

'Tis the Season: Tips for Keeping It a Happy One for Employees and Employers

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December is here, and management is often focused on things like year-end budget issues. Meanwhile, employees may be distracted by vacation planning, holiday shopping, year-end bonuses, and the annual office holiday party.

Unfortunately, productivity is not the only thing that can suffer. Holiday parties can be a hot-topic issue and one full of pitfalls. Here are some strategies to consider that will help keep celebrations safe, happy, and welcome for everyone.

Religious Discrimination/Harassment

Employers must be mindful that not everyone celebrates the same holidays. While it is easy for employers and employees to go a little overboard with holiday spirit, holiday-themed activities should be respectful of all religions.

At worst, constant bombardment of decor, entertainment, and activities directed at only certain holidays may create a hostile work environment for those who do not celebrate. At best, these types of exclusionary holiday celebrations may leave some employees feeling left out. Employers should ensure that holiday activities do not permit either circumstance to occur.

In addition, employers that treat employees who observe certain holidays differently than others (when approving time off, for example) may find themselves embroiled in litigation due to claims of religious discrimination.

Alcohol and the Aftermath and Sexual Harassment

The office holiday party often involves a certain amount of holiday “cheer.” Overindulging, however, can lead to significant risks for employees and employers.

An employer’s obligation to provide a workplace free from sexual harassment does not stop at the end of the workday, nor is it limited to the four walls of the employer’s operations. It extends to any place that has a reasonable connection to the workplace. Arguably, this includes the office holiday party, even if it’s held off-site.

We have all heard anecdotes of coworkers who overindulge at the office holiday party and act inappropriately toward a colleague. If an employer fails to have a policy regarding workplace harassment and/or fails to act quickly to investigate potentially inappropriate behavior and take appropriate remedial action, a less-than-happy New Year may be in its future.

We covered more details on alcohol and sexual harassment at workplace parties in a recent article.

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Other Off-Duty Conduct

What happens at the office holiday party doesn't necessarily stay at the office holiday party. Off-duty conduct can be the basis for employee discipline, depending on the facts.

What should an employer do when an employee is convicted of a crime (disorderly conduct, public drunkenness, or a DUI, perhaps) after work hours? Simply because the conduct is off duty should not prevent an employer from conducting an investigation and taking appropriate disciplinary action, particularly if the conduct can impact the workplace. For example, if an employee who is required to drive for work loses his or her license following a DUI, he or she may potentially be disciplined and/or even terminated. Furthermore, an employee who is incarcerated for a short period of time due to off-duty conduct may potentially be disciplined for failing to report to work.

Workers' Compensation

Although it may be hard to believe, workers' compensation liability can be incurred when an employee is injured while attending an office holiday party. In Pennsylvania, courts will consider several factors in the determination of whether the injury is compensable, including whether the employer encouraged or made attendance at the holiday party mandatory; whether the event furthers any special interest of the employer (such as client goodwill or employee morale); and whether the event helped maintain or improve the skills of the employee (this could be something as simple as networking or communication skills). All workers' compensation cases are extremely fact-sensitive, but the risk remains.

Absenteeism

Regardless of the time of year, employers have the right to expect employees to show up for work as scheduled and directed. However, such rights are not without limitation. Employees are protected under federal law for various types of qualifying leave, as well as the right to utilize time off afforded by employer policy.

If an employee is not showing up for work, what can an employer do? First, an employer has the right to documentation regarding the reasons for the leave. Is it due to a "serious health condition" as defined by the Family and Medical Leave Act or simply because the employee was out late celebrating the night before?

Chronic absenteeism and tardiness should not be ignored simply because it's the holidays. Be consistent with policy enforcement year-round.

Performance Evaluations

Employers have a right to expect a certain level of job performance throughout the year. Employers that let certain behaviors go undocumented and undisciplined during the holidays may find it more difficult to deal with the behaviors the rest of the year.

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For a Happy Holiday Season and a Good Start to the New Year, Keep in Mind:

- Make attendance at holiday events and activities optional. Employers should ensure that employees are aware that attendance is voluntary and that they don't feel pressured to attend or participate.
- Make sure holiday party decorations and themes are neutral and don't discriminate against employees based on their religious beliefs. Employees of various denominations should not feel intimidated or left out.
- Keep alcohol consumption to a minimum, and make sure there are plenty of nonalcoholic options available.
- Remind employees that all workplace policies apply at the office party and throughout the holiday season. This includes the company antiharassment and antidiscrimination policies in particular.
- Continue to hold employees to job performance and attendance expectations year-round.
- Take all complaints seriously. Investigate complaints promptly, and take appropriate remedial action. Do not ignore or put off investigations until after the holiday season. Do not excuse inappropriate behavior simply because it occurred off-site or at a company social function.