UNCLE SCROOGE'S ADVICE FOR OFFICE HOLIDAY PARTIES

Boca Raton News
December 5, 2007

Practices & Industries

Labor & Employment

This article originally appeared in the *Boca Raton News*. Reprinted with permission.

It is fast approaching the office holiday party season. Employers should once again brush up on the "do's" and "don't's" of the holiday season to reduce the risk of lawsuits arising from holiday festivities. As with much in life, moderation and common sense are the key.

Florida's social host liability statute provides that a person who sells or furnishes alcoholic beverages to a person of lawful drinking age will not be liable for injury or damage caused by or resulting from the intoxication of such person unless you knowingly serve a habitual drunk. The Florida Supreme Court has interpreted the statute as intended to limit the liability of vendors and providers of alcohol. Thus, although the statute would seem to create a cause of action for providing alcohol to a minor or known alcoholic, the Florida Supreme Court has declined to interpret the statute in such a manner. *Dowell v. Gracewood Fruit Co.*, illustrates the court's view. In that case, Dowell sued an employer, arguing that the employer should not have served alcohol to a guest, a known alcoholic, at a company-sponsored outing earlier in the day on which the accident had occurred. The Florida Supreme Court held that, under the statute, a social host is not liable for serving alcohol to a known alcoholic and ruled in favor of the employer.

An employer, however, can still be held liable for the damage a drunk employee causes, even to him or herself, if the employer requires an employee it knows is drunk to drive. In *Bardy v. Walt Disney World Co.*, Disney held a company party at which an employee consumed thirty 16-ounce cups of beer. After the party, the employee fell asleep for several hours in his car in a Disney parking lot. A Disney security guard ordered the employee to leave the premises, even though the employee protested he was too drunk to drive. The employee fell back asleep in his car and later tried to drive out of the parking lot. He struck a light pole with his car and was injured. The court held that Disney could be at fault for the employee's injuries unless the security guard reasonably believed that the employee could legally and safely drive. As this case illustrates, employers should prohibit intoxicated employees from driving home and refrain from ordering them to drive when they are clearly impaired.

Despite the protection of a Florida Statute, an employer can be liable for an employee's negligence committed in the course and scope of the employee's employment. The legal doctrine is called *respondeat superior*. Under this theory, an employer may be held vicariously liable for an employee's negligent acts if the employee was acting within the scope of employment at the time of the incident.

A case in Broward County illustrates the concept and the dilemma for employers. In *Carroll Air Systems, Inc. v. Greenbaum*, an employer was held liable when a drunk employee killed a motorist on his way home from a company social event. The employee attended a dinner dance held in connection with the regional meeting of a trade association. The employee attended the dinner dance as part of his job to meet with customers and secure business. The employer encouraged its employees to entertain existing and potential customers. Employees deducted their bar tabs as a business expense. There was also evidence that the employer paid for the employee's traveling expenses to and from the dinner dance and also picked up the bar tab at the party. Based on these facts, the jury concluded that the employee was acting within the course and scope of his employment when he struck and killed another motorist on his drive home from the dinner dance. Even though the jury found that the employer was not at fault for furnishing the drinks, it nevertheless awarded punitive damages because the employer had knowledge that the employee was intoxicated and was not in a condition to drive.

The *Carroll* case illustrates the situation where an event's setting is superficially social, but in fact has a business-related objective. In those situations, courts may view the employer as a "business host," rather than a social one, and impose liability. For example, in *Chastain v. Litton Systems*, the employer held a Christmas party at one of its plants for all of its employees. The party ran all day, and employees who were paid for appearing had to show up at 8 a. m. and clock-in if they expected to be paid. One of the employees got drunk at the party, drove away, ran into another car, and killed a woman. The federal district court applied North Carolina law and held that although the plaintiff could not recover under the theory of social host liability, where the employer was a business host rather than a social one, it could be liable for the employee's actions. The court viewed the Christmas party as having a business purpose because its goal was to improve relationships among its employees. Once the employer was viewed as a business host, the jury could then impose *respondeat superior* liability. Although *Chastain* is not controlling law in Florida, it is significant because it demonstrates that courts may circumvent existing law on social host liability to impose liability on employers.

What should an employer do? One obvious, but draconian, solution is not to serve alcohol at holiday or company parties. Such a solution may be unrealistic. If alcohol is going to be served at a social function or combination social/business function, the employer should consider offering transportation services or designating volunteer drivers who will not be drinking. Intoxicated employees should not be allowed to drive home and employers should not repeat the mistake of the Disney security guard in forcing an employee to drive who claims he or she is too drunk to drive. Additionally, employers should announce "last call" for serving alcoholic drinks at least one hour or more before the party ends, and offer employees plenty of food and nonalcoholic beverages. Because, for many, the party is over when the liquor stops flowing, employers can entice employees to stay past "last call" with raffles, give-aways, or a to-die for dessert table. If the function is at a hotel, the employer can consider making rooms available at a discounted rate to encourage employees to stay the night, rather than driving home. (But see harassment discussion below!)

Outside of the social context, employers should prohibit their employees from drinking alcohol during lunch and when the

employee is using or driving a company vehicle or driving a personal vehicle in the course and scope of work duties. Companies may also wish to limit the amount of alcohol of employees consume while entertaining clients or customers by limiting the amount of money it will reimburse or by refusing to reimburse employees for any alcohol-related expenses incurred during business entertainment. Such a policy may discourage employees from drinking to excess. Most importantly, if the employer is aware that an employee is intoxicated, it should take all reasonable steps, short of physically restraining the person, to prevent the employee from driving.

Social settings, especially where alcohol is involved, may encourage employees to act in a manner that would not be acceptable in the workplace. Inappropriate touching, kissing, propositions, remarks, and the like can have a ripple effect in the workplace. Such conduct may constitute unlawful harassment for which the employer could be liable. Regardless, any inappropriate conduct will be the talk of the office, resulting in lost productivity and potentially hurt feelings and resentment. Employers should enforce their non-harassment and non-discrimination policies at office parties and social engagements just as they would in the workplace. Simply because employees are interacting in a social environment should not give them license to ignore rules prohibiting harassment and discrimination.

With some advance planning and the application of common sense, holiday parties can still be fun, while alcohol-related tragedies and the fallout from holiday festivities carried too far can be avoided.

By Larry Corman and Glenn M. Rissman