



Eat, Drink, And Be Wary

25 steps for managing holiday party liabilities

By Lori Baer

If Grandma got run over by a reindeer, you had better hope the reindeer wasn't drinking at your holiday office party. Alcohol leads a sleigh full of employer liabilities right to your holiday festivity and is capable of running over morale, careers, solvency, and at worst, lives. Employers want to host holiday celebrations and want their employees to have a good time, yet they also want people to act responsibly and stay safe and healthy to enjoy the New Year. You can relax in the knowledge that litigation relating to holiday parties is not rampant. Nor are insurance claims. But proper party planners can make sure a good time is had, and proper insurance can protect your business if they don't. A competent manager knows about exposure, liability, and risk management even though there will probably not be a need to apply it. So ...

Exercise Pre-party Due Diligence

1. Review your general liability policy with your insurance agent.

"It can be tough to read an insurance policy and figure out what you have," says Alan Convey, ARM, CRIS, vice president, commercial, at Gallen Insurance. "Talk with your insurance agent, and they can help you figure it out."

In particular, you'll want to be certain about your alcohol-related coverage. "Host liquor liability" coverage is an unendorsed inclusion in general liability plans. Should a guest overimbibe, the insured is protected from claims made by people injured by the intoxicated person. The majority of general liability policies include host liquor, but some don't. If you're "in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages," then your business is excluded from host liquor coverage under general liability policies. Sexual harassment claims—common when alcohol is involved—are covered under Employment Practices Liability Insurance, not general liability. Some insurers provide this coverage as an endorsement to their directors and officers policies; other companies offer EPLI as stand-alone coverage.

"The other type of coverage that can come into play is workers' compensation," says Sheri Riley, AAI, vice president, programs, Murray Insurance. "In Pennsylvania, if your employees are perceived to be doing something that is furthering your business and if they are hurt doing that, then that may be covered under workers' comp."

2. Team with your insurance agent to review vendor contracts.

Prudent review of event contracts before you sign should be a given. But many businesses zero in on price and deliverables rather than verify issues of liability.

"Before you sign the contract, send it to your insurance agent and ask them to take a quick review," advises Theresa Kane, an account executive at Wells Fargo Insurance Services of Pennsylvania. "We're not attorneys, but there are certain things we can pick up just by looking at it."

"Sometimes also on these contracts there is a waiver of segregation," Theresa Kane further explains. "For example, if you are rear-ended in a car accident, your insurance company may pay for your medical costs first, but they are going to go against that other insurance company to get back the money they paid you. It's called segregation."

If the facility you've rented gives the dance floor a super polish and then Nick from accounting twirls his wife on the dance floor and she falls and gets hurt, that could be the facility's negligence. But if there's a waiver of segregation in the contract, your insurance company has no resource to collect against the facility.

Certificates of insurance are common in special event agreements. The facility or caterer wants proof that your business has general liability insurance and that they have been named as an additional insured. Agents advise businesses also to require proof of general liability and liquor liability insurance from event vendors and to negotiate to have your business named as an additional insured under the vendor's policy.

"If businesses aren't sure how to ask that question, they should go to their insurance agent and the agent can tell

them how to do it—and can even check the certificates and documentation received from the caterer or restaurant,” says Alan Convey.

3. Set clear expectations

Prior to the event—in internal communications and meetings—stress that the party is a work function and that the same personnel policies and procedures that apply during the normal business hours also apply at the holiday party. Emphasize that inappropriate behavior such as intoxication and lewdness will not be tolerated. Have additional communication with management personnel about setting an example for standards of behavior and going over how to intervene should misconduct occur.

Establish a Professional Party Atmosphere

Where liquor freely flows, so does libido and bravado. Sheri Riley points out that in addition to holiday times, exposure is the same at company picnics, fundraisers, and other gatherings where alcohol is typically involved.

“Employers have been rethinking holiday parties as there has been more concern about alcohol issues and sexual harassment,” says David Keller, a partner at Barley Snyder LLC. “With alcohol, people lose their inhibitions and do things they may not otherwise do, which includes making unwelcome sexual advances, and especially where the offender is a manager or supervisor of the employer, the possibility of successful legal action is high.

“We see very little litigation about alcohol-related problems at such parties. The law in Pennsylvania makes it difficult to hold a social host liable for serving alcohol to an adult. It is different in the case of minors. Serving alcohol alone is not enough to hold a company liable, and it is likely that liability will be found only if the host had reason to know that the person was intoxicated, and perhaps if the host should reasonably have known. Thus far, courts’ holding employers liable has not been a deterrent, but employers are much more sensitive to safety issues generally and to the possible publicity attendant to a serious accident arising from a party.”

Jody Shelby, a shareholder at Stevens & Lee, agrees. “Outside the legal analysis, companies should really look to the practical side of the issue and what harm any accident would cause with public relations, internal morale, and the like.”

If serving alcohol, create a culture where over-imbibing and sexual harassment are not permitted.

4. Have professionally trained bartenders serve alcohol.

Professional bartenders typically have received formal awareness training to detect signs of intoxication and to prevent associated problems. Also, notify the bartender to avoid doubles and cut off any visibly intoxicated guests.

Michael Kelley, esquire, McNees Wallace & Nurick LLC, explains that in the language of the law, “visibly intoxicated” does not depend on blood alcohol content or number of drinks. “Essentially what you have to show is at the premises that the person was displaying signs of intoxication: blood shot eyes, slurred speech, trouble walking or standing up or sitting, maybe loud and boisterous.”

