

IT'S THAT TIME OF THE YEAR AGAIN

AVOID HOLIDAY BLUES - BASIC DO'S AND DON'TS DURING HOLIDAYS

Between Thanksgiving, Christmas and New Years, the holidays permeate almost every aspect of our life, including employment. As fun as our holidays can be, there are numerous traps for the unwary employer to fall in during these times. This section of the Newsletter will summarize the most common issues that often come up during the holidays and provide brief explanations on how to deal with them.

I. Holiday Time Off Pay

- A. Paid time off for holidays is not required by law. Some employees may be entitled to such paid time off or enhanced pay if they have to work on a holiday because of a written agreement such as a collective bargaining agreement or individual contract.
- B. Overtime: Overtime pay is not required just because an employee works on a holiday. Overtime is only required when an employee works more than 40 hours in a single work week. Most companies do, however, provide automatic time and a half or double time for employees who have to work on recognized holidays.
- C. Christmas Bonus: Again, Christmas bonuses are not required, however, unless the bonus is completely discretionary with management (i.e. not tied to production, over-all company performance, etc.) the bonus must be included in calculating the overtime pay for the particular week in which the Christmas bonus was paid. In other words, if an employee works overtime during the week in which a Christmas bonus is paid, this will increase the regular rate of pay for the employee so that the employees pay will increase because of the enhanced overtime rate.

II. Holiday Cheer

Office parties are a common occurrence during the holidays. Unfortunately, as some employers have painfully learned, office parties can be quite expensive long after they are over. Two of the most common problems occurring from office parties are Dram Shop liability and sexual harassment.

- A. Dram Shop: Entities who serve alcohol to individuals, such as restaurants or employers at office parties, can be liable for personal injuries suffered by third-parties who are injured by an intoxicated employee following the party or because of the injuries of the employees themselves after they have left the party intoxicated. In other words, if an employee becomes intoxicated at a company

party and management knew or should have known that the employee was intoxicated but allowed the employee to drive home, the employer can be liable if the employee becomes involved in an automobile collision and injures himself or others. Some companies try to avoid this type of personal injury claim by specifically limiting the number of alcoholic beverages served to individual employees.

- B. Sexual harassment: Office parties are great for a number of reasons including the fact that sometimes employees get to know each other a little bit better by simply having the time to talk to one another in a more relaxed environment at the party. Unfortunately, for many companies, some employees loosen up a little bit too much at the party and then later get to know each other a little bit too well. There are literally dozens of published opinions where companies were sued for sexual harassment which all began at an innocent office party. The law does not provide employers with an exception to sexual harassment just because everyone was having a good time at a holiday office party. Employers who receive any type of report or complaint which may remotely be related to sexual harassment, even as a result of someone having a little too much fun at the office party, should promptly investigate the matter and take prompt effective remedial action as with any other sexual harassment complaint.

III. Religious Icons

Another area of concern, although not as common as sexual harassment or personal injury liability, regards the use of religious icons or figurines by employees, especially during the holidays. Because of religious affiliations, some employees like to display certain types of religious icons or in some cases conduct certain religious activities during working hours. Under the law, employers do have the duty to accommodate the reasonable religious beliefs of employees so long as the accommodation does not cause the employer an undue hardship. Therefore, if an employee would like to display a manger scene in the office or light Hanukkah candles, as the case may be, management should be careful in denying such requests especially if they allow other employees to display non-religious items such as sports trophies, deer heads, etc. in the office.