

Avoid costly lawsuits — check out the holiday employment checklist

The holidays can be a gift to plaintiffs' attorneys and disgruntled employees. Here are a few strategies that an employer should utilize so that this holiday season employers can enjoy the man with a red suit and not a New Year's lawsuit!

The holiday party

Just because the employees are off-site (or onsite after hours) does not mean they are not subject to sexual harassment rules and laws. Parties can cause employees to be merry, but they should not be too merry... or ...well...just plain naughty. To that end, employers should remind employees to keep dress appropriate and their behavior nice.

Also, employers should think carefully before serving alcohol at their holiday parties. Not only may it facilitate inappropriate comments (and lawsuits in the new year), it may also lead to other more dangerous situations, like drinking and driving. To limit exposure, employers who still want to serve alcohol may want to limit employee alcohol intake by issuing drink tickets, employing private bar tenders (who check IDs and refuse to serve people who have had too much), and closing the bar early. Also, employers should offer rides or reimbursement for

Uber or taxis.

Finally, employers should not require (or strongly suggest) that employees attend the party if it is outside working hours. If it is considered a requirement, then it is compensable time, and an employer will need to pay their employees for attending.

Holiday pay

California does not require paid time off for holidays or additional wages for employees who work on holidays. If an employer does pay a holiday premium and employees work overtime, the premium does not need to be calculated in their overtime rate. In other words, premium holiday pay is not considered part of the "regular rate" of pay. Indeed, an employer is allowed to credit the time and one-half premium pay on holidays against the overtime otherwise owed to the employee. Additionally, small holiday gifts or discretionary holiday bonuses are not included in the "regular rate."

Also, please note that if an employer does provide a paid holiday off (e.g., it provides 8 hours of pay and the employees are not required to come to work), this paid holiday off does not count as time worked to determine whether an employee

worked more than 40 hours for the purposes of overtime.

Gift cards

Some employers like to give gift cards to their employees during the holidays. These may be deemed taxable income if the gift card can be considered a cash equivalent under Treasury Regulations section 1.132-6(c). The IRS considers a gift card to be a cash equivalent if it provides for the purchase of general merchandise, as opposed to being used to redeem a specified item.

Volunteering

While this is the time of year we all want to give back, remember that "volunteer work" is only allowed without contemplation of pay for individuals who volunteer for a non-profit or like organization. In other words, an employer must be careful if their company is partnering with a charitable organization and their employees seek to donate their time. If an employer is directly involved in giving, the employer should take care to also give its employees their pay if the employees are providing their time to the charitable cause. Also, if the employees' children want to help out (once school is out) you may run into child labor law issues.

Religion in the workplace

The California Fair Employment and Housing Act prohibits religious discrimination of any kind. But, this is tricky because the law does not permit prohibiting all forms of an employee's religious expression. As such, employers need to walk a delicate line. That said, employers should be wary of religious-themed décor and other forms of displays and expressions that discuss religion.

GUEST VIEW



Steve M. Crass, Esq.

Payday falls on a holiday

An Employer's established payday sometimes falls on a holiday. The Civil Code defines "holidays" (which includes every Sunday). If payday falls on a defined holiday, pay may be provided on the next business day following the holiday.

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How to avoid a Clinton-like email scandal

You don't have to be a presidential candidate to find yourself in trouble for mixing business and personal Internet use. There are risks for small business employers and their employees, too. These tips will help you avoid liability.

Employees should be aware that accessing private email on a company computer or server forfeits their right to privacy. "If there's any business equipment being used, it doesn't matter if it's your personal email or not, businesses can look at your email, including personal email," says Karen Harned, executive director of the NFIB Small Business Legal Center. "[Employers] have very strong rights to do that if you're using company property. If there's any business tied to it, the employee has no privacy rights."

Additionally, if employees are using personal email addresses to conduct company business, and the company ends up in litigation, the employee's personal email account may end up tangled up in legal proceedings, says Donna Payne, CEO of Seattle-based software company the Payne Group.

The best way to protect your privacy rights as an employee is to avoid accessing personal email accounts and conducting personal business on company equipment or servers or sending business-related emails from personal accounts—period.

The flip side is that employers can be held accountable for the Internet activities and personal emails of their employees if company equip-

ment is used. For example, if an employee uses a personal email address to send threatening emails from a company computer, the employer could potentially be liable for those activities.

This possible liability is the reason that employers are empowered to monitor employee computer activities, Harned says.

Here's how to protect yourself:

Harned recommends creating an Internet-use policy that notifies employees that their emails and Internet activity can and will be monitored, and employees will face consequences up to and including termination for inappropriate Internet or email activity.

It may be tempting to ban personal

Internet-use during work hours, but Harned says outright bans are unrealistic and difficult to enforce. Internet-use policies should allow "reasonable personal use," but make sure employees understand the risks involved in using company equipment for personal Internet use.

Additionally, employees need to understand that personal Internet use is a privilege allowed only after work-related duties are completed. "If they're not performing, and they're surfing the Internet or emailing all day, they can be fired," Harned says.

Founded in 1943, and headquartered in Nashville, Tennessee, the **National Federation of Independent Business** is America's leading small-business advocacy association.

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WEB POLL

How would you characterize your holiday spending this year?

47% - Less than in the past
16% - More than in the past
37% - About the same

It appears that readers of thebusinessjournal.com are going easy on the holiday shopping this year. Forty-seven percent of voters in this week's Web poll say they will spend less on the holidays this year than in years past, while 37 percent said they will spend about the same. Only 16 percent plan to spend more than normal. One hundred forty-three votes were cast.