Leaderschoice
INSURANCE SERVICES

Leaders News Alert

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Risk Management

How to Reduce Your Liability during Holiday Party

IF YOU'RE throwing your staff a Christmas party this year, don't forget that holiday soirees also mean increased liability for workers' comp, harassment and third-party injuries.

For example, did you know that if one of your staff is injured at your holiday party it could trigger a workers' comp claim, since it could be considered "within the course and scope of employment?"

The rules for this can vary depending on the state and how broadly the courts define "scope of employment."

In California, all company-sponsored events fall within the course and scope of employment, because they benefit the employer by improving employee morale and furthering employer-employee relations.

But the biggest issue is liability, particularly if alcohol is served at the function.

Here are 10 tips to help ensure that cheer does not turn into a legal nightmare:

1. Attendance must be voluntary. To make sure that your employees understand this, clearly state it in the invitation and any announcements you may post about the party in your workplace.
2. Hold the event after working hours and offsite. This reduces the chance the party will be perceived as work related.
3. Don't try to coax employees to come by implying that attendance can help them advance their careers or standing in the office, or that not coming would be viewed by other staff as the employee not being a team player.
4. Don't give out awards, bonuses or any types of recognition that would indicate that they are there for business reasons.
5. Strongly consider NOT inviting vendors, customers or others with whom your company conducts business.
6. Tell your employees that they can bring their spouses and significant others.
7. Remind employees that normal workplace standards of conduct should be respected. When alcohol is served at parties, it may reduce inhibitions and can lead to sexual harassment or discrimination claims.

If you do receive a complaint about discrimination or harassment, don't shrug it off. Take it seriously and conduct a proper investigation and interview the employee complaining, the one who is accused and any witnesses.

8. Limit or not serve alcohol. Close the bar at least one hour before the end of the party. Also, hire a professional bartender who knows when to cut people off.

Arrange for no-cost transportation for any employee who should not drive home. If you serve alcohol, also serve plenty of food.

9. Tell employees not to post pictures from or comments about your company party on social media without a policy in place.
10. Discuss your exposure with us to make sure that you are properly covered for any liabilities that may arise out of the function. Call us! We are always here to help. ❖

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Directors & Officers

As DOJ Targets Bosses, Your Execs Need Coverage

THE U.S. Department of Justice is stepping up its efforts to prosecute individual executives for company misdeeds, which could see more directors and officers facing jail time and financial penalties.

The department issued a memo to its prosecutors outlining best practices and recommending that responsible individuals should be the focus of investigations, and that it only considers a company to have cooperated in an investigation if it turns over information about the actions of individuals at the firm.

This type of prosecution can cost the executives involved and the company hundreds of thousands of dollars in defense costs and fees, potentially bankrupting both the individuals targeted and the business.

The latest effort comes as the DOJ has been criticized for not doing enough to prosecute company executives, especially in the wake of the financial crisis.

With the stakes increasing, it's more important than ever that you protect your executives' and company's assets by securing a directors and officers (D&O) liability policy. A D&O policy provides overage for defense costs and damages (awards and settlements) arising out of wrongful-act allegations and lawsuits brought against an organization's board of directors and/or officers.

But there are times when coverage questions may arise, or times when costs exceed the D&O coverage amount.

Some issues that could arise include:

- A company refusing to indemnify certain directors or officers because of concerns they may have done something wrong, or
- A company exhausting its D&O policy and then refusing to pay a director's legal fees.

There is an additional policy – an excess "Side A Differences in Conditions" policy – that would fill the void in these circumstances. This policy will advance defense costs for directors and officers in the event the company doesn't pay an otherwise covered claim for any reason.

These policies have fewer exclusions than normal D&O policies. They can often fill the void when the underlying D&O policy is not triggered due to an exclusion. Also, there is usually no retention or deductible on Side A Differences in Conditions policies. ❖

3 Sides of D&O Policy

Coverage under a D&O policy typically has major coverage parts, or "sides":

- Side A covers the director or officer in circumstances when the company is not legally permitted to provide indemnification.
- Side B covers the firm for indemnifying the relevant director or officer when the firm is legally permitted to provide indemnification.
- Side C provides some limited coverage for the company itself.

