

Seasonal Risk

Don't Get Sued Over Your Firm's Holiday Party

HOLIDAY PARTIES have made a comeback despite, or maybe because of, more people working remotely. Many managers want to bring their teams together under one roof as it's become apparent that connecting face-to-face is vital to a vibrant and cohesive work atmosphere.

But if you are planning on throwing a company holiday party, there are a number of considerations for you to keep everyone safe and avoid issues that can result in legal liability.

Alcohol can bring trouble

The biggest risks you face arise if you throw a party that serves alcohol. A 2018 survey found that one in three office workers had done something at an office holiday party that they regret, and two in five said they'd seen events at parties evolve into office drama, altercations or scandals.

The best advice is not to serve alcohol at your event. That will greatly reduce the chances of problems like the following:

Bad behavior and conflict – If hostilities erupt, it puts you the employer in danger of being sued by one of the parties and others may be drawn into the fracas.

Hook-ups between staff – These are a common occurrence and can lead to a long-term romance or awkward times at work. Worse, alcohol-fueled aggressive come-ons can spill over into outright sexual harassment – another legal peril.

Holiday advice: If it's an office event, the rules of conduct in the office extend to the party and you should not tolerate those who exceed the boundaries of proper behavior. This should be made clear in party announcements and reinforced through memos.

Drunk driving – If someone has been drinking at your holiday party and injures themselves or others on the drive home, you may be held liable, particularly if you had an open bar and didn't set limits on how many drinks an employee can be served.

IF SERVING BOOZE...

- Limit consumption to two drinks. Drink tickets are a good way to go.
- Serve drinks with lower alcohol content (beer/wine – not shots).
- Offer a signature company "mocktail," and provide water and non-alcoholic beverages.
- Stop serving at least an hour before the shindig ends.
- Provide plenty of food to snack on, particularly high-carbohydrate and high-protein foods.
- Hold the event at a hotel and offer free rooms to those who want to stay the night.
- Offer free Uber or Lyft rides to your staff so they can get home safely.
- Ask your managers to lead by example.
- Invite spouses and kids, which should force people to mind their p's and q's.

See 'Keep' on page 2

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New Rule Increases Risks to Thousands of Firms

THE NATIONAL Labor Relations Board has issued a final rule that expands the definition of what's considered a joint-employer relationship and increases employers' potential liability.

Under the rule, two or more entities may be considered joint employers if they share one or more employees and they both can determine the workers' essential terms and conditions of employment. If a company is deemed a joint employer with another entity, each can be held liable for labor law violations that the other commits.

The new NLRB rule applies to almost all industries, but will have the most effect on companies that use staffing or temp agencies, firms that are third party employers, and franchisors.

The rule repeals and replaces a rule implemented during the Trump administration that had made it more difficult to qualify as a joint employer under the National Labor Relations Act.

Essential terms and conditions of employment

Specifically, the new rule states that an entity may qualify as a joint employer if it retains the authority to control at least one of the following essential terms and conditions of employment (whether or not such control is exercised, and whether it is direct or indirect control):

- Wages, benefits and other compensation;
- Hours of work and scheduling;
- Assignment of duties to be performed;
- Supervision of the performed duties;
- Work rules and directions governing the manner, means and methods of the performance of duties and the grounds for discipline;
- Tenure of the employment, including hiring and discharge; and
- Working conditions related to the safety and health of employees.

For companies that use temp agencies or staffing companies, the new rule poses a significant risk. If the NLRB determines a joint employment relationship, the company that pays a temporary agency for workers could be subject to liability or unfair labor practices committed by the agency.

Similarly, franchisors could be held liable for the labor actions of their franchisees.

The takeaway

The new rule takes effect December 26 on a prospective basis, meaning it applies to any cases filed on or after that date.

If your company uses temp or staffing companies or third party employers, you may want to review the contracts and memorandums of understanding with the other entity to clearly define the employment relationships, including roles, responsibilities and the extent of control exerted over the seven essential terms and conditions of employment.

The NLRB's new rule is likely to face litigation, as prior rules have, and challenges from Congress. ❖



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Keep Hot Food Warm and Covered

Food safety

The other big issue is food safety. It's not uncommon for food from a catering service to sicken partygoers.

At an office party, foodborne illness can occur when people eat certain items that were either undercooked or left out at room

temperature for too long.

