

community BANKER

NOVEMBER / DECEMBER 2021

Welcome to the latest issue of the COMMUNITY BANKER.

The Community Banker is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

Community Banker
c/o Olson & Burns P.C.
P.O. Box 1180
Minot, ND 58702-1180

olsonpc@minotlaw.com
Also, visit our web site at:
www.minotlaw.com

The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

DISCLAIMER

COMMUNITY BANKER is designed to share ideas and developments related to the field of banking. It is not intended as legal advice and nothing in the COMMUNITY BANKER should be relied upon as legal advice in any particular matter. If legal advice or other expert assistance is needed, the services of competent, professional counsel should be sought.



OLSON & BURNS P.C.

17 FIRST AVENUE S.E. • P.O. BOX 1180 • MINOT, NORTH DAKOTA 58702-1180
TELEPHONE (701) 839-1740 • FACSIMILE (701) 838-5315 • E-MAIL: olsonpc@minotlaw.com

HAVE YOURSELF A MERRY LITTLE LIABILITY-FREE CHRISTMAS

It's been two years since the last holiday party and employers and employees may be ready to mingle again; unfortunately, holiday cheer may expose you to risk of different sorts, including the following:

Employee Wrongful Acts.

An employer may be held liable for the wrongful acts of an employee under the doctrine of respondeat superior; this legal principle spreads risk among those best able to bear it – the one with more money. Because the employer does not actually commit the wrong, putting responsibility on the employer is "vicarious liability."

Employer vicarious liability generally is limited to employee errors or actions that occur within the "scope of employment" – for example, if a pot of hot coffee is negligently dumped on your head when you are out for breakfast, the cafe may be responsible for your injuries caused by the employee's negligence. The test is whether the risk of injury is *incidental to or related to* the employer's business; under that standard, employers may find themselves liable for negligence of employees on the way home from holiday parties.

It's generally true that an employer is not liable for collisions involving employees who are on their way home from work because traveling to and from work is outside the normal course and scope of employment. Therefore, to limit risk, employees should not be *required* to attend holiday get-togethers. If attendance is not mandatory, this helps defeat the argument that being at the party was part of the "course and scope" of an employee's job.

Workers' compensation claims.

Requiring attendance raises another issue as well. If employees are required to attend and are injured at the party, are they eligible for workers' compensation? Maybe? The issue has not been litigated in North Dakota, but employers should not require attendance at holiday parties or in any way pressure employees to attend. Mandatory attendance at functions can lead to the argument that the employee was injured while acting in the course of employment.

Dram Shop laws.

In North Dakota, the employer can be held liable if alcohol was provided at the party and someone is injured. Under the Dram Shop laws, North Dakota established a statutory duty for persons providing alcohol to a person under 21, to an incompetent, or to an obviously intoxicated person. In this context,

providing alcohol to someone includes giving it away in a social situation. N.D.C.C. § 5-01-06.1.

A social host can be liable if he or she serves alcoholic beverages to a person he knows (or should know) is under the influence of alcohol, and he knows that the person who is under the influence of alcohol will shortly thereafter drive. Arguably, employers have an even greater responsibility than private social hosts because they have control over the conduct of their employees in a way social hosts do not have over a guest. Employers should therefore take reasonable steps to continue to control the conduct of employees. Even if an employer does not provide the alcohol, the employer who knows—or reasonably should know—that employees became intoxicated on work premises or at a company function should take reasonable steps to prevent the employee from operating a motor vehicle.

Sexual harassment.

It doesn't just happen on tv - Christmas parties can be the scene of unwanted romantic overtures that result in lawsuits in real life. As always, care should be taken to make sure inappropriate conduct does not occur; if gifts are exchanged, make it clear that sexually-themed gifts are prohibited.

Ideas.

1. Make it clear to employees that celebrations are optional and attendance is not required.
2. An office breakfast party, group volunteer activity or tickets to a special event are great ways to let your employees know you appreciate them.
3. Make sure employees are aware that personnel policies apply not only to work-related situations but also to office social functions, even if they are not on work premises.
4. Have a non-alcoholic business party where the focus is on fun activities rather than alcohol. Spend the money you'll save on door prizes, games, or better food. Let employees know they are not to bring alcohol to the event, even as a gift or donation.
5. If you are having a more traditional party with alcohol, provide a variety of non-alcoholic beverages and plenty of food. Use a cash bar or ticket system instead of an open bar because the amount of alcohol consumed by employees is reduced.