

# EMPLOYMENT MATTERS

November 2013

## HOLIDAY PARTIES UNDERSTAND YOUR LIABILITIES

### 'Tis the Season

It's that time of year again... Employers are planning their annual holiday party and employees are gearing up for the big event. It's a fun time around the office and everyone is looking forward to the holiday party. As an employer and party host, you should be aware of your potential liabilities and take the necessary precautions to minimize those risks. Employers have an obligation to maintain a safe workplace and owe their employees a duty of care. Two concerns should be top of mind this time of year: harassment and drinking and driving.

### Employer's Liabilities

Employers can be held liable for harassment, including sexual harassment, that occurs in the workplace. The "workplace" includes off-site events such as the annual holiday party. I think we can all agree there is a heightened likelihood of inappropriate behaviour occurring when drinking is involved. Armed with that knowledge, employers should take the necessary precautions (suggestions are below) to reduce the risk of harassment occurring at the holiday party.

In addition to harassment concerns, employers should take precautions with respect to the risk of drinking and driving occurring after the event, especially if the company is supplying alcohol. The employer's liability lies somewhere between that of a social host and a commercial establishment. There are a number of cases that address drinking and driving after a workplace event. For example, in the often-cited case [Jacobsen v. Nike Canada Ltd.](#), the employer was held to be 75% responsible for a drinking and driving accident that occurred after it had supplied a young worker with alcohol during working hours. In that case, a 19 year old employee had consumed 8 beers at work followed by some beer at a pub. He drove home and was involved in a single car accident that rendered him quadriplegic. He sued the employer and took the position the employer was, at least in part, responsible for the accident. The court agreed and held that the employer was responsible for 75% of the 2.7 million dollar damages award.

### Minimize the Risks

There are a number of things employers can do to minimize the risks, such as:

- Supply taxi chits to employees or have chits available at the party
- Make sure employees who are visibly impaired do not drive home
- Offer non-alcoholic beverages and make sure food is served throughout the evening
- Limit the amount of alcohol available to each employee (e.g., provide tickets for drinks)
- Avoid the self-serve and open bar
- Make sure employees know they are not required to attend the party
- Appoint employees who can act as monitors for the event
- Use certified bartenders who are independently insured
- Remind employees and managers about your harassment policy and related complaints procedure

In conclusion, implement preventative measures to ensure a safe holiday season.



[Andrea M. Marsland](#)  
Partner  
[amarsland@foglers.com](mailto:amarsland@foglers.com)  
416-365-3703

Fogler, Rubinoff LLP  
Lawyers  
77 King Street West  
Suite 3000  
P.O. Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8  
Direct: 416.365.3703  
Main: 416.864.9700  
Fax: 416.941.8852

**fogler**  
rubinoff