



## is your labour day picnic a looming company liability?

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Many employers and their staff look forward to their company's labour day picnic, but do you know that unless sufficient safeguards are in place, the social event of the year can turn into the lawsuit of the century. If you are planning to host a social gathering at which alcohol is served, you need to be aware that you may be exposing yourself to significant financial liability for the actions of an impaired guest from harm caused by drinking and driving. The liability can arise both from the actions of your employees while attending your company's function and long after they have departed.

It is well established in Canada that bars, pubs, restaurants and other commercial alcohol providers owe a legal duty to take positive steps to protect the public from the drunken driving of their patrons. For a social host, the liability is more limited. What about where the event is sponsored by an employer? Employers have wide ranging legal duties to ensure that the workplace is safe for their employees. What happens when the employer hosts an event which is both a social event and a work event? Alcohol served in the workplace in the context of a firm sponsored event is risky business.

In one case, a judge ruled on the duty of care owed by an employer to an employee who drove home drunk after an office Christmas party. A secretary attended an office party for clients and staff at the premises of her employer. Guests served themselves from an open bar and no one was in charge of monitoring alcohol consumption. The secretary was in attendance as both an employee and a guest. She consumed alcohol at the party, and later cleaned up the office after the party ended. She then left work, went to a pub and continued drinking. She then drove home several hours later in a snowstorm, seriously injuring herself when she drove into oncoming traffic. She was convicted of impaired driving. The employee successfully launched a legal claim against her employer. The court held that the employer and the pub were jointly responsible and imposed a judgment against them of nearly \$300,000.

In another case, a B.C. employer was held substantially responsible for injuries to an employee who consumed a large quantity of beer supplied by his employer during working hours. The employee later drove home and was in a single vehicle accident which rendered him a quadriplegic. The court held that the employer was primarily responsible for the employee's injuries even though the employee stopped at a bar after leaving work and continued to consume alcohol. The employer was found to have breached the duty of care it owed to its employee.

What does this mean? Our courts have said that social hosts generally do not owe a duty to the public to take positive steps to prevent intoxicated guests from driving. One might expect even "social" hosts to be responsible for the harm done by their guests if the hosts themselves are

reckless or aggressively ply their guests with drink. However, the duty of an employer to an employee is higher and closer to that of a "commercial" for profit host.

Whatever the circumstances, one would do well to recognize that where innocent people are harmed, the courts have a natural tendency to seek to hold someone accountable. If the person most directly responsible for causing harm is unable to pay, be aware that the focus will shift to the host and that, with the benefit of hindsight, it might be possible to conclude that the host's conduct created or contributed to the risk. Measures an employer should consider for the annual summer party include:

- Hold parties at non-work locations;
- Use professionally staffed "no host" bars instead of "open" bars and provide a selection of non-alcoholic beverages;
- Provide a limited number of drink tickets for employees where alcohol is provided by the employer;
- Promote responsible alcohol consumption and remind employees about their personal responsibility not to drink and drive;
- Provide taxi chits or bus tickets and discourage employees from driving their vehicles to the party; and
- Lead by example with responsible and sober management.

Regardless of what your legal duty might be, common sense dictates that, if you are going to host a party where alcohol is consumed, you should take steps to ensure your guests drink responsibly. If an employee does end up becoming intoxicated despite all of your efforts consider taking the following steps:

- Offer a safe ride home;
- Take away the employee's car keys;
- Call a taxi for the employee and take reasonable steps to ensure they take it; and
- If the employee refuses your assistance and attempts to drive home, call the police.

Have a safe labour day and make your party one to remember for all the right reasons.

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#### [a cautionary note](#)

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