



You'd better watch out! The perils of holiday parties

By David C. Higgs and Amy C. Osenar • December 19, 2014

Temperatures have dropped, the last leaves have fallen and the sun is setting in the afternoon. The holiday season has come again! Along with traditions of friends and family, we cannot overlook another beloved seasonal institution: the holiday office party.



The holiday office party is a great opportunity for employers and employees to mingle and celebrate the season. But what happens when a worker is injured during the celebration or as a result of too much eggnog?

In Oregon, a compensable injury does not include an "injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activity primarily for the worker's personal pleasure".¹ Oregon also exempts injuries caused in major part by "consumption of alcoholic beverages or the unlawful consumption of any controlled substance, *unless* the employer permitted, encouraged, or had actual knowledge of such consumption"² (emphasis added).

Personal Pleasure

In *Charles E. Negus*,³ a worker sustained a knee injury while playing charades at his office holiday party. The injury was deemed compensable.

The Board considered a number of factors to determine whether the charades were primarily for the worker's personal pleasure. They ultimately found there was a significant work connection between the charades and claimant's employment, because the holiday party occurred at corporate headquarters, was at least partially for the benefit of the company, was not perceived to be optional and was directed in large part by the employer.

Intoxication

In *Scott S. Fromm*,⁴ claimant sustained an injury when he lost his balance while on a ladder at work. The injury was deemed non-compensable.

At hearing, testimony established that claimant was "drinking and dancing" the night before the injury, and although the precise amount of consumption was unknown, the claimant arrived two hours late to work. Testimony also showed that coworkers drove claimant to a hospital after the injury, but

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You better watch out! (continued)

stopped along the way to purchase beer and take shots of whiskey. A blood alcohol test of claimant showed results exceeding several times the legal limit.

While acknowledging he consumed alcohol after the accident, Claimant argued that he was not impaired at the time of his injury. However, expert medical opinion established claimant's consumption during the trip to the hospital did not account for his full test results, and that claimant was likely impaired at the time of injury. The Board found sufficient evidence that claimant's intoxication was the major contributing cause of his loss of balance and resultant injury.

Mitigate your exposure!

Scrooge would say to cancel your holiday party. We disagree. Instead, avoid including physical activities, limit employees' consumption of alcohol via drink tickets, enforce post-injury drug testing and make your holiday party a voluntary affair. And remember to have fun!

Happy holidays from Reinisch Wilson Weier PC. ■

¹ ORS 656.005(7)(b)(B).

¹ ORS 656.005(7)(b)(C)

³ Charles E. Negus, 42 Van Natta 2399 (1990),

⁴ Scott S. Fromm, 47 Van Natta 1476 (1995),

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