

## 6 action items for the holidays



Ryan Neumeyer | Saturday, December 9, 2017

### 1. Prevent harassment

In today's world of Harvey Weinstein and other high-profile harassment cases, employers need to ensure that their holiday parties are harassment free.

- Employers should re-release a copy of the company policy on harassment and have all employees sign. Include a paragraph on appropriate and inappropriate language and actions at social events, such as holiday parties. Take this time to educate employees regarding company harassment policy and the law. If inappropriate conduct is reported, investigate such conduct and discipline accordingly.
- Avoid actions that may encourage inappropriate conduct. Do not play inappropriate games. **Do not hang mistletoe.** Make sure the company dress code applies.
- Allow family and guests to attend. Employees are more likely to behave appropriately if family is present.

### 2. Avoid alcohol related issues

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In a perfect world, everyone would behave and drink responsibly – but this is not a perfect world. Whether employers allow alcohol at their holiday party or not depends on how much the company is willing to risk. To play it safe, employers should consider not including alcohol at all. Have a holiday party at noon and then provide your employees with the rest of the day off. This would relieve the company of liability that it may have in relation to providing alcohol at a company event. If this is not possible, below are some suggestions for employers when alcohol must be present at the party:

- Have a third party serve the alcohol.
- Check IDs and have wristbands or some other method for determining if guests are of age.
- Schedule the party during the day.
- Provide food and non-alcoholic beverages.
- Have a cash bar.
- Have a system to limit the amount each person may consume, such as a ticket system. Or stop serving alcohol at a certain time.
- Provide some form of transportation, such as a taxi or Uber.
- Provide lodging if the venue is far from employees' homes.
- Provide notice of expectations for responsible drinking. In the invitation and other correspondences related to the holiday party, the employer should state that the use of designated drivers is encouraged and all attendees should drink and behave responsibly, should they choose to consume alcohol. The employer should post similar language at the holiday party, near where drinks are served.

### 3. **Prevent workers' compensation claims**

If an injury occurs at the party, an employer may be liable. Many states provide employers with the ability to require their employees to release them when the employees choose to attend company sponsored recreational events such as holiday parties.

### 4. **Prevent discrimination claims**

Discriminating on the basis of religion is illegal under both federal and state law. Thus, employers can run afoul of such laws by

favoring one religion over another. In order to ensure compliance:

- Consider calling the party a “holiday party,” rather than a Christmas party.
- Do not display religious symbols at the holiday party.

### 5. Eliminate wage and hour issues

An employer may owe non-exempt employees for attending the party depending on the circumstances. Some tips on eliminating or reducing pay during a holiday party are:

- Hold the event offsite and outside regular work hours.
- Provide employees paid time off during the workday to attend.
- Make the event voluntary.
- Avoid business related awards and speeches at the event.

### 6. Handle bonuses, gifts and taxes appropriately

Holiday bonuses typically are exempted from inclusion in the regular rate for overtime calculations. Section 7(e)(1) of the FLSA provides that the term “regular rate” shall not be deemed to include “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.”

If the bonus paid at the holiday or on another special occasion is a gift or in the nature of a gift, it may be excluded from the regular rate under section 7(e)(1). This is true even though it is paid with regularity so that the employees are led to expect it and even though the amounts paid to different employees or groups of employees vary with the amount of the salary or regular hourly rate of such employees or according to their length of service with the firm, so long as the amounts are not measured by or directly dependent upon hours worked, production, or efficiency. For example, a holiday bonus paid (not pursuant to contract) in the amount of two weeks’ salary to all employees and an equal additional amount for each five years of service with the firm would be excludable from the regular rate.

Year-end bonuses separate from regular wages are supplemental wages that require employer and employee withholding for payroll taxes. As an employer, you may withhold at the fixed supplemental rate of 25 percent for most bonuses. Or, if compensation is treated as one payment together with regular wages, then withhold using the ordinary withholding rates for regular wages.

Also remember that holiday gifts may be considered taxable wages unless they are considered *de minimis* fringe benefits. Employees do not have to recognize income for gifts that have only nominal value – for example the holiday ham, fruitcake, or an inexpensive bottle of wine. Cash or gift cards, however, are not *de minimis* benefits and must be included as taxable income through W-2 reporting.



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Team member bio