



FROM THE THINKHR LIVE HOTLINE:

Frequently Asked Questions About Holiday Parties



Throwing a party this holiday season and have questions? Our Hotline Advisors have answers.

Alcohol

Question: What is the employer's responsibility regarding alcohol and employees being inebriated?

Answer: When the employer is the sponsor of the event, the employer is responsible for the amount of alcohol consumed at the event and the safety of the guests. If the employer knowingly permits alcohol consumption and does not take action to prohibit inappropriate behavior, the employer may be found liable for incidents of wrongdoing or neglect by others.

Question: What are the liabilities in serving alcohol at the place of employment?

Answer: This is a company decision and one that may be best reviewed with your legal counsel. If companies have alcohol on the premises and share a celebratory toast on company property from time to time, the employer needs to be aware that there may be unintended consequences. When an employer knowingly permits alcohol consumption and does not take action to prohibit inappropriate behavior, the employer may be found liable for incidents of wrongdoing or neglect by others.

Question: What exposure does an employer have when serving alcohol?

Answer: The employer has direct and vicarious liability to any incidents that may occur when serving alcohol. This can expand from personal injury to criminal acts, for example, driving while intoxicated or assault.

Compensation and Pay

Question: Is the employer required to pay employees during the company holiday party if it is during work hours? What about employees who don't take part, or who work off-site?

Answer: If a company party is held during any portion of an employee's normally scheduled work hours and the employee is permitted to attend during those work hours, even if voluntary, a nonexempt employee must be compensated. In the event of an after-hours voluntary party, where there are no consequences for not attending, there is no requirement to compensate a nonexempt employee under wage and hour regulations.

Question: Do all of the holiday party pay rules apply to temporary employees if the party is required?

Answer: If by the term "temporary" you are referring to third party contingent workers, the same would hold true for pay as for your direct employees if you require attendance of your temporary employees at the party. If you do not invite temporary employees to your event and the event is held during normal company work hours, you can advise them that their services are not required for work during those hours because the business will be closed, and not pay them for time not worked.

Question: If we have a voluntary party and it goes on after-hours, must we pay nonexempt employees?

Answer: In the event of an after-hour voluntary party, where there are no penalties for not attending, there is no requirement to compensate a nonexempt employee under wage and hour regulations. However, in the event that a party is held during any portion of an employee's normally scheduled work hours and the employee is permitted to attend during those hours, even if voluntarily, the nonexempt employee should be compensated.

Question: If the company party starts at 3 p.m. (during the workday) and we pay our employees in full for the day, why do we need to pay hourly employees for the full party time?

Answer: In the event of an after-hours voluntary party, where there are no company consequences for non-attendance, there is no requirement to compensate a nonexempt employee under wage and hour regulations. However, in the event that a party is held during any portion of an employee's normally scheduled work hours and the employee is permitted to attend during those hours, even if voluntarily, the nonexempt employee should be compensated. Therefore, if the employee's work day ends at 5 p.m., the nonexempt employee would be paid for two hours (3 p.m. – 5 p.m.). If the party was mandatory or would have any consequences for those not in attendance, the nonexempt employee would be paid for the entirety of the party, including any time the individual may provide toward set-up, tear-down, or clean-up.

Employee Transportation/Lodging

Question: Do employers have a requirement to provide taxi service and/or do employers have a responsibly to pay for the employee's taxi ride home?

Answer: The employer does not have a requirement to provide a safe resource for travel home; however, this practice does minimize risk to the employer directly and protects the employee. It can be a small expense to pay to ensure the safety of the employee and others.

Question: Our company has eight passenger vans for clients. Are there any concerns or issues with having our regular drivers (employees) transport their co-workers to/from the restaurant where we are having our company holiday party?

Answer: Providing safe transportation for your employees to and from your holiday event is a great idea. Review your relevant liability insurance coverage with your insurance broker so that you understand the limits of your liability under your plan(s) for after-hours coverage and potential accidents involving groups of employees transported in company vehicles. In addition, ensure that you are paying your employee-drivers appropriately for all time worked before and after the party.

Question: If we have a voluntary event and provide taxi vouchers to/from event but the employee declines the taxi and is in a car accident, who is liable?

