the likelihood of occurrences that could give rise to various legal woes.

a. Limit Drinking

Bad behavior at company holiday parties can often be fueled by excessive alcohol consumption. This is not to say that inebriation is the cause of problematic employee behavior, nor that limiting alcohol is a panacea, guaranteed to make a holiday party drama-free, but it certainly can help. When people drink, their inhibitions are lowered, and depending on the behaviors at issue, it may make sense that a company wants its employees to have the same or similar inhibitions at a holiday party that they would have in the office, because certain actions and behaviors are just never okay at a work or work-sponsored environment.

One way to limit drinking alcohol is to eliminate it entirely. This can be done at an evening party, or a company may choose to hold a daytime affair instead, where there is a lessened expectation of alcohol being served. By choosing to hold the party in the daytime, the company can eliminate or limit the serving of alcohol, and avoid appearing like the Grinch, simply because of social norms of drinking less during daylight hours.

⁴ This example was also sent to me by a friend as an example of what has gone awry at her company's holiday parties. I think she was joking but I can't be sure.

Another approach to limit alcohol consumption is to provide employees with drink tickets. When this is done, attendees are normally given one or two drink tickets. This doesn't always work, because employees who want to drink more usually have the option to purchase additional drinks, or employees give each other their unused tickets. But it can help.

Some employers choose to limit the alcohol menu to beer and wine selections. The elimination of hard liquor means that in general, people become intoxicated slower and therefore less overall. (I was once at a company holiday party with an ice sculpture luge, whereby employees and their guests were encouraged to do shots of premium vodka by drinking at the bottom of an ice sculpture ramp. Needless to say, as the evening progressed, I observed lots of inappropriate dancing. I blamed the vodka luge.)

Finally: consider serving plenty of food to help employees avoid drinking on an empty stomach, thereby decreasing rates of intoxication.

b. Uber

It is definitely a best practice for any company party where alcohol is being served to offer reimbursement for the cost of a ride home. With the proliferation and ease of ride services- from Uber to Lyft to regular taxi and car services- there is little excuse for employers to not offer this option at any company party where alcohol is served. From a legal perspective, it is a no-brainer, easy way to reduce potential liability, and more importantly, potentially save lives by keeping inebriated drivers off the road. Employers should offer this service and consider it as an expense of hosting a holiday party.

c. Christmas versus Holiday Party

Another easy tip to avoid unintended legal liabilities is to have an inclusive, non-denominational party and just call it a “holiday party.” I fully realize there is a growing segment of the population that feels there is a “war on Christmas” and feel victim to so-called “reverse discrimination.” In fact, at a company holiday party I personally attended, I overheard some attendees griping that it was no longer billed as a “Christmas Party,” as in the good old days. But it bears stating the obvious: not all employees celebrate Christmas. Moreover, if employees who celebrate Christmas can be offended that the party is *not* called a Christmas party, so too can employees who do not celebrate Christmas be offended that the party *is* called a Christmas party. As such, it is generally a better practice for companies to avoid this sort of nomenclature and just celebrate the season in an inclusive way- to invite the employees to celebrate without inviting the drama. To be clear, I am not suggesting that if a company has a “Christmas Party” instead of a “Holiday Party,” or if your décor is green and red, or if you wish your employees “Merry Christmas!” you will end up before a Judge to rule on your company’s political correctness. I am suggesting, however, that a company holiday party is not necessarily the time or place to impose or assert an individual preferred religion, without being inclusive of other beliefs and practices, when the workforce does not necessarily uniformly celebrate one religion. And at least until the concept of reverse discrimination gains more traction in the legal landscape, it is the better practice for businesses to celebrate the end of the year with minimal overt religious references. It’s also just a better practice to make sure everyone feels welcome, and holding a general “holiday” party is one easy way to achieve that. Another option is for an employer to simply call it an end-of-year party and avoid any reference to holidays. Some employers opt to have their annual parties in

January to take advantage of better rates associated with hosting the party, and just call it a New Year party.

Similarly, in addition to avoiding overt religious symbols, an employer should be mindful of dietary needs and disability considerations when planning a party, so as to not open itself up to claims of discrimination or failure to accommodate claims.

