



# NEVADA LAW BULLETIN

## **BEWARE THE HOLIDAY PARTY - MAYBE THE GRINCH IS ONTO SOMETHING**

By Rebecca Bruch, Esq.

As you have heard me say many times: No good deed goes unpunished. The office holiday party is no different. You want to show your appreciation to your employees for their hard work, and a longstanding traditional way to do that is by hosting a holiday party of some shape or form. But as one Court said, “At the risk of playing the Grinch, we note that office parties also seem to be fertile ground for unwanted sexual overtures that lead to Title VII complaints.” *Place v. Abbott Labs.*, (7<sup>th</sup> Cir. 2000).

The aftermath of a holiday party gone bad can be seen immediately, or come back to haunt you like the Ghost of Christmas Past, 300 days after the joyous event. Take a look at these statistics:

- 60% of employers plan to hold office parties
- 60% plan to serve alcohol
- 25% have no policy on alcohol consumption at work-related events

- 40% of employees have either embarrassed themselves or know someone who has at an office party
- One survey revealed that 29% of those surveyed observed or experienced sexual advances at office parties between people who work together

What could go wrong, right? Consider these potential dangers:

- The informal nature of the event leads to breaking down barriers.
- Employee guard is down in conversations and actions, which leads to personal discussions and inappropriate statements
- Alcohol - need I say more?
- Dancing, games, entertainment, and the ominous mistletoe
- Lowered inhibitions

While Nevada does not have Dram Shop laws which impute legal liability to whoever is

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serving the alcohol, under certain circumstances, that legal liability can find its way to your door if you are the purveyor of excess alcohol.

The legal question that may be asked is whether the alcohol that was consumed at a company-sponsored event and drunk driving is a foreseeable consequence, sometimes even after safe drop-off.

You don't have to abandon the fun, but can still minimize your company's liability by consider the following.

- Carefully plan the event, and be cognizant of items for your checklist.
- Time of day - the later in the day and the more prevalent the alcohol, the more likely inappropriate and unsafe behavior will occur.
- Day of the week - weeknights are best.
- Location
- Alcohol monitoring - consider using drink tickets and close the bar early.
- Addressing religious issues.
- Transportation and/or overnight accommodations (paid).
- Maybe no party, but a gift card for a dinner for each employee?
- Include spouses or significant others - it encourages appropriate behavior.
- Don't call it a "Christmas Party."
- Enforce your policies.
- Be sure it's clear that attendance is voluntary to minimize harassment claims and wage and hour issues.
- Consider a cash bar or no bar.
- Have managers keep an eye out for potential problems, like resourceful employees collecting drink tickets from others who are not using them.
- Empower the bartender to refuse service.
- Serve food.
- Make taxis/Uber/Lyft available - at the Company's expense.

You can reward your employees by having a celebration, and do it in a way that will minimize liability. Just be aware that it takes some planning and vigilance to ensure a good time is had by all.

## **ETS News and Announcements**

ETS is pleased to welcome attorney Craig Smith to the firm. Here are a few words of introduction from our newest associate.

Craig is an internationally qualified lawyer admitted to the Supreme Court of England and Wales in 1997. He practiced in the areas of serious crime, family law, and general litigation. He became a partner in a long established firm within five years of qualification, and ended his UK career as a freelance advocate specifically retained by other firms to undertake court hearings and trials.

He is admitted to the State Bar of Nevada and California. His practice includes general litigation, divorce, and he worked with the Second Judicial Court in the Guardianship arena under the auspices of a Supreme Court Commission.

Outside of the law he despairs at the proliferation of grey hairs he is developing and squarely places the blame on his two young children. Apart from that he enjoys running, boxing, guitar playing, and is awaiting the unique delight of the English Premier league that only an Everton supporter truly understands.

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# **NO (PAID) REST FOR THE WEARY UNDER THE FMLA**

By Rebecca Bruch, Esq.

In April of this year the Department of Labor addressed rules for employee rest breaks of less than 20 minutes that would otherwise be paid, and which are taken as a result of the employee's continuing serious health condition, as protected under the FMLA. The situation that was presented to the DOL, was an employee's medical certifications which required an hourly break of at least 15 minutes. It created a total of two hours lost work over the course of a work day. The employer asked the DOL which law applied: the FLSA's requirement that short breaks be paid or the FMLA's allowance for leave on an unpaid basis.

The DOL's opinion letter recapped the FLSA's requirement that "short" rest breaks up to 20 minutes must be paid, because the breaks benefit the employer. However, if the breaks, even less than 20 minutes, primarily benefit the employee, they are not paid. For example, a break needed to assist an employee's chronic back pain would likely primarily benefit the employee, not the employer.

In the situation addressed in the DOL's opinion letter, the DOL determined the breaks were necessary to address the employee's serious health condition, so they did not need to be paid under the FLSA. The FMLA expressly contemplates unpaid protected leave.

A final observation about the effect of unpaid leave on exempt status: Exempt status will not be lost if an employee's salary needs to be adjusted to account for unpaid FMLA leave. This DOL situation is a good reminder of some of the complexities and intricacies of the interplay between the FLSA and FMLA. Employees on FMLA leave are entitled to the same rights and benefits as if they were not on FMLA. So if all employees are entitled to two paid rest breaks as part of their workday, employees on FMLA are entitled to the same paid time. However anything

beyond that paid time may be unpaid, and tracked and deducted from the employee's FMLA leave bank.

Call us at 775-786-3930 if you have questions about the complicated world of wage-and-hour law in Nevada, or any other employment-related questions.



**SAVE THE DATE**  
**ETS Employment Law  
Seminar**  
**May 1, 2019, 9:00 a.m. to  
4:00 p.m.**  
**The Grove in south Reno.**

Stay tuned for more  
information about  
presentation topics. Mark  
your calendars now!