Answer: Besides the employee who caused the accident, the court would assign responsibility for the employer's part in providing alcohol to the employee based on the facts of the situation. Specifically, if the employer-sponsored event had witnesses that company representatives offered the employee a taxi voucher or other safer method of transport from the party that the employee declined, this could mitigate the employer's risk. The court could also still assign some responsibility to the employer because the employer knew the employee was impaired, had declined the employer's options for safer transportation, and still allowed the employee to leave the party.

To mitigate company risk, a company manager should meet with the intoxicated employee privately, explain that there is no judgment and the company cares about him and wants him to be safe. Don't take "no" for an answer and simply call the taxi.

Question: Is liability reduced if the employer provides taxi and/or hotel room and an exempt employee does not accept?

Answer: It would depend upon the facts and circumstances of the situation, but it generally looks better when the employer provides resources for employees who appear to need the assistance. Specifically, if the employer-sponsored event had witnesses that company representatives offered the employee a hotel room, taxi voucher, or other safer method of transport from the party, this could mitigate the employer's risk. The court could also still assign some responsibility to the employer because the employer knew the employee was impaired, had declined the employer's options for safer transportation, and still allowed the employee to leave the party.

To mitigate company risk, a company manager should meet with the intoxicated employee privately, explain that there is no judgment and the company cares about him and wants him to be safe. Don't take "no" for an answer and simply arrange the hotel room or call the taxi.

Employer Liability

Question: What liabilities would the company have if the party is held onsite at the workplace but it is after hours, optional attendance, unpaid, and BYOB?

Answer: The liabilities remain. The employer is the sponsor of the event and therefore has a level of accountability for the amount of alcohol consumed at the event and the safety of the guests. If the employer knowingly permits alcohol consumption, and does or does not have direct observation of individuals or does not take action to prohibit inappropriate behavior, the employer may be found liable.

Pertaining to your inquiry of an after-hours, unpaid, and voluntary party, where there are no consequences for not attending, there is no requirement to compensate a nonexempt employee under wage and hour regulations. If the party was mandatory or would have any consequences for those not in attendance, the nonexempt employee would be paid for the entirety of the party. If the nonexempt employee provided any work effort towards the set-up, during the party assisting with the event, or post event clean-up, the employee would need to be compensated for all time worked at regular wages, including any eligible overtime.

Question: Our holiday party follows our annual meeting. Attendance is required for the meeting, but not the holiday celebration portion. In communication to staff this is explicitly made clear. Are we protected should an employee become drunk?

Answer: The liability and risk remains. The party is sponsored by the company and therefore the company has a stake in being liable for the happenings at or following the event. For example, if the employee becomes intoxicated, there is a portion of liability to the person and organization sponsoring the event that may come into consideration. Designate a person or team responsible for observing guests and taking appropriate action to limit alcohol and provide resources for a safe return home, as well as a friendly reminder prior to the event for every person to take a level of personal responsibility to self-monitor their alcohol consumption for safety.

Party Attendance

Question: If an employee does not want to attend the company holiday party, can we require the employee to work rather than go home? Our party is a late lunch where employees are allowed to leave after the luncheon for the remainder of the day.

Answer: Yes, you may create that stipulation that employees who do not wish to attend the holiday party may continue to work their regular work day instead. However, we caution that the message may be misinterpreted and could create employee relations concerns for those who may have other religious beliefs and/or are simply uncomfortable attending the event. Sending any message that may be interpreted as a penalty for not attending the party could result in unintended consequences. Talk separately with each employee to understand his or her reason(s) for declining the invitation and consider your options carefully. You may also discover other work-related issues pertaining to the team that are the actual reason the employee does not want to socialize with his or her co-workers.

Question: If the employer is giving everyone the rest of the day (half day) off after the party and an employee doesn't go to the party and takes the rest of the day off, would that be grounds for discipline?

Answer: The first step would be to talk with the employee and understand why he did not participate. If there is a valid reason for his deciding not to go to the party, such as religious objections, illness, personal problems, or a dispute with co-workers, then applying discipline may not be appropriate. If, however, the employee chose to leave the workplace without alerting his manager in order to have a "free" day off, then this could be grounds for disciplinary action according to your workplace policies. Consider that you are "gifting" your employees with the rest of the day off after the party, and be fair when factoring that into any action you take with this employee.