IV. Company Foundations for Success

a. Policies

One of the best ways a company can ensure a successful holiday party is to maintain a company culture and supporting policies year round that prevent the sort of problematic issues that arise more frequently at holiday parties. For instance, some policies that employers should consider having in place include:

- A non-harassment policy that covers all protected statuses, addressing more than simply sexual harassment. The policy should also cover third parties' improper behavior during work-related functions. It is important to realize that sexual harassment is not the only type of harassment that occurs at holiday parties. With less inhibition, employees may make a racist joke or other harassing conduct that is not sexual in nature.
- A Professional Standards Policy that provides that while conduct may not constitute illegal sexual (or other) harassment, the employer requires a level of professional conduct that allows employees to feel safe from even marginal conduct.
- A "No-Fraternization" policy can be separate from a non-harassment policy and addresses various prohibitions and standards regarding managers dating subordinates.

- Some employers go as far as to have a “Social Gatherings” policy contained within their handbook, which reiterates the principles in the above policies, but explicitly states that these concepts apply at company-sponsored social gatherings.

b. Role of Managers

Managers at all levels play a crucial role in the everyday operations of a company, and those responsibilities should not end during a company holiday party. Oftentimes, managers are the worst offenders at a company holiday party, perhaps because they feel a sense of freedom from their everyday supervisory role and want to bond with their subordinates, or because employees are not as comfortable signaling to a manager that certain conduct is unwelcome or unfunny. While the latter may be as true during working hours, the unwelcome conduct can be heightened during a holiday party where inhibitions are lowered through alcohol and otherwise.

My Partner, Karen Elliot, of Eckert Seamans’ Richmond, Virginia office advises, “People often communicate through humor and sometimes that humor goes a step too far. If the recipient of the joke laughs, the giver may believe it is welcome and continues. . . . The most common statement from individuals accused of harassment is that they did not mean any harm. Remind employees that it is not what they intended, but how the recipient felt. If you would not say it to your mother do not say it to co-workers. . . . Remind managers that anything they do or say that skirts professional norms may give rise to a claim of harassment. The reason? Everyone laughs at the boss, regardless of whether he or she is funny or appropriate. Remind your managers that employees may feel powerless to make a complaint because the reality is they perceive they may not be believed or they perceive they will be retaliated against such as suffering in their performance reviews.” (Karen Elliot, Esq., “DON’T LET YOUR HOLIDAY PARTY GIVE RISE TO #MeToo”).

One approach is that companies might consider deputizing certain managers to keep an eye and ear out during the holiday party for any inappropriate conduct, and have a basic plan in place for how managers can appropriately intervene if needed. This helps so managers are not caught off guard when this conduct occurs. Inappropriate behavior is often easy to spot and can be corralled before escalating, and it is common for companies to designate a few employees tasked with making sure the party stays under control. At a minimum, companies should remind managers that they lead by example not only during the work day, but at the holiday party as well.

c. Pre-party Reminders

In addition to reminding managers of their responsibilities that continue from the work day through the holiday party, some employers opt to send a reminder to employees that the same policies that apply during the normal work day apply at the work-sponsored holiday party. A properly worded memo distributed to employees invited to the holiday party can go a long way in reminding employees of expected standards of conduct, and letting the employees know that harassing and other inappropriate behavior will not be tolerated, without stifling the fun too much. This is particularly true if the company maintains a Social Gatherings policy, as mentioned above.

If a company circulates a pre-party memo, it is also a good vehicle to remind employees to encourage the use of designated drivers or a company-provided car service such as Uber.

V. Voluntary versus Mandatory Attendance

One of the most important pieces of advice to employers planning holiday parties is to make sure that attendance at the party is truly voluntary. There are many different issues that arise when the party is mandatory, or even perceived to be mandatory. Courts have held that even when parties were technically billed as voluntary, pressure and expectation for employees to attend

rendered the party mandatory and not voluntary, for legal purposes. This can end up opening the door for liabilities that would be cut off if the event were voluntary.

