COMPANY SPONSORED EVENTS - Social Host Liability When Alcohol Is Involved

The courts increasingly are recognizing the legal responsibility of a host who serves excessive alcohol at a social event. Employers are not immune to lawsuits arising from post-party auto accidents in which alcohol has played a role. Accordingly, employers should take steps to minimize their risks in this area.

To Serve Or Not To Serve

Some employers avoid potential liability by making their holiday parties alcohol free. For example, a number of companies have moved to family-oriented affairs in which employees' children are invited and NO alcohol is served.

Other employers attempt to put the liquor liability risk onto a third party by holding the functions at a facility where the alcohol is served by a licensed party. For example, some employers rent rooms at a restaurant or club where the alcohol is served by the restaurant or club.

Another approach used by some employers is to provide everything except the alcohol and utilize a cash bar. This further removes the employer from the act of providing the alcohol.

Points To Consider

- Make attendance voluntary
- Do not keep records or lists of attendees
- Avoid holding parties during regular working hours
- Hold parties off site
- Do not hand out awards or bonuses at the party
- Do not conduct business at the party
- Get employees involved in planning the party

Protective Steps

- Make sure all employees know your workplace alcohol and substance abuse policy and that the policy addresses the use of alcoholic beverages in any work related situations and office social functions.
- Post the policy. Prior to the office party, use break room bulletin boards, office e-mail and paycheck envelopes to communicate your policy and concerns.
- If you do serve alcohol, make sure employees know that they are welcome to attend and have a good time, but that they are expected to act responsible.
- Make sure there are plenty of alternative, non-alcoholic beverages available.
- Eat and be merry! Have plenty of food on hand.
- Distribute free taxi passes permitting an employee and/or their family members a ride home.
- Designate a member of your management team to "monitor" employee drinking and assist anyone who has a need for special transportation.
Accidents During Company Sponsored Athletic Activities

Many companies sponsor activities such as employee softball or bowling teams. With these activities comes the possibility of accident and/or injury. Are these injuries compensable under workers’ compensation and is it recordable on the OSHA 200 log?

Workers' Compensation

According to Nevada Revised Statute 616A.265, "Any injury sustained by an employee while engaging in an athletic or social event sponsored by his employer shall be deemed not to have arisen out of or in the course of employment unless the employee received remuneration for participation in the event." However, we advise companies to check with their workers' compensation carrier due to everchanging laws and regulations.

OSHA Recordable?

Accidents such as these are generally not recordable on the OSHA 200 log. According to a scenario taken from the Department of Labor's OSHA Recordkeeping guidelines:

Q: Our employees participate in many off-premises activities such as picnics, impromptu softball games at noon, bowling leagues at night, and a football team which plays its games on weekends. If any of our employees are injured in these activities and require medical treatment, should the injuries be recorded?

A: They need only be recorded if they are connected with the injured person's job. If the employees are paid for sports activities or are required by their employer to participate, any resulting injuries are work related and should be recorded. If not, the injuries which occur are not recordable, even though the employer may be providing uniforms and equipment.

The more a company can do to separate itself from the activity or sports team, the better it can reduce its liability for accidents. For example, activities should be away from the premises, preferably outside normal business hours, no attendance record kept, no pressure to participate, and as little financial support as possible.

Companies would be wise to consider having employees sign a waiver (sample below) to participate on a sports team, to reduce the company's liability.
WAIVER AND RELEASE OF LIABILITY FOR COMPANY
ATHLETIC EVENTS

Below is a sample waiver from Warren Gorham & Lamont's HR Forms for employees who voluntarily participate in athletic activities. Companies should customize a release form and have it reviewed by their attorney.

In consideration of being allowed to participate in any way in the following athletic program and related events and activities, ____________________________, of the employer [company name], the undersigned:

1. Agrees that prior to participating, each participant will inspect the facilities and equipment to be used and if anyone believes anything is unsafe, will immediately advise his or her coach, supervisor, or referee of such condition(s) and refuse to participate;

2. Acknowledges and fully understands that each participant will be engaging in activities that involve risk of serious injury, including permanent disability and death and severe social and economic losses that might result not only from his or her own actions, inactions, or negligence but also that of others, the rules of play, or the condition of the premises or of any equipment used and that there may be other risks neither known nor reasonably foreseeable at the time;

3. Assumes all the foregoing risks and accepts personal responsibility for the damages following such injury, permanent disability or death;

4. Releases, waives, discharges, and covenants not so sue the employer, [company name], and its related companies, its respective administrators, directors, agents, and other employees of the organization, other participants, sponsoring agencies, sponsors, advertisers, and, if applicable, owners of premises used to conduct the event, all of which are hereinafter referred to as "releasees," from any and all liability to each of the undersigned, his or her heirs, next of kin for any and all claims, demands, losses, or damages on account of injury, including death or damage to property caused or alleged to be caused in whole or in part by the negligence of the releasees or otherwise.

THE UNDERSIGNED HAS READ THE ABOVE WAIVER AND RELEASE, UNDERSTANDS THAT HE OR SHE MAY HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND SIGNS IT VOLUNTARILY.

Employee Name:_____________________________________________

Signature:____________________________ Date:________________

Home Address:______________________________________________

Home Telephone:_______________  Office Location:________________