

LEGAL NEWS FOR YOUR BUSINESS

December 2022

Employment Law Update

IT'S THE MOST WONDERFUL TIME OF THE YEAR...TO BRUSH UP ON HOLIDAY CONSIDERATIONS FOR EMPLOYERS

Regardless of when you plan to put up your decorations, there is no denying that the holidays are right around the corner. And while the season is wonderful for spending time with family and friends, shopping for that perfect gift, and enjoying some festive tunes, the holiday season can also open the door for a variety of employment issues. This December, employers should take care in navigating the holiday season.

RELIGIOUS DISCRIMINATION AND ACCOMMODATIONS

December encompasses multiple holidays, including Hanukkah (December 18-26), Christmas (December 25), and Kwanzaa (December 26-January 1). Such a packed schedule is a unique opportunity for issues of religious discrimination and accommodation requests, including:

- ***Requests for Time Off for Religious Reasons:*** Absent undue hardship, employers covered by federal law are required to accommodate employees with sincerely held religious beliefs. Accommodation requests may include time off to attend or participate in a religious event or to observe a religious holiday. When these requests surface, flexibility is key. Accommodation options include working a flexible schedule or having flexible breaks, voluntary shift swapping, or working remotely. However, employers should also be careful to avoid giving preference to employees of one religion over another, and holiday policies should be applied consistently throughout the year.
- ***Holiday Decorations:*** To add festive cheer, some employers may choose to decorate common areas or allow employees to bring in their own decorations for office and desk spaces. While employers may limit – or even

ban – holiday decorations, such limits should not adversely impact employees of different religions. If an employee of one religion is allowed to decorate their office, employees of all other religions should be allowed to do the same.

- ***Focus of Celebrations:*** Similarly, holiday gatherings should aim to be inclusive. Keep the focus of any functions away from religion and emphasize appreciation for employees and celebration of the year's accomplishments.

HOLIDAY PARTIES

Holiday parties have the potential to bring a host of employment-related issues. When planning holiday celebrations, it is important to keep the following areas in mind:

- ***Time and Attendance:*** Requiring non-exempt employees to attend an after-hours holiday party can create a tricky situation. To avoid this, consider scheduling celebrations during work hours or making attendance completely optional. If attendance is not required, it should also not be expected, and employees should not fear reprisal for not attending events.
- ***Alcohol Consumption:*** With alcohol comes risk of liability. If alcohol is being served at your holiday event, consider the following:
 - Hold the event at an off-site location with a liquor license and servers who can use their professional judgment when serving;
 - Provide transportation to discourage employees from driving;
 - Limit the amount of alcohol by providing drink tickets or not having an open bar;
 - Designate sober managers to monitor and assess to keep problems from occurring.
- ***Sexual Harassment and Misconduct:*** Unfortunately, each year numerous lawsuits show that sexual harassment and misconduct are anything but uncommon at holiday parties. Employers can mitigate this risk by following established alcohol procedures and taking certain steps. For example, scheduling and conducting sexual harassment and misconduct training close to the holidays may remind employees of appropriate (and inappropriate) behavior. Additionally, avoid hanging mistletoe or encouraging activities that might increase the chances of potential misconduct. It is important to keep in mind that employers can be held liable for harassment and misconduct by their employees at holiday events.

WAGE AND HOUR ISSUES

Finally, employers should take care to avoid wage and hour issues during the holidays. If employees who are not exempt from overtime requirements (i.e., they are entitled to overtime pay) must work additional hours to meet increased demand, appropriate overtime pay must be paid, and overtime hours should be tracked and recorded in accordance with federal and state law. Additionally, employers with holiday pay policies should ensure that their policies are applied across the board to avoid the appearance of pay violations or discrimination.

Although the holidays present some challenges, employers who carefully plan and consider can have a successful, trouble-free season and set themselves up for success in the coming year.

