

DON'T INVITE A BAD SANTA TO YOUR HOLIDAY OFFICE PARTY

With Thanksgiving now behind us, we are officially into the holiday season. Many businesses are planning a variety of holiday events to celebrate the season. Among the many business-related activities organized, the annual holiday party is the most common and potentially exposes employers to a variety of different types of liability, especially where alcohol is served. While the view of drinking, eating, and jollity with fellow co-workers, subordinates, and superiors may seem innocent, I can assure you that it is anything but a good time when Bad Santa appears. What seems like a festive occasion during the most wonderful time of the year is, if not proactively planned and executed, is an invitation for potential employment law claims, liability, and consequences.

Over the years I have counseled many of my corporate clients about how to minimize the risks of claims, liability, and consequences which include DUI-related incidents, discrimination and sexual harassment claims, and violent behavior resulting in assault complaints by an employee or guest. We have all seen or heard about employees and guests whose behavior is so inappropriate at the holiday office party or event that I refer to them as a Bad Santa. Avoiding the appearance of a Bad Santa reduces your exposure for potential employment law claims, liability, and consequences.



The purpose of this column is to share some of the recommendations I have advised my clients over the years to engage to avoid the appearance of Bad Santa at their holiday office parties and events.

Create a new type of holiday office event. Consider a new type of holiday event outside of the traditional holiday party. Several of my clients now host a day of giving back to the community by holding an event in which their employees all volunteer together at one or more local charities. These types of events are alcohol-free and often the gift of selfless giving profoundly impacts the volunteers.

Review and remind your employees of your policies and procedures regarding discrimination, harassment, and other intolerable behavior. If you decide to host an office holiday party, at least a week before the holiday event, you should review your company's policies and procedures, including those relative to discrimination and harassment, to ensure that you are familiar with what is and is not appropriate behavior for your employees. Send an e-mail or memo the day before the event reminding your employees that they are expected to adhere to your company's policies and procedures including discrimination and harassment, during your office holiday party. Similarly, a holiday office party is still a work event. Communicate to your employees that they should dress in at least what we consider to be business casual attire and that they should limit their alcohol consumption if alcohol will be part of the party. Make your employees aware that you will not tolerate misconduct of any kind.

Serving Alcohol. In my experience, alcohol is often the fuel for somebody who is viewed as the model employee being turned into a Bad Santa. Employees and guests must not be allowed to consume excessive amounts of alcohol. One suggestion to control the flow is to supply attendees with a fixed and limited number of drink tickets or offer a cash bar. You may wish to have the bar open for a limited period of time at the beginning of the event, or close the bar at least one hour before to the end of the event. Serve only beer and/or wine, excluding all hard liquor. Utilize a professional bartender or hold the event at a location offering bartending services. Allowing employees to serve themselves could encourage them to pour too generously or consume alcohol too frequently. Make sure that you offer many non-alcoholic beverages and plenty of food. Designate individuals who will not drink at the event to monitor alcohol consumption. Importantly, have a system in place to get intoxicated people home safely, such as Uber, Lyft, or other local transportation options, and in which the costs are incurred by the company. This will avoid giving employees control over the decision to drive at a time when they are tired and unwilling or unable to make their own arrangements.

Maintain a neutral environment. Do not permit games, decorations, or other sexually charged traditions that could expose your company to liability.

Shift your gift exchange to charitable giving. Nobody should offer an inappropriate gift to the office gift exchange. Too often there is somebody who finds it entertaining to offer a type of gift which may lead to the potential for sexual harassment complaints associated with the office gift exchanges. Instead of an employee holiday gift exchange, solicit donations to be made to one or more charities.

End the event at a reasonable hour. If your party will not begin until later afternoon or early in the evening, end the event at a reasonable time. Bad things can happen late at night, especially when people drink and have had hours to do so.

Broaden the invitees to your office holiday party. As another way to help temper inappropriate behavior is host a holiday party which allows employees to invite their significant other, a plus one, or even children.

Host a religious neutral event. When planning your office holiday party, be mindful to select a name for the event that is non-religious to avoid complaints of religious discrimination. Do not assume that everyone celebrates a particular holiday. Many holidays are celebrated during December including Kwanzaa, Hanukkah, Christmas, Festivus, etc. Be sensitive to the fact that we're a diverse country with diverse holidays and rituals. Similarly, you should also inform all employees that their participation in the office holiday party is voluntary and that there are no repercussions for failing to attend.

Eliminate suggestive behavior. Avoid displaying mistletoe because it is likely to incite unwelcome behavior.

Promptly investigate any claims of inappropriate behavior. As soon as you become aware of inappropriate behavior through observation or from a complaint, promptly engage your investigation and remediation protocols contained in your company's policies and procedures. A uniform and fair application of your company's policies and procedures is important to avoid a claim of selective enforcement.

Although these recommendations are not overly complicated or Draconian, keeping them in mind while formulating and implementing the plans for your office holiday party or event will help you to minimize the risks of employment law claims, liability, and consequences at your holiday office function.

The contents of this column are not intended to be a complete summary of the legal issues discussed in this column. Rather, this column is intended to alert you to the broad impact of changes in the law or the means in which to comply with the law to reduce the risk of liability and claims. Because of the complexity of the law, it is recommended that all employers consult with experienced labor and employment counsel to ensure that all policies, procedures, and practices are compliant with applicable state and federal law. Please feel free to reach out to the author at jroth@TheRothLawFirm.com with any questions or comments.