Question: Can we invite temporary employees (those from an outside agency) to our company holiday party?

Answer: Inviting temporary employees to your holiday party would be a company decision. Of course, the same liabilities and exposure would exist for any participants, regardless of employment status. If the holiday party is considered a voluntary function without consequences for failure to attend, and it is not held during normally scheduled business hours, there should be no concern for compensation under wage and hour regulations.

Harassment Investigations

Question: If an employee tells us the day after the party that she was sexually attacked, should we call the police as part of the investigation?

Answer: If the employee was sexually attacked and you have been notified of the incident, it is your responsibility to take appropriate action. This includes comforting the employee, working with the employee to contact authorities (it is the victim's responsibility to press charges, but you can and should assist to ensure the incident is handled appropriately without over-stepping your role as the HR professional). If the alleged attacker is also a company employee, you should coordinate your internal harassment investigation with the police investigators. As with any claim of sexual harassment, you have a responsibility to follow up on every claim of harassment.

Question: What if HR hears "through the grapevine" about a harassment situation during or after the holiday party but the employee does not actually report it directly to HR?

Answer: The company is responsible for taking immediate action due to the fact that the employer now has knowledge based on indirect information. The HR investigator should meet with the employee alleged to be harassed but not reporting the incident to gain more insight. Depending on the severity of the situation, the employer may want to consider using a third party investigator to eliminate any potential perception of bias.

Holiday Gift Exchanges and Employee Gifts

Question: Can the employer be responsible for “inappropriate presents” when the group is doing grab bags or surprise presents, in case an employee feels that the present represents something against his or her religion?

Answer: Removing any potential liability can be done through simply placing guidelines on the gifts, such as no religious symbols or themes. Permitting guests to participate voluntarily by placing gifts in a pile, where gifts are then chosen or handed out at random to only those who participated, may also tend to minimize exposure under this activity.

Question: Are there tax or IRS implications if we choose to offer our employees a gift certificate or gift card?

Answer: According to the IRS, cash or “cash equivalents” (such as gift cards) are always taxable. However, you can exclude the value of a de minimis benefit you provide to an employee. If you offer the employee a different type of recognition reward (such as a dinner out or tickets to an event), it may not be taxable. While the IRS doesn’t specifically put a dollar value on what constitutes “de minimis,” the definition of a *de minimis benefit* is “any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, use of gift card, charge card, or credit card), no matter how little, are never excludable as a de minimis benefit, except for occasional meal money or transportation fare.”

For more information, the [IRS Publication 15-B Employer’s Tax Guide to Fringe Benefits for 2016](#) offers a chart that shows the tax excludable value of some fringe benefits.

Question: Our party is called a holiday party and we are asked to bring gifts. Should I wrap presents a certain way to appease everybody?

Answer: Avoid any religious symbolic patterns. Consider using plain colored paper, paper with designs such as snowmen or snowflakes, or other winter-themed paper.

Religious Issues

Question: We are a private company under 50 employees. Is it permissible for the vice president or owner to say grace before eating?

Answer: While there are no specific regulations for small private employees disallowing the practice, consider offering a grace including appreciation and gratitude that excludes any religious content to avoid offending individuals of different faiths. However, if your organization is based on a religious foundation and all employees are aware of those religious principles, then saying grace from a religious perspective may be considered appropriate.

Question: Our company is family-owned by a Jewish family who has absolutely no issue with us celebrating the holidays each year. We have several employees who choose not to participate due to religious beliefs, and we are okay with that. If these individuals will not be present at the party, is it necessary to refrain from having holiday themed games or team building events (i.e., ugly sweater contest; decorate the Christmas tree or snowman)?

Answer: Minimize religious symbols whenever possible. An ugly sweater contest, decorate the snowman, place the flame on the candle or nose on the snowman are considered nonsymbolic and appropriate.

Question: We're a small organization and the party will be in a home. Will religious issues need to be considered, e.g. removing Crèches? Does liability homeowner's insurance come into play?

Answer: When holding a company event in a private home, exposure of liability can be expanded to the homeowner. We recommend reviewing coverage liability with the insurance carriers of both the company and the homeowner's policies to assess if additional coverage is warranted for the event.

As for any decorations within the home, leave that up to the person hosting the party. Encourage the party host to consider this issue prior to the party.