

Party Over Here...Party Over There
Let the Party Begin...
Fa La La La La... Or is it?
Ho Ho Ho: Holiday Party Facts You Should Know

Grown-ups are curious creatures. Whether we want to admit it or not, we want to be appreciated and rewarded for doing a good job at work. As employers, we try to think of unique ways to show our employees that we appreciate them. One way that employers show their appreciation to employees is by providing office parties especially during this holiday season. There are employee office parties being planned at hotels, restaurants, the office, or even at the boss's home. Employees love it; it builds morale; it is a great motivator. And after all, who doesn't love a good party!

Sounds like such a positive thing. So, what could be the down side? Well as it turns out, some states hold that the employer may be held liable if a person consumes alcoholic beverages at a company-sponsored party and subsequently causes an accident. Wow! Who knew that something purely fun, meant to be an employee benefit, could actually be such a potential employer liability?

Most of the time, the potential liability comes in the form of drinking and driving accidents. Driving while either intoxicated or drunk is dangerous and drivers with high blood alcohol content (BAC) are at an increased risk of car accidents, highway injuries, and vehicular deaths. Unfortunately according to the Department of Transportation's preliminary findings, there are some scary statistics about drunk driving. Drunk drivers each year cause over twenty percent of all traffic fatalities in the U.S. There is an alcohol related traffic fatality every 33 minutes. In 1999, 15,794 people died in alcohol related crashes. Actually, because of all the publicity and community campaigns such as MADD (Mothers Against Drunk Driving), SADD (Students Against Drunk Driving), church and community groups with "After Proms", and many insurance company promotions warning about the effects of drinking and driving, this number is actually at it's lowest level since the DOT began keeping records in 1975. That is great, but last year during the holiday season, between Thanksgiving and New Year's Day, 1644 people were killed in alcohol related accidents—many after holiday parties. That is simply too many! We should remember that every single injury and death caused by drunk driving is TOTALLY preventable.

According to the Insurance Information Institute, forty-two states and the District of Columbia have laws that hold liquor servers liable for the damage a drunk driver causes. These states have liquor liability laws that are designed to help curb drunk driving by making sellers of alcohol more careful about how they serve drinks. But these laws only apply to bars and restaurants—right? Well, they definitely apply to restaurants and bars, but some courts hold that through "Dram Shop" (tavern) or Common Law Liability principles (which essentially serve the same purpose), they may apply to employers who provide alcohol at company parties also. Generally, both require a plaintiff seeking damages against a "tavern" owner to prove that the "tavern" had caused the injury by not

exercising proper care in the sale of alcohol either to minors or to intoxicated guests/customers. In other words, they were acting with negligence.

The first cases in which a noncommercial supplier of alcoholic beverages was held liable for furnishing liquor to an intoxicated employee at a company Christmas party in California in 1972 occurred when that employee was in an auto accident after leaving the party. The company was ordered to pay damages because they were considered a “social host”. Georgia, for example, has held that an employer who has an “open bar” company party could be subject to the “dram shop” liability if they served an intoxicated employee or a minor. In Oklahoma, the possibility of financial gain or business endorsement may cause the employer to fall within liability of a “dram shop”. In New York and Illinois, “social hosts” are held liable for the actions of the intoxicated person. In contrast, Colorado exempts “social hosts” from liability unless the host knowingly and willingly serves liquor to a person under 21 or a visibly intoxicated person. The definitions of “furnishing”, “negligence”, and “social host” are unfortunately not always easily definable as they vary by state. So, potential employer liability is gray at best where alcohol is served at company social functions.

In the past, courts have been reluctant to recognize the right of action against “social hosts” relying in social settings on the principle that it is the consumption and not the serving of alcoholic beverages that is the proximate cause of liquor-related incidents. However, social concern with the problems of intoxicated drivers has caused some states to re-evaluate their position. Do you know where your state stands on this issue? If not, consult your risk manager.

But I have insurance for this kind of potential liability. Right? Yes, all Commercial General Liability policies include liquor liability for “bodily injury and property damage” if you are not” in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.” The question is raised regarding whether a business needs special insurance against liability arising out of social entertaining or if it is covered under the Commercial General Liability policy. Obviously, exposure at business social settings such as holiday parties where the employer provides alcohol could come under the principle of common law negligence. Here is a good rule: where alcoholic beverages are provided without a charge OF ANY KIND, there is no exclusion in the CGL policy that would eliminate coverage in this situation. Entertaining customers or employees with alcoholic beverages is not the equivalent of being engaged in the business of selling or serving alcohol. However, the courts have held that the issue is not so clear where the party host sells alcohol or has an admission charge for the event. As a matter-of-fact, some states even hold that liability arising out of incidents where the insured serves liquor for a charge is the hosts’ responsibility thus, excluding the insured from insurance coverage. This doesn’t mean that you couldn’t be found liable for damages; it means that you wouldn’t have insurance coverage for the potential liability for your company. So be very aware of your state’s laws.

Sound kind of like doom and despair where parties are concerned? It certainly doesn’t have to be. It is all a matter of minimizing your liability risks. There are a number of creative ways to minimize your risks and maximize your fun at the same time:

- Plan lots of group activities to keep the focus away from drinking
- Offer a variety of non-alcoholic drinks; have a recipe contest before the party and serve the winners concoction at the party
- Don't push alcoholic drinks
- Have two punch bowls, one with alcohol and one without. Keep the one without constantly full
- Serve lots of foods rich in starch and protein as they stay in the stomach longer and slow the absorption of alcohol in the bloodstream
- Appoint designated drivers at the beginning of the evening and give them a special prize or reward for being the designated driver
- Arrange for discounted hotel rooms when a party is at a hotel so that guests don't have to drive home
- Have a shuttle or taxi arranged to take people home
- Make sure your bartender has training on serving guests and what the rules are for your state
- Close the bar 90 minutes before the party ends; only time sobers someone
- Designate managers to be responsible for implementing the company's alcohol and substance abuse policy
- Have a breakfast or lunch party instead of an evening party; alcohol is not expected
- Try an indoor carnival with proceeds going to a local charity instead of a traditional party
- Have employees display their talent with funny skits and/or musical selections
- Have employees decide if they would prefer to donate the money that the company would spend on a holiday party to a charitable organization
- Go to an amusement park or a local theatrical production

Remember the following drinking myths are not true:

- That coffee can sober someone.
Really, it takes about 1 hour to metabolize each drink.
- Hard liquor is more intoxicating than beer or wine.
In fact, a 12-ounce beer, a five-ounce glass of wine, and a 12-ounce cooler contain the same amount of alcohol.

While society has done much to improve highway safety, you can do much to protect yourself from drunk drivers.

- Don't drink and drive and don't ride with anyone who has had too much to drink
- Volunteer to be the designated driver
- Always wear your safety seat belt
- Avoid travel late at night—especially on weekends
- Choose vehicles with airbags
- Drive defensively

So whether you decide to have alcoholic beverages at your next company fa la la la or not, make sure that you understand that there are potential repercussions. More importantly, look at alternatives and minimize the risks to your company. Then, let the party begin!