Eggs, raw egg products (e.g., eggnog), meat, seafood, and even fruits and vegetables (if not properly washed) are some of the most common offenders. Add to that the possibility of poor hygienic practices by the caterer's staff. ❖

HOLIDAY FOOD SAFETY ADVICE

- Observe the two-hour rule: don't let foods sit at room temperature for more than two hours. For refrigerated items like deviled eggs, consider putting a few out at a time and replenishing when needed.
- Place hot foods in crockpots, chaffing dishes, or on warming plates to maintain a safe temperature.
- Cover food containers in the buffet line when not in use.
- Use large spoons, forks, wax paper, tongs and other serving tools to avoid touching food by hand.
- If you suspect anything has been out too long, toss it.

Detecting Breaches Early Reduces Claims: Report

MANY BUSINESSES devote their cyber security dollars to technologies designed to prevent attacks, such as firewalls, virtual private networks and anti-malware applications.

But, an October 2023 report indicates that they might do better to focus both on prevention and detection. Enhanced emphasis on detection could make cyber attacks less severe, resulting in smaller cyber insurance claims and possibly lower future premiums.

The report from Allianz Commercial found that a tiny fraction of all cyber attacks – 2% – account for the overall amount of cyber insurance losses. Organizations quickly contain 90% or more of other attacks. The dollar loss from most of them is less than the policy deductible; many of these losses are never reported to the insurance carrier.

Cyber attacks are either detected and contained quickly with small dollar losses, or they become full-blown expensive crises. Few fall between these extremes. Detecting an attack in its early stages is the important factor in limiting the damage it causes.

Prevention is not foolproof. If hackers encrypt or steal a company's data, the costs of recovery and downtime skyrocket.

The report's authors found that attacks not caught in the early stages can be more than 1,000 times more expensive than those nipped in the bud. An attack that would cost \$10,000 if caught early can end up costing \$10 million or more otherwise.

Despite that, the report found that two-thirds of cyber security budgets are spent on prevention. Early detection systems are plentiful, effective and constantly improving, but they get a smaller share of organizations' spending. As a result, only one-third of organizations detect security incidents through their own information technology staff.

WHAT YOU CAN DO

To improve early detection, you may want to consider these steps:

- Regularly assess your business's cyber security risks. Identify potential threats, evaluate how serious they are, and prioritize them to determine which to address first. Perform assessments annually or as the organization's operations and technology change. For example, if your business offers new product lines, a new assessment should be done.
- Devote more resources – equipment, software and personnel – to incident detection.
- Implement policies and procedures for storing data, routinely encrypting sensitive stored information, and securely deleting it when no longer needed.
- Adopt a written incident response plan designed to enable early detection and mitigation of cyber incidents. It should describe the tasks each person involved in the response will perform.
- If your organization is too small to have a dedicated cyber security staff, work with a qualified IT security firm to respond to attacks.

The takeaway

Cyber insurance should be part of every organization's risk management program. Many insurers, in addition to paying recovery costs and business interruption losses, offer forensic specialists to determine how an attack occurred. Ask us about a cyber insurance policy appropriate for your operations.

Even the best defensive line will occasionally give up a big play. Early detection of cyber attacks will help your organization minimize the resulting damage. ❖



Report: Most Small Businesses Are Underinsured

IT IS GOOD news that small businesses are thriving, with many of them enjoying growing sales over the last two years. The bad news is that their insurance protection has not kept pace, according to a recent report. That means an accidental loss could undo all the progress they've made, or even threaten their survival.

The report by specialist insurance company Hiscox found that 75% of small businesses do not have sufficient insurance. It revealed some unsettling truths:

INADEQUATE COVERAGE

- General liability insurance protects against lawsuits for bodily injuries, property damage, and personal and advertising injuries. Only two-thirds of small businesses have this coverage, while 100% of them may face these lawsuits.
- Less than half have insured their business property, such as machinery, equipment and tools.
- Only one-third carry workers' compensation insurance, which every state but Texas mandates. This coverage pays for the cost of providing required benefits to injured workers. The employer owes the benefits to the worker whether or not there is insurance.
- Even fewer carry professional liability insurance, which protects against lawsuits alleging mistakes in giving professional advice.

Coverage confusion

Many business owners also do not understand what their insurance policies cover. Fewer than one in five could correctly describe what a general liability policy covers, according to the report. Many were surprised to learn that their property insurance does not cover damage caused by earthquakes or floods.

