

FTR Now

Ensuring a Safe Holiday Party

Date: November 14, 2019

The holiday season is a time for celebration. For many of us, this may include workplace celebrations. All employers, big or small, should ensure that in addition to traditional party logistics, they take the time to develop a plan for providing a healthy and safe environment for employees and guests at any workplace celebrations.

In this *FTR Now*, we are pleased to bring you our annual checklist of potential measures to help plan a safe holiday celebration for all.

The Law on Employer Liability

Although workplace celebrations can be a positive teambuilding experience, they can also attract liability for employers and individuals. By hosting a social event, employers face a risk of liability that is different from their day-to-day operations. Courts have signalled that especially where an employee is permitted to drink too much at a work-related function, an employer may be held at least partially responsible for any potential damages that arise as a result. For example, should an intoxicated employee drive home following a workplace party, the employer may face possible liability for any related injury to the employee or to an innocent third party. This doesn't mean that employers need to stop hosting workplace functions, but they must be aware of the safety-related liability associated with the event and be proactive in managing that risk.

Employers may also have liability for actions of employees at a workplace function, such as those of an employee who becomes impaired at a workplace function and then engages in inappropriate behaviour, which can include sexual harassment. Employers should be cognizant that their obligations under the *Occupational Health and Safety Act* to provide a workplace free of harassment don't cease just because they are hosting a party. These obligations extend to workplace functions like holiday parties.

While alcohol is often a factor in incidents at workplace functions, liability can arise even in the absence of an alcohol-related incident. An Alberta court found an employer liable for the death of an employee where the employer allowed its employees to operate faulty, rented equipment (a calf-roping machine) at a work-related function, without proper training or oversight.

Issues of intoxication may also rise from substances other than alcohol. With the legalization of recreational cannabis in 2018 and the recent legalization of cannabis edibles, there may be a concern with impairment from cannabis use during workplace functions. Employers should review their policies regarding cannabis use, which may specifically prohibit the use of recreational cannabis at work-related functions. Employers need to set clear expectations regarding cannabis use at any workplace function and limit the risk of intoxication, of any kind, at a holiday celebration in the workplace.

Should incidents arise at a holiday party, employers can still hold employees responsible for their actions, where appropriate: note that a British Columbia court upheld a termination for cause where a management employee engaged in inappropriate behaviours (including physical contact of a sexual nature with a subordinate) at a holiday party and "after party."

Holiday Celebration Checklist

Prudent employers should take steps to provide all attendees with a safe and enjoyable environment, and to provide safe transportation options for returning home following the holiday celebration.

Safety Tips

- In the lead up to the event, set consistent expectations for behaviour and remind employees that all workplace rules and policies remain in effect during the event, including with respect to sexual harassment, harassment and workplace violence. Where applicable, draw their attention to any policies that prohibit cannabis use during work-related functions.
- Ensure employees are familiar with the harassment reporting procedure and are comfortable coming forward with any complaints.
- Do not have any games, activities, or decorations that could encourage inappropriate behaviours (e.g. hanging mistletoe).

If your celebrations will include the consumption of alcohol, consider adopting the following safety-enhancing measures:

- Before the event:
 - Inform employees that they are not to drink and drive.
 - Plan to provide a supervised limited bar and serve food.
 - Arrange for a trained third party to tend the bar and serve the drinks to employees and guests (they can monitor consumption and/or impairment).
- At the event:
 - Remind employees that they should not drink and drive.
 - Close the bar an hour or more before the party ends.
 - Designate an appropriate employee to monitor employees' alcohol consumption and to deal with circumstances in which an employee appears to be impaired and/or intoxicated.
 - Consider utilizing a ticket system to limit the number of drinks an employee or other guest may be served during the party.
- After the event:
 - Set up alternative transportation options for employees prior to the party, and be sure to communicate those options clearly to employees.
 - Provide taxi chits to employees, and do this at the outset of the event. Designate employees to proactively distribute additional chits as necessary.
 - Consider establishing carpools with designated drivers who agree not to drink at the event.
 - Assist in arranging for hotel rooms for employees who live far from the event, perhaps by arranging a reduced rate with a nearby hotel.

Even when employers take positive steps to limit impairment, some employees may still become intoxicated. If employers identify intoxicated employees or guests, they should take positive steps to ensure that the employee does not drive. For example:

- Consider a system whereby employees leave their car keys with an attendant at the start of the evening instead of having to remove keys from an intoxicated guest later in the evening.
- Arrange to have a sober co-worker drive the employee home.
- Call the employee's emergency contact (don't just offer to do so).
- Insist that the employee take a cab, and pay for the trip.
- If all else fails, and the employee insists on driving in an intoxicated state, call for police assistance.

By having a plan in place for these situations ahead of time, employers can help avoid many of the problems associated with excess alcohol consumption. Some forethought by employers can help to ensure that an enjoyable and safe time is had by all.

We wish you and your employees an enjoyable and safe holiday season.