



Keeping the Holidays Happy and Liability-Free

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The holidays are nearly upon us. While everyone hopes for a happy holiday season, we understand that, for many HR managers, the holidays often bring a series of headaches, from employee disputes over gift-giving to holiday parties that get out of control. As usual, the best remedy for these potential problems is careful up-front planning. In this client alert, we discuss some of the most common holiday headaches and the steps you can take now to avoid or minimize them.

Keeping the Culture Wars out of Your Workplace

Every year, we are inundated with media stories about the "culture war" between religious and secular observances of the holidays. As an employer, your best path is to take steps to keep these disputes out of the workplace so that they don't interfere with employee productivity or morale or give rise to a claim of religious discrimination.

Keep Holiday Decorations Neutral. Employer holiday decorations should be simple and neutral. They should not honor or appear to promote any particular religious observance.

Train Managers to Spot Potential Religious Harassment. The holidays can bring religious differences into the open that would otherwise not be an issue. Managers should be reminded to ensure that employees are not being mistreated because of their religion (or lack thereof), including their observance or non-observance of the holidays or their observance of holidays that are outside of the mainstream.

Consider a Gift-Giving Policy to Avoid Disputes. Gift-giving disputes come in all shapes and forms, from an employee feeling

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left out because they didn't receive a gift, to managers expecting gifts from subordinates, to unhealthy competitions for who gives or receives the "best" gifts. To avoid these issues, some companies encourage employees to give to an employer-sponsored charity in lieu of workplace gifts. Others create a secret Santa program to channel employee gift-giving, and others have a policy prohibiting employees from giving gifts at work. The right approach will vary from company to company, and we encourage companies to proactively address gift-giving with some form of policy to avoid dealing with sticky issues on the back end.

Throwing a Holiday Party that Is Enjoyable Without Getting out of Hand

Most of us have had experience with holiday parties that went terribly wrong because of excessive alcohol consumption, unprofessional behavior, or some other problem. Below are some ways to throw an enjoyable holiday party while minimizing the drama.

Consider a Daytime Alcohol-Free Event. Perhaps the easiest way to ensure that a holiday celebration does not get out of hand is to have an on-site event during the workday, such as a holiday lunch or afternoon party, that does not involve alcohol. Many companies find that, with all of the busyness of the holiday season, employees are more than happy not to have one more after-hours event on their calendars.

Guidelines for After-Hours Events. If an after-hours event is more appropriate for your company, consider the following guidelines to keep the event under control:

- Use a commercial venue with professional bartenders and appropriate insurance. This will help to curb over-service and limit the company's liability in the event of any mishaps.
- Consider a two-drink or similar maximum.
- Limit the time period of the event, and set a hard ending time. Make it clear to employees that, following the end time, it is no longer a company event.
- Remind employees in advance of the professional nature of the event and that the company's behavioral expectations apply just as if they were sitting at their desks. It may even be appropriate to send out a copy of the company's code of conduct as a reminder. Remember, Title VII and the anti-harassment laws apply at employer-sponsored parties.
- Designate a set of managers who are "on duty" during the event, meaning that they must refrain from alcohol consumption and must act to handle any situations that arise.

No Mandatory Attendance at Holiday Events. Keep in mind that some religions specifically forbid adherents from celebrating holidays, and some non-religious people are uncomfortable with the celebration of religious holidays. Accordingly, attendance at holiday events should not be mandatory, and managers should be instructed that they are not to pressure employees into attending by making them feel like non-attendance will be counted against them.

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Navigating Pay and Leave Issues

The holidays inevitably bring pay and leave issues, such as nearly everyone wanting the same days off and, in some industries, employees working substantially more overtime than usual. Below are some tips to deal with these common problems.

Establish an Objective Method for Prioritizing Time Off Requests. Establish an objective method for determining who gets to take time off over the holidays, and make sure that method is communicated to employees well in advance. As long as the method itself is not discriminatory, the method can be whatever works for your company, be it seniority, alternating holidays, first-come first-served, or some other method.

Establish an Objective Method for Offering or Requiring Overtime. In many industries, there is extra work to be done around the holidays, and employees have to work overtime to do it. If your company needs extra overtime work around the holidays, avoid the appearance of favoritism or discrimination by offering or assigning overtime on an objective basis that is communicated to employees well in advance.

Don't Skimp on Overtime Pay. Remember that non-exempt employees who work more than 40 hours in a workweek must be paid time and a half for all hours over 40. While it is a good idea to require that employees obtain permission before working overtime, be realistic about these requests when there is extra work to be done, and do not explicitly or implicitly encourage working off the clock by punishing employees for making legitimate overtime requests. Also, keep in mind that employees must be paid for all hours worked, whether permission was properly obtained or not.

We hope these tips assist you in keeping your holidays happy and liability-free. As always, please feel free to contact us with any questions or concerns. Happy Holidays!