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## 'Tis the Season for Avoiding Holiday Liability

By Julie T. Bittner

Recently, I was at mediation at a law office in downtown Des Moines. The room that we were assigned to for the day had glass walls that allowed us to see the front lobby. Through the window, I noticed that a handful of staff members from the firm began decorating the artificial tree in the lobby. The staff carefully decorated the tree with lights, garland, ribbons, and bows. Instead of an angel or star, the topper on the tree was a silver bow. All of the decorations on the tree were blue, silver and white. I wondered, perhaps owing to the fact that I am an employment attorney, whether the use of the colors of Hanukkah was deliberate. It also led me to consider the potential employment-related minefields that occur during the holidays.

First, as to an employer's holiday decorations, the United States Equal Employment Opportunity Commission (EEOC) has acknowledged the U.S. Supreme Court's determination that, at least in regards to the First Amendment, wreaths and Christmas trees are considered "secular" symbols, akin to items such as lights, Santa Claus, and reindeer. *See County of Allegheny v. ACLU*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1984). Despite the EEOC's stance, some employers have opted to decorate their offices and other work spaces with secular winter/snow scenes, lights, and maybe even candy canes -- even though, believe it or not, the origin of the candy cane is religious in nature as well.

This time of year there are also numerous religious services that your employees may want to attend. Title VII requires an employer to reasonably accommodate an employee's religious observances, practices, and beliefs, as long as it can do so without undue hardship on the employer's business operations. The prohibition on discrimination and the requirement of reasonable accommodation apply whether the religious views in question

are mainstream or non-traditional, and even if not recognized by any organized religion. These protections also extend to those who profess no religious beliefs. Therefore, you [may be required to make reasonable accommodations](#) that will allow an employee to practice his or her religion. Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

Many employers also wish to end the year with a holiday party to celebrate the successes of the year. There are many things to consider when deciding whether to host a holiday party. First, think twice before calling any event a "Christmas" party. Simply inviting your employees to a "Holiday" party includes those who celebrate Christmas, Hannukah, Kwanzaa, and other holidays that fall at this time of year. Also, when it comes to employees being allowed to invite guests, be cognizant of the different relationships employees may be in. Rather than create a blanket label of all guests as "spouses," consider inviting employees only or allowing each employee one adult guest only.

If you plan on serving alcohol at your holiday party or frequenting a restaurant or bar that serves alcohol, ensure that all of your guests who choose to partake in the alcoholic offerings are at least 21 years old and have made responsible plans for traveling home. If one of your underage guests drives under the influence of alcohol served by you or paid for by you, you may be at risk for "social host" liability. If you plan on having minors attend your holiday function, take care to communicate to all employees and guests that there will be zero tolerance for minors consuming alcohol and that any minor employees that consume alcohol at the company function or adult employees that contribute to the minor's consumption of alcohol at the company function face discipline in accordance with your company's policies, which may include termination. Also, clearly communicate to your employees and guests that it is your expectation that employees under the influence must not drive home from the party. You could also consider having your employees purchase their own alcoholic beverages but provide complementary non-alcoholic drinks and food to cut down on any temptation to drink in excess on the company dime.

Finally, holiday parties may present a situation where employees let their guard down and perhaps unwanted sexual overtures may abound. Sexual harassment at holiday parties poses as large a liability risk to employers as sexual harassment in the workplace. Take care to publish, retrain, and remind your employees regarding the company's sexual harassment policy in early December. Communicate to employees in advance of any party or other celebration that they will be expected to comport themselves in accordance with the company's policies, including those regarding harassment and discrimination. Further, be on the lookout for anything that could be construed as inappropriate or offensive behavior leading up to or during the party itself. If an employee complains to you about something that made them feel uncomfortable at the party, take the

complaint seriously and investigate it as you would a complaint arising from behavior in the workplace during working hours.

It sure seems like I've taken all of the fun out of the holiday season with this list of "don'ts." One thing you might want to consider that would likely boost company morale is to announce that, while there will be no decorations or holiday parties this year, the company has decided to pool all of the funds that would have gone toward those items and instead is divvying up the funds to its employees in the form of an extra holiday bonus. A recent survey by the career site [glassdoor.com](http://glassdoor.com) shows that cash is probably on your employee's minds: 73% of the 2000+ full-time employees polled stated that they would rather forego the holiday party and get a bonus instead, while only 5% said they would prefer the experience of socializing with their colleagues. Food for thought.

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