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Celebrate (Really) Responsibly: An Employer's Potential Liability for Employees' Post-Party Conduct Under the Doctrine of *Respondeat Superior*

By Gregory B. Gilmore

According to a recent survey by Battalia Winston, an executive search firm, 96 percent of companies polled plan to hold holiday parties this year for their employees. If you include yourself in this list of companies and you plan to serve alcoholic beverages at that party, you may be subject to more liability than you would anticipate for your employees' post-party conduct.

In [Purton v. Marriott International, Inc.](#), 218 Cal. App. 4th 499 (2013), a California appellate court held that an employer may be liable for the negligence of an employee who was engaged in a fatal, post-party drunk driving accident under the doctrine of *respondeat superior*. In *Purton*, the employee, after becoming intoxicated at a company holiday party, was involved in an automobile accident in which the employee struck and killed another driver. The employee did not consume any alcohol after leaving the party and initially arrived home safely. Twenty minutes after arriving home, however, the intoxicated employee decided to drive a coworker home and was then involved in the fatal accident. The interesting aspect of *Purton* is that the negligent act that the court focused on was the employee's consumption of alcohol at the holiday party, not the actual automobile accident. In reversing the trial court's granting of summary judgment in favor of the employer, the court in *Purton* did not determine the ultimate issue of whether the employer was liable

for the employee's negligence. The court, however, did state that if a jury were to find that the employee, while at the party, negligently consumed alcohol to the point of intoxication, and that this negligent act occurred within the scope of his employment, the employer could be held liable for the foreseeable consequences of the negligent act, including the fatal automobile accident. The court held that it was of no consequence that the automobile accident occurred while the employee was no longer acting within the scope of his employment, so long as the accident's proximate cause (the negligent consumption of alcohol) occurred within that scope.

The *Purton* court held that a reasonable jury could find the employee was acting within the scope of employment for several reasons: the party was company-sponsored; the employer served or condoned the consumption of alcohol; and the party benefitted the employer by improving employee morale, intra-office relations, etc.

In reaching its decision, the court adopted the view followed by the Supreme Courts of Hawaii, Oregon, and Washington. These courts reject the opposing view followed by Arizona, Illinois, and Kansas that for *respondeat superior* liability to attach to an employer, the *actual accident* must occur while the employee is acting within the scope of his or her employment.

The *Purton* decision is significant in that it holds that an employer may be held vicariously liable for the foreseeable consequences of an employee's negligent conduct (for example, negligent consumption of alcohol at a holiday party), even if those foreseeable consequences (such as a post-party automobile accident) occur while the employee is no longer acting within the scope of his or her employment. In essence, this case holds that if an employee becomes intoxicated at a company holiday party, the employer is potentially liable for the post-party torts committed by the employee until, presumably, the employee is no longer intoxicated.

The Battalia Winston survey shows the vast majority of employers are holding holiday parties for their employees this year. If you are one of those employers, you must be cognizant of the potential legal ramifications of employees becoming intoxicated at these company-sponsored events and plan accordingly, such as by requiring drink tickets or prohibiting hard alcohol. This is particularly so if the holiday party is being held in a state that follows the view adopted by the California appellate court in *Purton*.

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