

FTR Now

Enjoying a Safe Holiday Party in COVID Times

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The holiday season is a time for people to come together and celebrate. As COVID-19 circumstances evolve, many employers are intending to return to in-person workplace celebrations for the first time since December 2019. All employers, regardless of size, 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 liability risks that are different from their day-to-day operations. Courts have signalled that employers may be held at least partially responsible for negative consequences and damages flowing from their work-related social gatherings. For example, should an intoxicated employee drive home following a workplace party, the employer may face liability for any related injury to the employee or to an innocent third party. This does not 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.

Health and Safety/Harassment

Employers may face liability for actions of employees and their guests at a workplace function; for example, where an employee or guest engages in unacceptable behaviours such as sexual harassment. Employers should be cognizant that their obligations under occupational health and safety and other legislation to provide a safe and healthy workplace, free of harassment and discrimination, do not cease just because they are hosting a party. These obligations extend to workplace functions such as holiday parties, which means the function should be properly planned, monitored and supervised.

Note that should incidents arise at a holiday party, employers can hold employees responsible for their actions, where appropriate. 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.”

Intoxication

Alcohol is often a factor in incidents at workplace functions. Issues of intoxication, however, may arise from substances other than alcohol. With the legalization of recreational cannabis, there is a significant potential for 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.

COVID-19 Considerations

To date, the courts, adjudicators and regulators have all been reluctant to find employer wrongdoing or liability in relation to COVID-19 if they have complied with government and public health requirements and guidelines.

If there is one thing that we all have learned in the past 2.5+ years, COVID-19 circumstances and related health and safety requirements change rapidly and are very difficult to predict. At the time of this publication, public health and government guidelines are such that in-person workplace holiday celebrations generally can proceed in a legally compliant manner. However, employers should be alert to quickly changing requirements. For example, in the past two years, surging case counts around the holidays led to last-minute changes to gathering-size restrictions. As recently as this morning, Ontario's Chief Medical Officer of Health strongly recommended that persons mask while in indoor public places.

Employers have maintained workplace COVID-19-related protocols towards achieving a healthy and safe workplace, reducing exposure to liability and maintaining a sufficient complement of healthy employees attending and performing work.

So which COVID-19 protocols should employers have in place for their holiday party? The short answer is this: since an employer's holiday party is an extension of work and the workplace, employers should also extend to the party COVID-19 protocols that are consistent with both (i) their existing workplace COVID-19 protocols and (ii) public health and government guidelines.

Given the less structured and challenging environment of a holiday celebration, some adaptations and additional COVID-19 protocols may be appropriate for your event. Examples of these COVID-19 measures are listed below in the checklist.

Holiday Celebration Checklist

- 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 for both employees and their guests, including with respect to harassment, sexual harassment, workplace violence and COVID-19 protocols. Where applicable, draw their attention to any policies that prohibit cannabis use during work-related functions.
- Reinforce to employees that they are responsible for the behaviours of their guests and must ensure that their guests comply with all of the policies and protocols for the event.
- 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.
- 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 and guests 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 and guests 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 and guests prior to the party, and be sure to communicate those options clearly to employees
- provide taxi chits to employees at the outset of the event and 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 intoxicated person is not driving. For example:

- consider a system whereby employees and guests leave their car keys with an attendant at the start of the evening instead of having to remove keys from an intoxicated person later in the evening
- arrange to have a sober co-worker drive the intoxicated person home
- call the intoxicated person's emergency contact (don't just offer to do so)
- insist that the intoxicated person take a cab, and pay for the trip
- if all else fails, and the intoxicated person insists on driving impaired, call for police assistance

Regarding COVID-19, consider the following measures for your in-person holiday events:

- send out advanced written communications reinforcing that the employer's COVID-19 workplace and public health protocols will apply at the holiday party and that all employees and guests are expected to comply
- post signs at the event venue identifying these same protocols
- due to the extra challenges of maintaining physical distancing at the event, ask employees and guests to remain seated while eating and drinking, avoid handshakes, and try to maintain physical distancing; similarly, keeping music volume at a modest level will assist with physical distancing
- ask employees and guests to complete COVID-19 tests prior to and after attending the function, and ask them not to attend if they or household members have tested positive or have any symptoms
- make hand sanitizer and masks available at the event location
- have designated individuals monitoring and enforcing all COVID-19 protocols during the holiday function

By having a plan in place and tailored protocols communicated well ahead of the holiday celebration, employers can help avoid many of the problems associated with these events, including excess alcohol consumption, the less structured (and perhaps less inhibited) environment of a social gathering, and COVID-19. Some forethought by employers can help to ensure that an enjoyable, healthy and safe time is had by all.

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

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