a. Wage and Hour Considerations

The most obvious consideration for a mandatory holiday party versus a voluntary holiday party is wage and hour law. The FLSA requires that covered employers must pay covered employees at least the minimum wage for all hours worked, and time-and-a-half the employee's regular rate of pay for all hours over 40 in a given workweek. Individual state laws may have more stringent wage and hour requirements. Requiring employees to attend a holiday party-- even if there is no actual company work performed there-- could create obligations to pay employees for this time. Unless a party is held during work hours, such as an on-site lunchtime party, the best practice is to make the party truly voluntary. In order to avoid having the party count as compensable time, it may be helpful to include a line in the invitation such as "we hope you can join us for this party, but attendance is not mandatory," and also make sure that managers do not pressure employees to attend. Employers should ensure that managers are on the same page about not pressuring employees to attend, as this can create the appearance of attendance being mandatory.

b. Workers Compensation Considerations

Workers compensation may also be triggered if an employee is injured during work hours. If the party is mandatory, then the party may be considered working hours for purposes of workers' compensation. If the party is voluntary, it is less likely to be considered work hours for purposes of workers compensation. Ensuring that the party voluntary is a better practice in this regard.

c. Liability for employee injury

If an employee is injured during a holiday party where attendance is mandatory, and the injuries are not covered by workers compensation, this increases the likelihood that the employer ultimately may be held liable for the injuries. Of course, if the party is voluntary, it is still certainly possible that an employer could be liable for employee injuries, depending on the circumstances.

d. Third party liability

If the event is mandatory, then it increases the likelihood that a court could find that an employee was acting within the scope of his employment when he committed whatever bad behavior that injured a third party. This is true whether the injury at issue is a drunk driving accident, or an employee harassing another employee or third party.

Courts determine whether an employee was acting within the scope of his employment on a case by case basis. If the party is mandatory, explicitly or implied, it is more likely that the conduct at issue may be imputed to the employer, giving rise to liability. Specifically, when the party is mandatory, it creates a different theory of liability against the employer for a plaintiff to pursue: *Respondeat Superior* or vicarious liability, as opposed to social host liability or other forms of liability. Therefore, making clear that employee attendance at the party is voluntary, in theory, can effectively close the door to theories of liability where the employer would otherwise have to answer for its employees' conduct.

VI. Non-employee attendees

a. Spouses and employee guests

One consideration for employers when planning a holiday party is whether or not to include spouses and significant others as invited to the party. This is often a consideration that is weighed

not by legal implications, but more based upon budget and company culture consideration. Nevertheless it is worth briefly exploring some of the legal implications.

If employee guests are invited, the employer opens itself up to additional potential liability for the acts of the spouses or family members- for many of the same reasons an employer could face liability to employees themselves- whether injury, or serving alcohol to a drunk driver (discussed below), or liability for guests' acts towards third parties. Also, inviting spouses involves inviting a somewhat unknown aspect to the party, because while the company generally knows its employees, in many cases, it has no information about the spouses or potential behavior or problems.

On the other hand, inviting spouses can often keep certain employee bad behavior at bay, and act as a kind of buffer against the party getting out of control. Employees generally act better around their spouses- for instance curbing flirting and unwanted sexual advances. Having employee spouses and guests present can also result in more designated drivers and less concerns about employees or attendees driving drunk.

This is a factor that can cut both ways, and as mentioned, is often considered on grounds other than legal considerations. However, if spouses are included, employers should consider these additional legal-related factors that could give rise to increased or lessened liability.

b. Independent Contractors or Temporary Workers

Employers may want to consider inviting colleagues who work for the company however not as employees. This category of worker often includes independent contractors or temporary workers who are employed by an agency or another entity.

One reason to exclude these workers from holiday parties is for Department of Labor or IRS misclassification considerations. While the U.S. Department of Labor, State departments of labor, IRS and other entities all employ different tests to determine misclassification, any of these entities might consider how the workers are included as part of the company generally- and the holiday party may be one piece of evidence weighing either way.

If employers want to include non-employee workers in the holiday party festivities, it may be beneficial to charge them a nominal fee, for instance asking the staffing agency or the independent contractor's business to subsidize each worker's attendance. If this approach is used, it makes sense to send the invitation directly to the agency or independent contractor and ask that entity to distribute the invitations to the workers. Again, although not dispositive, this is just a measure that can help distance the employer from any unintended liability down the road.