TOP 5 REASONS FOR COVERAGE

1. Directors and officers can be held personally liable for claims.
2. D&O liability claims related to regulatory actions are increasing, representing 23% of claims.
3. More directors and officers want assurances beyond corporate indemnification. In fact, 43% desire added protection in the event their firm becomes bankrupt and/or insolvent.
4. Directors and officers and their employers may be targeted by a range of claimants, including shareholders, competitors, customers, employees and government entities.
5. D&O claims are increasingly common for private companies and nonprofits; 36% of all firms reported claims in the last 10 years.

Workers' Compensation

Avoid Legal Troubles, Report All Injuries Promptly

IF ONE OF your staff suffers an injury at work, it's your duty to report that injury to your workers' comp carrier.

Many employers think they can skip making a report if someone is hurt at work yet doesn't need to go see a doctor immediately. But the problem is that even what seems like a minor injury can turn into a major problem down the road.

Take the case of a man who was working for Louis Truth Dairy, when a crate with milk containers fell down a shoot and hit him in the shin.

The force of the impact knocked him to the ground and left a welt. Despite the bruise, he did not think the injury was serious, so he didn't report it to his employer.

But the welt became a boil that eventually opened up and became infected. The man then sought care from his doctor, but did not mention the wound to his employer until three months after the workplace injury was incurred.

Although, in this instance, the employer had no control over the delay, it's common for workers not to report a minor injury, such as a small cut on the hand.

But you never know when an injury can become infected or otherwise develop into something more complicated.

Consequences of late reporting

- A delay in seeking treatment may cause a deterioration in the employee's condition.
- Your ability to investigate the claim may be hindered, as witnesses may no longer be available or key evidence may not be preserved.
- The ability to deny uncompensable claims can be affected. Many states have laws that prohibit denial of claims after a specified time period.
- It may affect your ability to deny a claim if the worker was under the influence of drugs or alcohol at the time of the incident.
- The opportunity to direct the initial treatment to an occupational health clinic that specializes in treating workers' comp injuries and coordinates with the employer's return-to-work program may be lost.

First-aid claims

In California, employers are permitted (under specific guidelines) to directly pay first-aid claims.

This practice can help minimize the impact on future experience modifications, and reduce the future cost of premiums. But you need to carefully make a decision on first aid.

Definition

First aid, as defined by the California Labor Code and Regulations, is any one-time treatment, and any follow-up visit, for the purpose of observation of minor scratches, cuts, burns, splinters or other minor occupational injuries, which do not ordinarily require medical care.

Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid, even though provided by a physician or by other registered professional personnel.

Reporting

In California, you are not required to report first-aid claims to your workers' compensation carrier.

We at assist you if you have any claims questions.

We can work with your carrier to help you be certain that such claims are classified as first-aid only. ❖

Examples of first-aid treatment

- Application of antiseptics
- Treatment for first-degree burns
- Application of bandage(s) during any visit to medical personnel
- Use of elastic bandage(s) during first visit to medical personnel
- Removal of foreign bodies not embedded in an eye if only irrigation is required
- Removal of foreign bodies from wound if removed using tweezers or another simple technique
- Use of non-prescription medications and administration of a single dose of prescription medication on first visit for minor injury or discomfort
- Soaking therapy on initial visit to medical personnel or removal of bandages by soaking
- Application of hot or cold compress(es) during first visit to medical personnel
- Application of ointment to abrasions to prevent drying or cracking
- Application of heat therapy during first visit to medical personnel
- Use of whirlpool-bath therapy during first visit to medical personnel
- Negative x-ray diagnosis
- Observation of injury during visit to medical personnel

Source: California Division of Workers' Compensation

Driver Safety

Hands-free Technology a Significant Danger: Study

IF YOU think that your driving employees are completely safe using hands-free mobile phone technology while on the job, a new study says otherwise.

Mental distractions can persist for nearly 30 seconds after dialing, changing music or sending a text using voice commands, according to new research by the AAA Foundation for Traffic Safety.

The researchers discovered the residual effects of mental distraction while comparing new hands-free technologies in 10 vehicles and three types of smart phones (Google Now, Apple Siri and Microsoft Cortana). The analysis found that all systems studied increased mental distraction to potentially unsafe levels.

