



# Employment Update

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## A CUP OF GOOD CHEER: STAFF HOLIDAY PARTIES

Christopher McClelland

While it may be rare these days to attend a holiday party that includes figgy pudding, most party-goers will end up imbibing in at least one or two cups of good cheer. Staff holiday parties are no exception. Employers often have a general understanding that, by holding an event where alcohol is served, they can be held liable for injuries resulting from the actions of an intoxicated employee. However, employers may be surprised to learn that their liability does not necessarily end when their employees have moved on to the “after” party.

Consider the following example:

It's the afternoon of December 16, and an Employer is hosting an in-office staff holiday party. An Employee attending the party has a number of drinks. Other party guests describe her state during the party as “happy”, “more jovial than usual”, “not feeling any pain” and “intoxicated”. At around 4:00 pm, her boss, the President of the Employer, becomes concerned about her state of inebriation and suggests that he call her husband to pick her up, but she declines. Ultimately, he decides just to keep an eye on her. The Employee helps to clean up after the party, and then at approximately 6:30 pm goes to a nearby pub with a number of other employees. While at the pub she has two more drinks. She leaves the pub and drives home at around 8:00 pm.

On her way home the Employee is involved in a motor vehicle accident. She suffers a number of injuries, including severe brain damage. Her damages at exceeded \$1.1 million. The court found that the Employer had not discharged its duty of care to safeguard the Employee from harm. Although the court found the Employee 75% contributorily negligent, he awarded damages against both the Employer and the pub in the amount of approximately \$300,000.\*

The above is one of a number of recent court decisions attempting to distinguish between the liability of social hosts (for example, a person holding a dinner party for friends) and commercial hosts (bars, pubs and restaurants that serve paying customers) for events where alcohol is served. An Employer hosting a party, especially a party held in the office, occupies a murky role somewhere between the two. As an Employer, what can you do to reduce your exposure to liability and, more importantly, protect your employees?

- Hold your staff holiday party at a commercial establishment outside of the office.
- If the staff holiday party is being held in the office, hire a professional bartender.
- Provide employees with a limited number of drink tickets as an alternative to an “open” bar.
- If alcoholic beverages are being served, ensure non-alcoholic beverages and food are also readily available.

## EMPLOYMENT UPDATE



Christopher McClelland is a member of Blaney McMurtry's Labour and Employment Group whose practice includes labour, employment and human rights law. Christopher has been involved in matters before the Superior Court of Justice, the Divisional Court, the Labour Relations Board and the Human Rights Tribunal.

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- Provide employees with taxi chits. In the event employees will be moving on to an “after-party”, employer-sanctioned or otherwise, provide additional taxi chits.
- Prior to the staff holiday party, perhaps as part of the event reminder e-mail, emphasize to employees that, if they consume alcohol, they should do so in a safe and responsible manner. Remind them that taxi chits will be available, and that they should make arrangements before the party to ensure they will be able to get home safely.

During the staff holiday party, an employer must monitor the intoxication levels of its employees and guests. It is not sufficient to simply ask a person who may be intoxicated whether they require assistance, as they will not be in a position to make an appropriate judgment. If you determine that an employee is intoxicated, your duty as the employer may require you to insist that an employee leave behind his or her car keys and take a taxi home. Your duty may even extend to calling the police if you suspect that an employee is driving while impaired. In other words, you must take all reasonable steps to safeguard your employees from harm both during the staff holiday party and afterwards.

The lawyers in Blaney McMurtry's Labour and Employment Group wish you a safe and happy holidays! ■

\* *Hunt v. Sutton Group Incentive Realty Inc.*, 2001 CanLII 28027 (Ont. S.C.J.), rev'd 2002 CanLII 45019 (Ont. C.A.)

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*Employment Update* is a publication of the Labour and Employment Law Group of Blaney McMurtry LLP. The information contained in this newsletter is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific advice, please contact us.

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