

MANAGING THE HOLIDAYS: MAKE A LIST AND CHECK IT TWICE

Now is the time for employers to make their holiday lists and check them twice. While it is the season to be jolly, it is also a time of year when employers face additional employment law concerns that arise from events unique to the holidays, including the company party and requests for time off. But with some advance planning, employers can start the new year on the right note.

The Office Party

Holiday parties are a great way to show appreciation to employees for dedication and hard work. But they can also expose employers to liability for harm caused by employees who become intoxicated during the festivities.

For example, parties can be fertile ground for unwanted sexual overtures that result in harassment complaints. While a onetime incident at a Christmas party, even if inappropriate, may not necessarily be sufficiently pervasive to constitute harassment, it may be when coupled with previous incidents of harassment. Moreover, courts have recognized that a onetime incident, if severe enough, can constitute harassment. Additionally, employers may be exposed to lawsuits if intoxicated employees leave and are involved in car accidents.

Employers can reduce their potential liability by acting to control unprofessional behavior at parties. To begin with, they should have legally defensible policies addressing alcohol abuse and harassment. Beyond that, here are some tips for making holiday gatherings safer:

- When announcing the party, remind employees to drink responsibly, and remind them the employer's work rules and standards of conduct apply at the party.
- Tell employees that if they drink, they must have a designated driver.
- Have the party off-site and use professional bartenders to serve drinks.
- Make sure the bartenders have been trained to request proof of age from anyone who looks too young to drink; to not over-pour drinks; to not serve alcohol to anyone who is visibly intoxicated; and to notify a member of the Human Resources department if someone is consuming too much alcohol.

- Make sure there are plenty of non-alcoholic beverages available.
- Make sure there is ample food and entertainment to prevent drinking from becoming the focus of the party.
- Limit the length of the party and stop serving alcohol at least one hour before it is scheduled to end.
- Do not hang mistletoe.
- Hire a security service or an off-duty policeman or security guard to be present during and after the party.
- Tell employees the party is a voluntary social event and attendance is not required.

Holiday Pay and Time Off

The application of wage and hour, discrimination, and contract laws should also be considered during the holiday season.

The Fair Labor Standards Act (FLSA) does not require paying a premium to employees who work on holidays. Also, under the FLSA, employers may close on a holiday or give employees the holiday off without being obligated to pay non-exempt employees for the day.

However, many employers' policies provide for holiday pay or leave time, and employers should generally follow their own policies. If an employer chooses to grant paid holidays, questions may arise regarding compensation for non-exempt employees who are required to work on the holiday.

As a general rule, holiday pay does not count as time worked. So, unless the employee actually works more than 40 hours during the workweek, he or she may not be owed overtime under the FLSA. Employers must pay exempt employees for the full week when they close for a holiday, provided the employees have performed any work during the workweek.

Finally, discrimination laws require an employer to accommodate an employee's request for time off for a religious holiday unless doing so would cause the employer undue hardship.

While the holiday season is generally a time of joy, it can also be a stressful time for employers and employees alike. By planning and checking their lists twice, employers are more likely to have Happy Holidays!

This Employment Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

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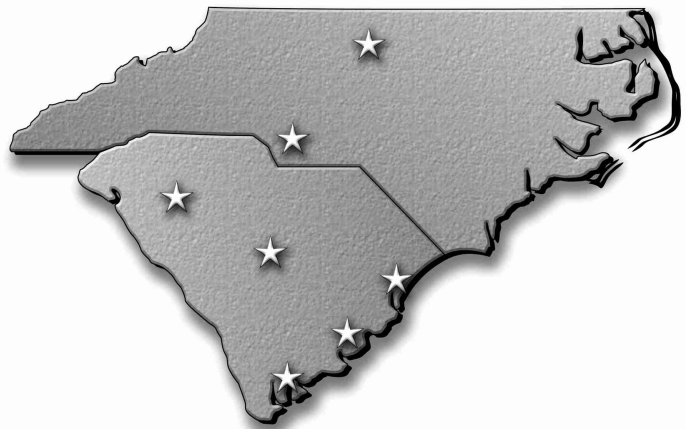
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