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Holiday Party Do's and Don'ts

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As the holiday season approaches, it's time to revisit the law of employer host liability. If your organization is planning to host a workplace holiday party where alcohol or other legal intoxicants may be served or used, you'll want to protect your guests from harm and your organization from the potential for significant liability for damages sustained or caused by an impaired employee.

The law of "host liability" – a refresher

The 2001 decision, *Hunt v Sutton Group Realty* ("Hunt"), is a good illustration of the scope of the duty of care that may be owed by an employer to an employee who becomes impaired at a company event and hurts him/herself. In *Hunt*, the employer was found partially liable for injuries an employee, Ms. Hunt, suffered during a car accident that occurred while Ms. Hunt was driving home from the office holiday party. At the party, Ms. Hunt had consumed alcohol made available through an unsupervised open bar. After the party, she and a number of other employees went to a pub where they consumed further alcohol.

At the trial, the employer argued it was not responsible for Ms. Hunt's injuries because it had taken all reasonable steps to protect her from injury, and it was unreasonable for the employer to have been expected to do more. Specifically:

- The employer offered a taxi to all employees at the party.
- Recognizing Ms. Hunt was impaired, the employer asked if she wanted her husband contacted to come and pick her up.
- The employer refrained from putting Ms. Hunt into a taxi because it was concerned this may have amounted to false imprisonment or even kidnapping.
- It was not possible for the employer to monitor the alcohol consumption of its employees.
- It was not possible for the employer to anticipate a group of employees, including Ms. Hunt, would stop for a drink on the way home from the party.

The trial judge rejected each of these arguments finding the employer had breached its duty of care and was negligent. The employer and pub were held jointly liable for 25 percent of the damages

suffered by Ms. Hunt who was held 75 percent liable on the basis of self-induced alcohol consumption.

The judge concluded the employer was liable because it owed a duty of care to Ms. Hunt as its employee:

...I find that the defendant Sutton, as the plaintiff's employer, did therefore owe a duty to the plaintiff, as its employee to safeguard her from harm. This duty to safeguard her from harm extended beyond the simple duty while she was on [the employer's] premises. It extended to a duty to make sure that she would not enter into such a state of intoxication while on [the employer's] premises and on duty so as to interfere with her ability to safely drive home afterwards...

As for the additional drinking while at the pub, the court held this "intervening act" did not absolve the employer from liability; according to the court, the employer should have reasonably foreseen or anticipated this result.

The trial judge's ruling was appealed. While the Court of Appeal ultimately allowed the appeal and ordered a new trial on both liability and damages, it did so for reasons unrelated to the trial judge's comments on an employer's duty of care; that part of the decision remained unchanged. The matter ultimately resolved before a new trial was held.

Holiday party best practices

In light of *Hunt*, employers must be aware they may be held responsible for the damage suffered by an employee who becomes impaired at a company sponsored event. Accordingly, short of a total ban on impairment while at a workplace event, employers may wish to consider the following steps and protocols:

- Do not have a self-serve, open bar.
- Retain the services of a professional bartender trained to identify and appropriately deal with an impaired party-goer.
- Restrict alcohol consumption. Consider imposing a two drink limit or provide non-transferable drink tickets or a cash bar.
- Provide non-alcoholic beverage options and food.
- Designate a team leader to monitor consumption and assist anyone who has become impaired and requires transportation.
- Address impaired guests immediately; do not wait until they are about to leave.
- Make transportation arrangements and clearly communicate them to guests (preferably before the event). This may include:
 - Providing taxi chits
 - Organizing carpooling with designated drivers
 - Arranging for discounted hotel rooms near the event
- Insist impaired party-goers turn over their car keys. Do not take "no" for an answer. If the guest insists on driving, call the police.

- Ensure senior management leads by example.
- Have appropriate liability insurance in place.

Finally, we recommend every workplace have a policy regarding the use of legal intoxicants at the workplace, including at a company sponsored event. The policy should emphasize your concern for employee safety and establish the expectation that employees will not consider a work event an opportunity to ‘party’ to excess.

Let’s all have a happy and safe holiday season!

To learn more and/or for assistance preparing for this holiday season, contact a member of the Sherrard Kuzz LLP team.

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