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60-Second Memo

Sponsored by the GSH Employment Group

July 27, 2011



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How Not to Get Burned By Your Company's Summer Picnic

By Matthew J. Feery, Esq.

Summer has finally arrived, and along with it comes what is for some employers an annual tradition: the company picnic.

True, for many employers, the company picnic is a relic of bygone and better times. Yet, for those few, those happy few who still host a company picnic, this is an exciting time of year. After all, when else can employees showcase their poor-to-below-average athletic skills in front of colleagues from whom they've long fought to earn respect?

In truth, I kid because I love. Company picnics can be a great opportunity to boost morale, especially in lean times. Plus, they allow employees the chance to commiserate about the weather while actually being outside in the weather they're commiserating about. Still, some companies fall victim to the parade of horrors that can result from combining coworkers, heat, sporting events, and (if you truly like to live dangerously) alcohol. So here are some common sense tips to prevent that awkward morning-after call to the employment attorney.

- *Don't force or "highly encourage" employees to attend or participate in events.* Hard as it is to believe, some employees don't like being forced to spend time with coworkers when they're not being paid to do so (or even when they are paid to do so). Plus, [as my colleague Warren Buliox recently discussed](#), from a worker's compensation standpoint, you don't want the picnic to be considered incidental to an employee's employment. Indeed, the most common question

I'm asked about company picnics is whether employers can be liable for physical injuries that occur during the picnic, such as the torn ACL sustained in a misguided attempt to stretch a single into a double to impress that special someone in marketing.

The answer depends on the particulars of the picnic and the laws of your state. Wisconsin courts, for example, have held that injuries occurring during company picnics and other "morale boosting" exercises may not be covered by worker's compensation law. See, e.g., *Schwab v. Department of ILHR*, 162 N.W.2d 548 (1968). But this determination is made on a case-by-case basis, and it depends on factors such as whether the event was truly voluntary; whether employees were compensated for attending or suffered adverse employment actions for not attending; and whether the employer gained tangible benefits from the event via presentations, brainstorming sessions, etc. So, if the aforementioned softball game is a voluntary pickup game, employers may be fine. But if the game is part of mandatory feats of strength to determine next year's compensation, well, that's a different story.

- *Don't serve alcohol.* And yes, take out all the fun, I know. But as with holiday parties, alcohol can (and does) lead to unwelcome comments and acts, which can lead to allegations of harassment. We all miss and wish it was on air right now, but you don't want your employees doing their best Don Draper and exposing your company to liability (not to mention lots of brooding looks and mysterious, wistful comments about carousels). If you do consider an open bar, first invite me but then consider common sense precautions to limit liability, such as having professional bartenders serve drinks, checking IDs, and having non-alcoholic options available. Better yet, limit employees to one or two alcoholic drinks, or eliminate alcohol from the equation altogether.
- *Hold the event off premises.* This may be more expensive, yes, but it also reduces liability because employees or their family members won't accidentally hurt themselves on some part of your property. While Wisconsin Statutes section 895.52 does provide some liability for private property owners for injuries sustained during recreational activities on the property (subject to certain exceptions, including - naturally for Wisconsin - exceptions involving wild animals), better to hold the event elsewhere.
- *Don't hire creepy clowns as entertainment.* This actually happened to a coworker of mine at one of her former employer's company picnics. Infliction of emotional distress is a serious thing and, as any first year law student will eagerly point out, a tort.
- *Review your company policies and act accordingly.* You knew this tip was coming. Just as with holiday parties, picnics are a work-sponsored event. Remind employees, especially

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supervisors, that you expect them to conduct themselves in accordance with company policies should they choose to attend. Be prepared to investigate claims of harassment or other inappropriate behavior in accordance with your company's policies, and discipline employees accordingly.

There are, of course, other common sense tips to keep in mind. Be aware of the lyrics of your music selection. Consider religious and dietary needs when choosing what food, if any, to serve. Watch the weather forecast, and be sure to have plenty of (non-alcoholic) fluids available for employees and their families if it is a hot day. And so on. (And if you choose to host a party for your personal friends, ignore, if not actively contradict, all these points.)

The point is that, as with holiday parties, common sense can help reduce legal exposure and increase enjoyment at company picnics. After all, summers are short enough - best to get outside and commiserate about it while we can.

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