5. Assign party marshals.

Designate management-level employees who shouldn’t drink to monitor how much alcohol guests are consuming and watch for problems.

“Be your own bouncer,” says Murray Insurance’s Sheri Riley.

6. Serve beer and wine only.

Hard liquor makes people get drunker faster.

7. Enforce drink limits.

Consider drink tickets to curb drinking—two tickets per person perhaps.

8. Monitor minors.

If you employ people under 21, make it clear that underage drinking won’t be tolerated, and alert bartenders to the fact that minors are attending.

“Courts will absolutely extend liability on social hosts who provide alcohol to minors. They have been reluctant to do so when the alcohol is provided to someone of age because that person is an adult and has their own judgment. It is a practical issue that all employers should be cognizant of regardless of whether there is ultimate liability or not,” says Jody Shelby.

9. Celebrate during business hours.

Social gatherings during business hours mitigate tendencies to over-drink. Consider hosting a breakfast or lunchtime gathering or close the office for an afternoon buffet. Even a weeknight celebration can be effective.

10. Serve plenty of food.

Alcohol consumed with food is absorbed more slowly than alcohol consumed on an empty stomach.

11. Plan activities.

Activities limit people’s focus on the bar, giving them something to do besides drink. Perhaps a themed event such as a skating party or something to support a charity.

12. Have a last call.

Stop serving alcohol several hours before your party ends; serve more food and alcohol-free drinks.

13. Arrange transportation home.

Schedule designated drivers, shuttles, or provide car or taxi service. Also plan to have cash on hand for those who didn’t

foresee the need for taxis. It’s not enough just to ask your inebriated guests if they’ll be okay as they’re leaving.

“If they are visibly intoxicated,” explains Michael Kelley, “it doesn’t matter whether you thought they had a ride home, it doesn’t matter whether you thought they were going to be in a car driving home or not, you have an obligation to make sure they get home safely. Call them a cab, call a family member to come get them, and make sure you physically watch them as they get into the cab or into the sober family member’s automobile to go home, or if they live nearby, have a sober person walk them home.”

14. Avoid overnight accommodations.

Liquor and bedrooms are not a good combination.

Barley Snyder’s Dave Keller has “known of more situations where employers have held the event at a hotel where rooms are available to avoid having employees drive after imbibing, but in those cases the sexual harassment issue raises even more concerns. There is not only the potential for legal liability where two employees go to a room together—force/consent issues or regretted sex can all lead to those—but also the issue of working relationships after the evening is over.”

Here’s more party-planning sex education.

15. Invite spouses.

Spouses, significant others, and even children keep employees on their best behavior.

16. Avoid slow, sensual music.

“Santa Baby,” “I Saw Mommy Kissing Santa Clause,” or anything by Barry White is asking for trouble.

17. Boycott mistletoe.

Even Santa isn’t safe—run from anything that encourages kissing, hugging, or touching.

18. Have a dress code.

Suggest attire that keeps things professional rather than provocative.

Secure a Plan for Emergencies

The range of inappropriate conduct is broad, and how to intervene varies as a result.

“It depends on the situation, but if it is somebody who has had too much to drink and is falling down drunk—or in the words of the law ‘visibly intoxicated’—you as a supervisor, a manager, an owner of a business have a responsibility to step in to remove the person from that environment and make sure they get home safely,” Michael Kelley explains.

You can game-plan for emergencies by talking with management about how to handle such situations. Here are some points for that meeting’s agenda.

19. Intervene.

Someone with authority should respond immediately and have reliable back up in case you actually need to take someone’s keys away in the case of intoxication. Also, take claims of sexual harassment seriously.

“Even if an employee comes to you in an informal setting and reports a claim of what they believe is harassment, it doesn’t matter if the setting is informal,” cautions Michael Kelley. “You still have a duty as a supervisor to follow up and act upon that report just as if they made this report in a business setting.”

20. Obtain both sides of the story.

Also talk to the alleged defender to get his or her side of the story.

21. Document.

Within the next day, make notes of the happening and related conversations.

22. Consult with legal counsel.

23. Take action.

Based upon the outcome of all talks, follow up and take action, up to and including firing the problem employee.

24. Be fair.

Treat same-sex harassment and men reporting harassment the same way you would treat women reporting harassment.

Maybe We’ll Give Fruit Cake Instead

Before you cancel the festivities, know that litigation relating to holiday parties is not rampant. Most people don’t go to office holiday parties just to drink or hook up or act foolish or get hurt, but you need a plan to mitigate potential problems. Even if claims don’t evolve into liability, episodes arising from misconduct in business social settings cause bad publicity, affect morale, and can be embarrassing, inconvenient, and expensive.

David Keller underscores that “employer officials will spend a great deal of time planning and executing their defense, and legal costs including time spent defending at administrative agencies and in court can easily reach six figures. Employers may or may not have insurance that covers all aspects of these claims. Even a claim without legal merit can be very costly.”

“Do a risk management thing—not an insurance thing,” reminds Sheri Riley. “Make sure your employees are safe and treated with respect.”

Taking a smart and practical approach to your holiday office party will allow you to spread cheer and maintain a safe and healthy environment for your employees. Doing so also enables you to cross off the last checklist item ...

25. Rest assured and enjoy the holidays!