

Liability for Intoxicated Employees

Introduction

Employers that make alcoholic beverages available at company functions, or who allow employees to drink alcohol on company premises, or while on company business may be liable for injuries caused by intoxicated employees. The scope and extent of this liability vary widely by state.

Traffic accidents are the most common potential liability exposure. The National Highway Traffic Safety Administration (NHTSA) reported that there were almost 17,000 fatalities in 2014 as a result of alcohol-related vehicle crashes [i.e., crashes where at least one person had a blood alcohol concentration (BAC) of at least 0.01 grams per deciliter], and in over 14,000 fatalities in crashes at least one person had a BAC of no less than 0.08. Other potential exposures include personal injuries and property damages that occur because of falls, assaults, smoking-related fires, and lawsuits alleging harassment or other improper employee behavior.

This report provides a brief background on the legal theories typically advanced by injured people against employers, and general recommendation for managing alcohol-related liability exposures. It does not address the liquor liability exposures of commercial servers of alcohol (e.g., restaurants, bars, or liquor stores).

Legal Background

Lawsuits attempting to hold employers liable for damages or injuries caused by an intoxicated employee are generally premised on one or more of the following legal theories: direct negligence, vicarious liability, or statutory liability. In addition, injuries to employees may be covered under workers' compensation laws.

Negligence: Traditionally, courts have held that there is no cause of action in negligence for the giving of liquor to an able-bodied person who became intoxicated and injured themselves or others. The argument advanced to justify these holdings, is that the drinking of the alcohol is the proximate cause of the injury not the furnishing of the liquor. However, a number of states have developed exceptions to this general rule where the provider gives alcohol to a person that they know, or should know, is intoxicated, or under other circumstances that create an unreasonable risk of harm to others. Such circumstances include cases where the provider knows that the person will be operating a motor vehicle in the near future, the provider knows that the person given alcohol is a minor, or the provider knows that the person has a physical or mental condition that will be affected by the consumption of alcohol. Employers may be considered to be providers if they give or pay for alcohol consumed by an employee.

Vicarious Liability: Courts have held that an employer may be vicariously liable for the actions of an intoxicated employee under the theory of respondeat superior. In general, these actions are limited to situations where the employee is acting within the scope of their employment or is within the control of the employer. Factors that courts consider when determining if these situations occur include whether the employer requested or required that the employee attend the event, the employer picked up the expenses for the event, or the employer derived a business benefit from the event.

Statutory Liability: A number of states have enacted civil damages or dram shop laws that give a right of action to people injured by an intoxicated person and against the person furnishing or selling the alcohol that caused the intoxication. Most of these statutes apply only to commercial servers of alcohol, such as bars or liquor stores. However, in a May 2005 report, the Insurance Information Institute (III) reported that 19 states had enacted statutes that impose some form of liability on noncommercial servers of alcohol.

Workers' Compensation: In general, state workers' compensation laws cover injuries and illnesses to employees "arising out of, or in the course or scope of" employment. States' compensation boards may interpret these laws to include injuries or illnesses occurring at social events sponsored by the employer or



while on company business. A frequently debated point in auto accident cases is whether a person is acting within the course or scope of employment when they are driving home from a workplace or event.

Alcohol Consumption Policy

A basic element in the management of employer liability for intoxicated employees is the development of a management policy concerning employee consumption of alcohol on company property, while on company business, or at company-sponsored social events. This policy should be crafted to meet the needs of the individual workplace.

The alcohol consumption policy should specify whether drinking alcohol is allowed and under which circumstances. Topics that should be addressed in the policy include:

- On and off premises consumption.
- Consumption during working hours.
- Consumption after hours while on company business.
- When alcohol consumption is a reimbursable expense.
- Limits on the amount that a person may imbibe in one sitting.
- Client entertainment, including hospitality suites.
- Available employee assistance.
- Penalties for violating the policy.

Legal counsel should review the policy prior to implementation to ensure that the policy does not raise any employment-related concerns (e.g., privacy violations or discrimination). This policy should be documented in writing. The policy should be communicated to employees and vigorously enforced.

The U.S. Department of Labor has developed materials that employers may use to develop and implement workplace substance abuse programs. These materials include information on preventing alcohol abuse in the workplace. They are available online, through the Working Partners for an Alcohol- and Drug-Free Workplace website at <http://www.dol.gov/workingpartners>.

Employer-Sponsored Social Events

Employers that sponsor large social gatherings, such as holiday parties or summer picnics, should take steps to control the potential liquor liability exposures at such events. These steps can be divided into three basic areas: pre-event planning, event supervision, and management of people who become intoxicated.

Event Planning

Employers can take steps during the event planning process to reduce the potential for liquor liability exposures. These include establishing conditions that encourage the responsible consumption of alcoholic beverages and avoiding conditions that may enhance potential liability risks.

Event Type: The employer should consider making social events alcohol-free. This may be done by scheduling events during the morning or daytime, when alcohol is not expected, or making the event a family event where children are invited. Alternatively, an employer may provide food and entertainment, and may arrange to have alcohol provided by another party as a "cash" bar.