VII. Dram Shop Act

Dram Shop laws are state laws that create a duty upon hosts to ensure that guests are not served excessive alcohol. These statutes create a right of action to people injured by an intoxicated person, against the person who sold or provided the alcohol that caused the intoxication. Whether or not the employee appeared intoxicated at the time the employer served the employee alcohol can prove important in determining whether dram shop liability exists. Moreover, when a function has business purposes beyond simply being a social gathering, it is more likely that an employer will be found liable for the employee's acts, under theories of dram shop act or negligence. This is another reason employers should ensure the holiday party is voluntary and purely social. Different states have different dram shop laws, and employers may consider consulting in-house or employment counsel to inquire as to their state's specific dram shop laws in order to assess potential liabilities, in conjunction with planning the holiday party.

When serving any alcohol at a holiday party, employers should make sure they are only serving to those who are of legal drinking age. Many employees are under the age of 21, and if employees are permitted to bring guests or family members, this increases the chance that some guests in attendance will be under the age of 21.

a. Third Party Vendor

One way to mitigate the risks associated with serving alcohol at company holiday parties is to hold the party on the premises of a fully insured third party vendor. As with inviting spouses and guests, the decision of where to host the party—at the company premises or a third party vendor premises, often is determined based on factors other than legal considerations, such as budget and company culture. Having the party at a third party site, however, can greatly reduce risks of liability associated with company holiday parties. It is important to make sure that the vendor is fully insured in this case. If an employee is injured, or is served alcohol and later injures another, having had the party at a third party site can often (but not always) reduce or eliminate employer liability for resulting injuries. This is especially true with respect to negligence or theories of premises liability, where the primary liability can shift to the third party vendor responsible for the site. Finally, employers should consider that the vendor will have professionally trained bartenders who can also help reduce the potential for attendees becoming too intoxicated. This may be preferable to having the employer directly serving alcoholic drinks to employees, in terms of anticipating potential liabilities caused by drinking-related injuries.

VIII. Sexual Harassment and #MeToo concerns

Although there is a difference between conduct that occurs during business hours and during work-sponsored social gatherings, courts will look to the culture of the company, and best

practices and steps that were taken to avoid putting employees and others at risk of harassment. As such, even if a holiday party is completely voluntary, it is important for employers to be mindful about concerns of sexual harassment. This is more relevant than ever for employers in the era of the #MeToo movement and social media. The essence of the #MeToo movement centers on employees feeling that they had no choice but to acquiesce to unwelcome sexual advances of superiors at work- whether as *quid pro quo* sexual harassment, or simply an inability to say no to unwelcome conduct for fear of retaliation. Therefore, it is important to briefly review the different types of sexual harassment, and how they can play out in the context of a holiday party.

Quid pro quo harassment is when submission to sexual conduct is a condition of the employment. Whether or not the requirement to acquiesce the sexual conduct as a condition of the employment is explicit or implicit, it can still give rise to *quid pro quo* harassment. In other words, a person in a position of power need not explicitly demand the conduct; courts have found that when it is implied as a condition of employment, it can sufficiently support a cause of action.

Hostile work environment is a legal standard where, a reasonable person would perceive the unwelcome conduct “severe” or “pervasive.” One incident can give rise to a hostile work environment claim, if it is severe enough. Of note, the standard is whether the conduct is welcome or unwelcome, not whether it was voluntary. This is not mere linguistics; under the eyes of the law, a person may voluntarily participate in unwelcome sexual conduct, and it can still constitute illegal sexual harassment.

Although not all harassment- sexual or otherwise- is illegal on its face, or on its own, unwelcome sexual conduct can give rise to claims when taken together with other actions or company culture, or proven to be unwelcome. Therefore, it is important for employers to create

and maintain a harassment free environment at work, and especially at a company holiday party where inhibitions are low and the fun runs high.

IX. Conclusion

In sum, a company holiday party should be a fun celebration for employers to demonstrate their appreciation for their workforce and all their collective hard work. Employers need to be mindful that a company holiday party is a unique event, insofar as it is a party, but still needs to maintain a professional atmosphere. This balance can prove to be challenging to achieve and maintain through the course of the party, particularly when alcohol is involved and inhibitions are lowered. Therefore, careful planning and some common sense approaches are the best way for employers to help keep their employees off of Santa's naughty list.

THANK YOU

for choosing NBI for your
continuing education needs.

Please visit our website at
www.nbi-sems.com
for a complete list of
upcoming learning opportunities.

NBI | NATIONAL
BUSINESS
INSTITUTE™