Despite all this, most business owners recognize that they need insurance. More than two-thirds of those surveyed said they bought coverage out of concern about the potential

consequences of uninsured losses. Only 20% said they bought it because a law or business partner required them to.

Most also recognize that they don't know what they don't know, so they seek expert help. Seven in 10 business owners used an insurance agent to buy coverage because of the agent's expertise.

More than half said that agents are the most helpful source of information; the rest said insurance companies' websites were helpful sources.

What you can do

To make sure they have the insurance protection they need, the report recommends business owners take these steps:

1. Do your homework before buying or renewing policies. Research the various coverages online or get expert advice from us. When you work with us, provide complete and accurate information about your business. It can be tempting to withhold some information in the hope of keeping the premiums low. You should resist that.

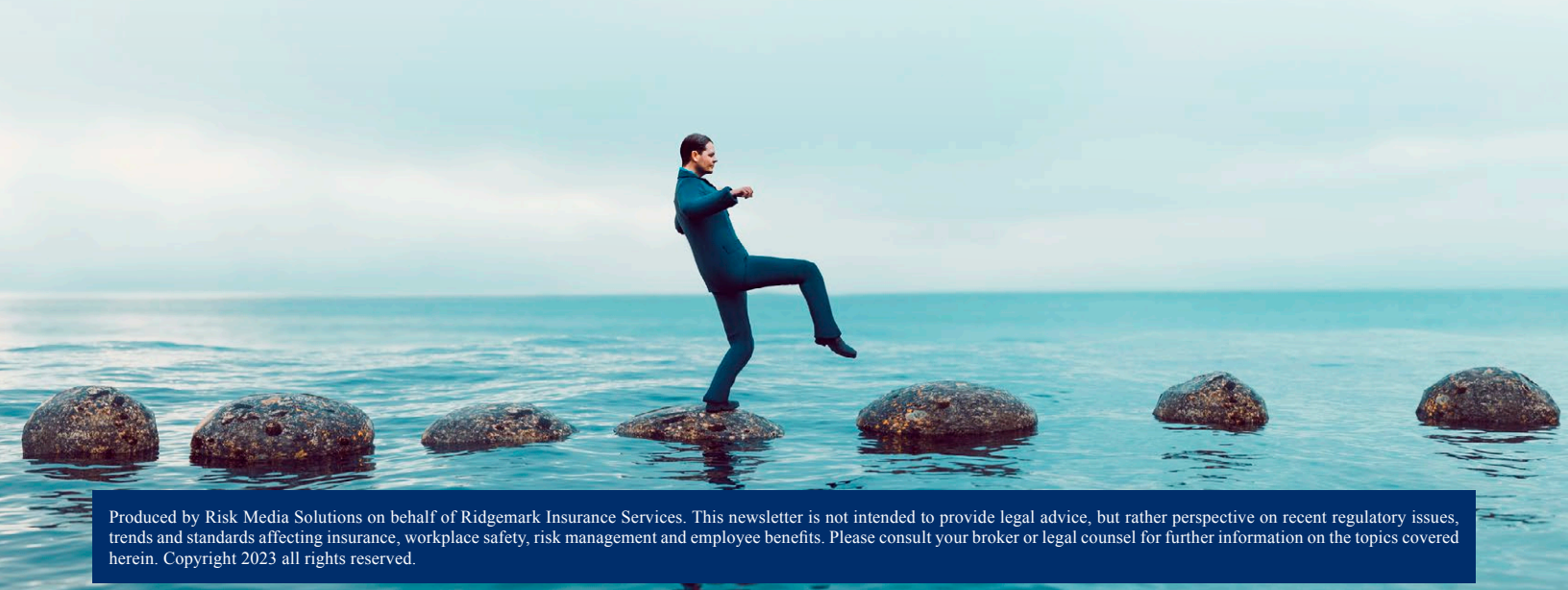
We need a complete picture of your business to match you with the right coverages provided by the right insurer. Also, an insurance company may deny coverage for a claim or even cancel a policy because the policyholder did not disclose key information.

2. Review your insurance program at a minimum once every two years; more often if revenue or payroll have risen or fallen by 20% or more. Your business is always changing; the business's insurance needs will, as well.

The takeaway

You put everything you have into growing your business. Not having the right insurance could cost everything you've worked so hard for.

Getting sufficient coverage will help you protect your most valuable asset — your business. ❖



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