

The Perils of Parties: Minimize Your Exposure and Still Have a Good Time

You are an employer. For years, you have had a number of company events such as the summer picnic, the office Christmas party, and client lunches. But recently, you have become increasingly nervous about these parties especially if alcohol is served. You have heard that employees may sue the employer for damages if the employee suffers injuries resulting from consuming too much alcohol. You don't want to be sued but at the same time you would like to have events for employees and clients. Can you continue to host these events? And have alcohol at the events?

First, whether or not to serve alcohol is a purely personal decision but one that will determine what measures you should take to both protect your employees and clients from damage and yourself from liability. If you do decide to have alcohol as a component, you need to plan in advance to minimize problems.

Any host, commercial, business or social, needs to be aware that excessive consumption of alcohol has many consequences. The intoxicated guest is at risk but the person who comes into contact with the intoxicated person is at risk as well, from assault to being on the road at the same time as a drunk driver. This innocent third party can sue the host of the party although success of liability is still mixed at best. Technically, social host liability has not been successful in Canada but the law is always evolving meaning this weekend's party which spawns an incident could be new law in three to five years.

Further, consequences of excessive drinking are far and wide. They range from a simple hangover to potential absence from work or school. They include assault, sexual assault, falling, choking on vomit, pedestrian incidents and most notably, drinking and driving crashes. The results include death and severe injuries such as spinal cord damage and brain trauma.

Now that you are wondering why you would have alcohol at a party when the consequences are severe, there are tips that you can follow to minimize exposure to these consequences. At all times, you need to know that you have a responsibility to monitor and supervise your guests, client or employee, particularly when there is alcohol consumption. The courts have suggested that there is a special relationship between employee and employer and while the client relationship has not been thoroughly examined, it is better to assume that there is a special relationship there as well.

First, know your insurance. Most companies will have a Comprehensive General Liability Insurance policy that includes coverage for damages resulting incidents. You need to know the extent of the coverage and particularly, study the exclusions, to be sure that incidents from the party would be covered. Alternatively, you can obtain special Party Alcohol Liability policies for one shot events.

You need to know what relevant legislation exists in your province. Every province has a liquor act, but only some have occupiers' liability legislation. It is worth a review to understand what obligations are placed on commercial servers. While the standard,

presently, is not as high for other servers of alcohol, the standard could change and it is worth knowing what obligations are placed on those who serve for a profit.

Further, your event may need a special occasion permit and many of the provincial liquor acts have special provisions regarding when a permit is needed and what the obligations are associated with the permit.

Does your company have an alcohol policy? If not, it may be worth considering developing a policy in order that all employees are working from the same page. If there is a policy, when was it last reviewed? Has it been provided to all employees? Do the employees understand what it means? All policies need to have the three “C”s – clarity, consistency and communication. If that is not the case, you, the employer need to insure that it becomes the case.

Several days before an event, even if it is a “simple” client lunch, it is worth sending a memo or note reminding the guests of the event and that the company does not endorse drinking and driving. In fact, the company expects all guests to make arrangements for alternative transportation if the guests intend to consume alcohol. You may want to offer taxi chits but make it clear that drinking and driving is not on the agenda. It is strongly recommended that companies take a zero tolerance approach on this subject and make sure all guests, employees and/or clients, clearly understand this approach.

If your company entertains regularly, it is worthwhile reviewing the commercial training programmes available to commercial hosts and waitstaff. These programmes include videos and workbooks that introduce some of the chemistry of alcohol in the human body, provide

an overview of liability issues and introduce signs of intoxication and how to manage the intoxicated patron. All of this is useful even to the business/social host. It may also be worthwhile to have certain employees designated to be trained in liquor liability and management and have them be responsible for organizing social events in which alcohol may be served.

You need to determine where the event will be held. If a party is held on the premises of the company, there will be an even greater responsibility upon you, the employer, to monitor and supervise the consumption of alcohol. For this reason, you may wish to hold the event at a commercial establishment with trained staff. However, do not think that this will absolve you, the host, from all liability should an incident occur. Because the event is held at your invitation, you still have a responsibility to monitor and supervise the consumption of alcohol of your guests. Holding the event at a commercial establishment will simply spread out the responsibility.

When choosing a venue, ask lots of questions. Just because the location is a commercial host, does not mean that they have many policies or protocols in place. Ask about the insurance and make sure it includes third party liability insurance. Not all licencees have insurance as it is not a condition of licence. Ask about what training is in place. At a minimum the answer should be Smart Serve, but ask how often, is reviewed? Ask if there has been additional training, for risk management and security. Ask to see their establishment alcohol policy. If they don't have one, ask why they don't and reconsider that location. One of the reasons the employer may find itself partly responsible is because it did not do its due diligence in choosing a party venue.

As for the party itself, make it about other things, not drinking. Spend a little more money on good food and entertainment. Make sure there is lots of food and that much of it is protein/high fat which will allow the alcohol to absorb more slowly into the blood stream. Remember that salty foods increase the desire to drink and sweets do not mix well with alcohol.

Avoid a cash bar or at the very least limit the number of drinks per guest. Be aware that both tickets and bar service have their difficulties as it is difficult to track the number of drinks consumed by guests. If you can afford it, have waitstaff. If not, try to have a professional bartender. At the very least, do not have a self-serve bar. If employees are bartending, they must not consume alcohol themselves and they must have the liquor behind the bar, away from the self-serve approach.

Which leads to the idea of designated non-drinkers (DNDs). You will likely have staff who do not consume alcohol for a variety of reasons but who may be happy to assist in the monitoring function. The DNDs should be rewarded in some fashion because they are essentially helping everyone to have a good time in a safe environment. However, if a problem occurs, the DNDs should not be expected to cut off the guest from further consumption nor break up a potential conflict. The DNDs will advise the employer of the problem and from there the employer takes over management of the problem.

Whether or not taxi chits are advertised as available, they should be available or at least some cash for taxis. Alternatively, have some hotel rooms available for those from out of town. It

is important to note, that once a person is intoxicated, the host should stay with the person until they are sober. The duty of care may extend until complete sobriety.

A problem may arise if the guest refuses to give up his/her car keys and/or take a taxi. The host needs to use every persuasive technique to prevent the person from driving and if everything fails, then the police must be called. The courts have established that commercial hosts have that obligation, and while it is a bit muddy as to the extent of that duty to business/social hosts, it is better to be safe than sorry. Further, if a guest becomes violent, you must only use reasonable force as necessary to protect yourself. The best course is to call the police in that instance.

The reality is that most parties are successful and without incident. However, to give yourself some peace of mind, develop a plan, include some strategies for the worst case scenarios and be sure that all the guests are aware of this. You really can have a good time at the party or event, just do the best that you can.