



Checking It Twice: Ensure Your Employee Handbook Addresses Holiday Parties

December 2023 Employer Alert

With the holidays just around the corner, many employers will be hosting company holiday parties. A company holiday party can be a great way to encourage employee engagement and boost retention. However, company holiday parties do not always go according to plan. Unfortunately, sometimes employees will consume too much alcohol, engage in inappropriate conduct, etc. To avoid potential issues and to minimize potential liability, it is important that your employee handbook addresses various topics of concern for company holiday parties.

First, your employee handbook should have a specific provision on company events. There are various issues to be addressed by this provision. This includes confirming that attendance is voluntary (or that compensation will be provided), that alcohol is to be consumed in moderation, that no one is to engage in any problematic or criminal conduct, and that the company is not liable for any losses or injuries.

Second, your employee handbook must include workplace violence, workplace harassment, and workplace sexual harassment provisions. These provisions are all required pursuant to the Ontario *Occupational Health and Safety Act* (or the applicable provincial health and safety legislation). In the event of problematic conduct at a holiday company party, these provisions will guide you in handling the investigation and response to the conduct. This in turn may reduce or eliminate your liability for the

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conduct.

Third, your employee handbook must have a workplace accident provision. If a worker is injured at a company holiday party, the company should adopt at least some of the workplace accident response procedures (e.g. calling 9-1-1, reporting the injury to management, etc.). Whether the accident is to be treated as a workplace accident, will depend on the facts. If it is required to be treated as a workplace accident, then various legislative obligations and legislative reporting obligations will be triggered. As an example, in *Decision No. 551/19*, the Workplace Safety and Insurance Tribunal held that an employee twisting her ankle during a game at the company holiday party was covered by the *Workplace Safety and Insurance Act*. The Tribunal held that company holiday parties can be work-related for the purposes of the *Act*. As a result, the Tribunal held that the employee could not file a civil action against the employer in regards to her injuries.

Together these provisions can help avoid potential issues and minimize potential liability in regards to company holiday parties. The consequences for failing to properly address company parties was learned by the employer in the Ontario Superior Court decision of *K.L. v 1163957799 Quebec Inc. (c.o.b. Calypso Theme Waterpark)*. In that case, the employer hosted an end-of-season-work party, during which an employee was sexually assaulted by her supervisor. The employee then sued the company. The company brought a motion to dismiss the action on the basis that it should not be held liable for the supervisor's conduct. The company relied on the fact that it had investigated the matter and had dismissed the supervisor. In review of the motion, the Court held that, while there were certain aspects of the employee's claim that should be dismissed, the employee could still sue the company for negligence. The basis of this decision was that the company had no workplace policy regarding sexual harassment, that the company had allowed employees to bring their own alcohol, and that the company had allowed employees to drink as much as they wanted to at the party.

For more information or for assistance with addressing company

holiday parties, please contact **our firm**.

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