Event Purpose: The event should be social. The employer should make sure that alcohol is not the focus of the event. Employee participation in the event should be voluntary. Employers should avoid transacting business at the event.

Liability for Intoxicated Employees

Event Timing: If the event is to be held during normal business hours, employees should be instructed not to return to the office after the event. Also, employees should not be allowed to operate company vehicles or equipment following the event.

Event Location: Employers should consider locating special events off-site at places where professionally trained and licensed people are available to serve alcohol. Employers should make sure that the off-site location maintains liquor liability insurance with adequate limits. The employer should obtain Certificates of Insurance and be named as an additional insured. All contracts should be reviewed for “hold harmless” clauses or other liability transfer devices that might pass liability back to the employer.

Admission: Employers should avoid charging a fee to the event. If fees are charged, they should be nominal.

Group Activities: Employers should schedule group activities and entertainment to keep the focus of the event away from drinking. Such activities may include dancing, carnival games, theatrical skits, or other diversions. Games that promote drinking should be prohibited.

Food and Beverages: Food should be served at all events where alcohol is served. Food should be high in protein and starch to slow the absorption of alcohol into the bloodstream. Salty snacks, greasy foods, and sweets should be minimized. Food should be provided in waves and servers should encourage consumption.

A variety of nonalcoholic beverages should be available. These beverages should be readily available.

Transportation: Event planners should consider arranging bus, van, or car services to any event held off-site. These services should be made available to all attendees. As an alternative, planners should arrange for vehicle services to handle attendees who become intoxicated at the event.

Security: Security should be provided at all events where alcohol is being served. The security can be provided by the employer, the facility where the event will be held, or by the independent contractor providing the alcoholic beverages.

Announcement: Event announcements should include information about the importance of responsible consumption of alcohol. This may include reminders about the company’s alcohol control policy, as well as information that the attendee may use to plan for the event (e.g., information on whether transportation will be provided). Employees should be made aware that they are welcome to attend and enjoy the event, but that they are expected to act responsibly.

Event Supervision

Employers should take steps to monitor the consumption of alcohol during the event. This is especially important if underage employees will be present.

Designated Monitor: At least one designated person should handle monitoring the event. This person should not be involved in serving and should be able to circulate through the crowd. This person should have the authority to instruct servers to stop serving individuals, arrange for alternative transportation for intoxicated people, and implement the employer’s alcohol consumption policy.

Open Bars: If open bars are provided, the bar should be supervised. Professional servers should be used whenever possible. The servers should be instructed not to push drinks or serve anyone who is noticeably intoxicated. Also, they should be instructed to notify the designated monitor if they think that anyone has had too much to drink. If employees serve as bartenders, those employees should be given formalized training in responsible alcohol service. The training should include:

- How to recognize when a person is becoming intoxicated
- How to handle unruly or intoxicated people
- How to obtain emergency assistance.

Standard measures should be used, such as shot glasses or pouring spouts. This will prevent the pouring of overly strong drinks.

Serving Hours: Event planners should consider limiting the time periods when alcohol is served. All alcohol service should be stopped at least one hour before the end of the event. Only non-alcoholic beverages should be served for the remainder of the event.

Drink Tickets: Drink tickets are one method of monitoring alcohol consumption. People attending the event should be provided with a limited number of tickets that can be used for redeeming alcoholic drinks. These tickets should be the only means of obtaining alcohol at the event. Even if participants are free to get additional tickets, the act of handing over tickets will inhibit some people from drinking excessively.

Underage Employees: Employers should take additional steps to monitor alcohol if underage employees would be present at an event where alcohol is served. This includes informing the servers that underage employees would be present and that the server should require to see a valid identification before serving alcohol if they are in doubt of the employee age. Adult employees should be made aware that the employer will not tolerate the acquisition of drinks for underage employees.

Managing Intoxicated People

It is reasonable to expect that the people at events where alcoholic beverages are served may become intoxicated despite the efforts of the employer to encourage responsible consumption. Employers should establish procedures for managing these situations.

Prevent Further Service: Persons serving alcohol should be instructed not to serve a visibly intoxicated person. A supervisor should be available to ensure that the employer’s policy is followed and to provide support for any person.

Alternate Transportation: Employers should arrange for alternate transportation for intoxicated employees following company-sponsored events. Such alternate transportation can include company personnel serving as designated drivers, limousines, taxis, and shuttle services. Employees should be encouraged to use such transportation if they consume alcohol.

Hotel Rooms: If the event is held at a hotel or convention center, the employer should consider arranging for blocks of discounted rooms to be available for use by intoxicated attendees. Employees should not be penalized for using the rooms.

Reference: Engineering & Safety, Liability for Intoxicated Employees, LB-20-20, September 12, 2005

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Contact: AIG Programs Loss Control
T 800 611 3994
F 888 659 9047
programs@aic.com

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