

# SHOPE at SURF

## Industry Insight

November 2015

### Beware of Mistletoe at the Office Holiday Party

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Yes, action sports employers can throw an enjoyable holiday party, but also avoid unnecessary legal liability. Here's how:

#### • Alcohol Consumption

California courts are clear—an employer may be legally liable for the wrongful acts of its employees including drunk driving accidents following company-sponsored events. Nonetheless, there are certain precautions that can be taken to reduce employer liability when alcohol is served at company functions. First, well in advance of the event, advise employees that the company will reimburse Uber, Lyft, or even taxi fares (as if anyone takes those anymore) if they choose to drink at the holiday party. Inform employees that they will not be disciplined or penalized for taking advantage of this offer. Consider providing drink tickets instead of an all-night open bar and be sure to provide food anytime alcohol is served. Opening the invitation list to spouses, significant others, and/or clients may also encourage employees to exercise good judgment. When feasible, hire professional bartenders and instruct them to cut off any employee who has been “over served.” Finally, the company holiday party may not be the best time to serve body shots, i.e., see “Harassment” below.

#### • Harassment

There is a certain freedom in socializing with colleagues outside the confines of the office. Employees may take advantage of the relaxed atmosphere by flirting or telling edgy jokes. While a single come-on or provocative joke is unlikely to result in harassment liability for the company, do not set a precedent by allowing unprofessional conduct to be accepted or encouraged at company functions. Further, while mistletoe may serve as festive décor, it may inspire Dave from Accounting to get a little too friendly with the new intern. Remind employees that even at events held outside the office, they still represent the company and therefore, must remain professional and abide by company rules, including the company's harassment prevention policy.

#### • Wage and Hour Violations

Non-exempt employees should be paid for their attendance at the company holiday party, which may include overtime, if attendance is mandatory or strongly suggested. Keep in mind that employees may feel an unspoken expectation to attend company-sponsored social events, so if in doubt as to the company's culture or employee expectations, employ-

ers should pay non-exempt employees for their time spent attending the holiday party. And let's be honest, there is little joy in attending an event when you are informed that you “don't have to attend,” so the best practice may be to compensate non-exempt employees without questioning employee expectations.

#### • Religious Discrimination

Our workplaces are becoming increasingly diverse and culturally rich. Accordingly, not all employees share the same religious beliefs. No one enjoys feeling left out, thus, employers should not make religion or any particular holiday the central focus of the company's holiday party. Clearly, the company's annual end-of-year celebration should be referred to as a “Holiday Party,” instead of a “Christmas Party.” The purpose of most company gatherings is to boost employee morale and celebrate a year of hard work and company successes—all of which can be accomplished without bringing religion into the picture.

**Best Practices:** Well in advance of the company's holiday party, action sports employers should remind employees of the following: (1) the company will reimburse Uber, Lyft, or taxi fares for employees who choose to imbibe; (2) attendance at the holiday party is entirely voluntary or non-exempt employees will be paid for their attendance; and (3) employees are expected to follow the company's harassment prevention policy at all company-sponsored events, i.e., no sitting on Santa's lap. And last, but certainly not least, avoid “awkward” encounters and unwanted affection by not hanging mistletoe at the company holiday party.

If you have any questions regarding legal liability for company-sponsored events or other employment law questions, you should contact competent employment counsel.

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