

Avoiding Vicarious Liability For Holiday Season Parties: Drinking and Driving

By Robert G. André

Many employers sponsor holiday parties where alcoholic beverages are served. As the holiday season approaches, employers should review their policies and procedures relating to employer sponsored parties. Remember--an ounce of prevention is worth a pound of cure.

LEGAL BACKGROUND

The Washington State Supreme Court has, in recent years, broadened the scope of potential liability for employers who furnish liquor to employees who then drive and injure others. In *Dickinson v. Edwards*, 105 Wn.2d 457 (1986), the Court discussed two theories of recovery by victims against employer hosts. First, an employer can be found liable if it furnishes liquor to an obviously intoxicated employee, and then allows the employee to drive, injuring another. Even if drinks are not actually served by the employer, an employer will be deemed to "furnish" liquor if it has directed those serving, or if management is present and observing during serving.

Second, if the holiday party is of "benefit to the employer," a victim injured by an intoxicated employee may also recover on a vicarious liability theory. Questions a court will look at under this theory include whether the employee's presence was requested or required by the employer; whether the employer deducts the cost of the function; and whether the function is undertaken to enhance employee relations.

PRACTICAL GUIDELINES

Considering these legal liabilities, employers can take the following preventative steps.

- If the function is indeed purely a social event, then, to avoid "vicarious liability," make sure it is labeled as such rather than an event to enhance employee relations.
- On any announcements, state that the event is a "social function."
- State expressly that attendance is not required.
- Rather than pay for and deduct the expense of the function from taxable income, either pay for the event without deduction, or have the participants pitch in to pay for the event.

Of course, most employers may want to sponsor holiday parties expressly to enhance employer relations. Therefore, the above steps would not be practical. Furthermore, even if the above steps are followed, an employer might not be shielded against liability under a "furnishing liquor to an obviously intoxicated employee" theory. Thus, regardless of whether the above steps are taken, the following should also be taken:

If the function is hosted by a paid third party such as a restaurant, expressly direct (in writing if possible) that the host not serve liquor to any employee who appears intoxicated.

- Announce to employees ahead of time that no one should drink and drive.
- Management or designees of management should observe whether any person is becoming "obviously intoxicated." Direct that such persons be served nothing more.
- If an employee does manage to reach a level of obvious intoxication, arrange for that person's ride home. Do not let the person drive.
- If the employer desires that glasses should be kept filled, then provide cab service, designated drivers, or other alternative means of transporting employees.

If you have any questions at all concerning the above, please feel free to call one of the attorneys at Ogden Murphy Wallace, P.L.L.C.

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