Researchers found that potentially unsafe levels of mental distraction can last for as long as 27 seconds after completing a distracting task in the worst-performing systems studied. The faster a vehicle is traveling, the further it would go during this time.

When using the least-distracting systems, drivers remained impaired for more than 15 seconds after completing a task.

Drivers using phones and vehicle information systems may miss stop signs, pedestrians and other vehicles.

The research indicates that the use of voice-activated systems can be a distraction even at seemingly safe moments when there is a lull in traffic or the car is stopped at an intersection.

Mental distractions persist and can affect driver attention even after the light turns green.

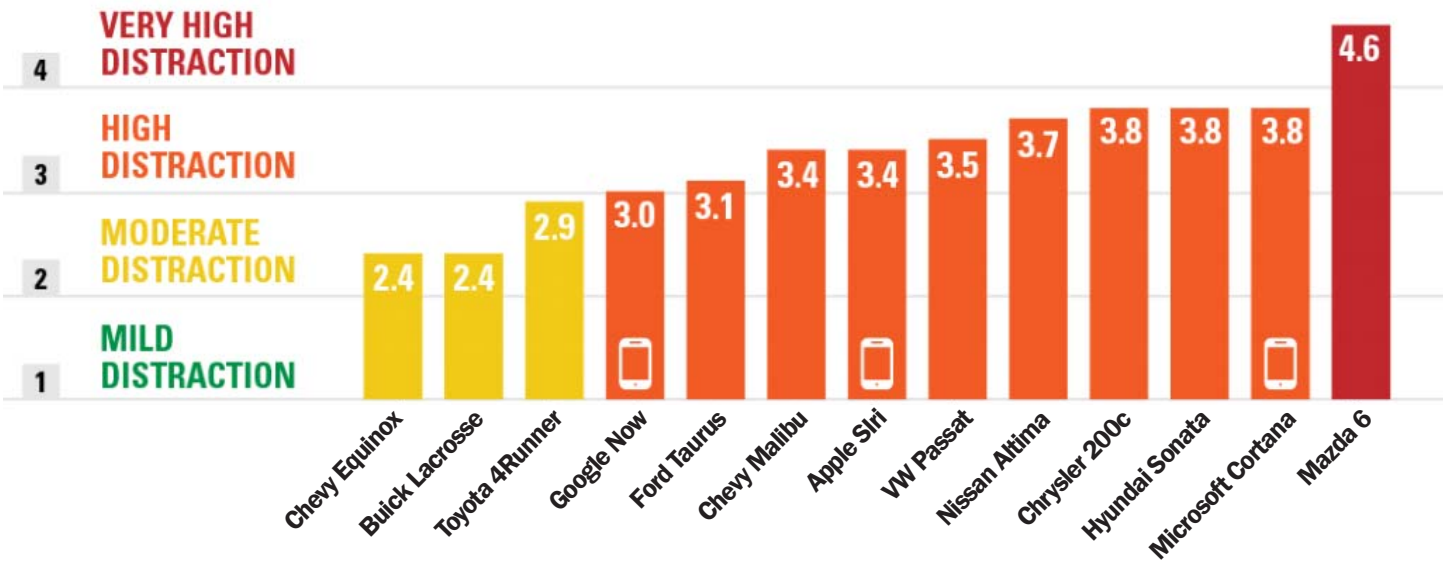
Researchers rated the distraction level of the cars and smart phone technologies on a scale of 1-5, with anything above 2 deemed distracting enough to be a danger. ❖

Danger levels

AAA Foundation researchers liken the categories as follows:

- **Category 1** – About as distracting as listening to the radio or an audio book.
- **Category 2** – About as distracting as talking on the phone.
- **Category 3** – About as distracting as sending voice-activated texts on a perfect, error-free system.
- **Category 4** – About as distracting updating social media while driving.
- **Category 5** – About as distracting as a-challenging, scientific test designed to overload a driver's attention.

MENTAL DISTRACTION RANKINGS OF VOICE-ACTIVATED SYSTEMS*



Source: AAA Foundation for Traffic Safety

* Mental distraction rankings when using voice commands to make calls or change music while driving. Includes 2015 model year vehicles.

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