

Employment Law for the Holidays

Deck the Halls with HR Compliance

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HORTON
Management Law



Overview



- Holiday Parties
- Religious Issues
- Attendance/Weather
- Holiday Bonuses



Parties

Holiday Parties

- Time to celebrate
- Show employee your appreciation for their service
- Reward employees for their service
- An opportunity to review the success of the Company
- Distribute employee awards

Company Holiday Party

- Should you have a holiday party?
- During or after work hours?
- Location: Company property or off-site?
- Employees only? Spouses/guests? Children?
- Alcohol? Beer/wine only or liquor too?



Potential Problems

- Sexual Harassment
- Bullying
- Misconduct
- Accidents
- Physical Injuries
- Intoxication



How can employers minimize the risks associated with Holiday Parties?

Reducing Risks

- **Eliminate/reduce alcohol**
- Make attendance voluntary
- Serve only beer and wine and avoid liquor
- Provide each employee with a set number of drink tickets upon arrival
- Schedule the party during the lunch hour instead of dinner or late night
- If possible, allow employees to bring their spouse, guest, and/or children depending on the nature of the party and venue
- Provide each employee with reminder of important company rules that apply for the event
- Arrange rides home (Uber, Lyft, Taxi, Shuttle)

Religion



Holiday Decorations

If the company decorates the office for the holiday or permits employees to decorate their work areas for the holiday, the decorations may not be restricted to those related to one specific holiday or religion.



Protected Religions/Practices

- Traditional, organized religions such as Christianity, Judaism, Islam, Hindu, and Buddhism
- Religious beliefs that are new, uncommon, and not part of a formal church or sect
- Religion or religious practices held by only a small number of followers
- Practices might be protected under one religion but not others (e.g., working on a Saturday or Sunday)
- Religious beliefs must be “sincerely held,” but often difficult/risky for employer to challenge

Reasonable Accommodations

- Limited inquiry on validity of belief
- Time off, schedule change, or workplace adjustments
- Undue Hardship?
 - high cost to the organization
 - would compromise workplace safety or efficiency
 - infringes upon the rights of another employee
 - other employees to do more than their share of potentially hazardous or burdensome work.
- No legal requirement to compensate employees for time off for religious observance, including holidays (unless provided by company agreement or policy)

Undue Hardship

- A religious accommodation request that is considered burdensome or involves an excessive cost
- A request that substantially harms employee morale, reduces efficiencies in other jobs, or infringes upon the rights of other workers
- An accommodation that causes a safety concern for the employee or coworkers

Accommodation Examples

- An exception to the company dress or grooming policy
- Schedule change request to attend church services
- Accommodation for an atheist to be excused from any religious practices that may be observed at the beginning of a staff meeting
- Pharmacist excused from filling prescriptions for birth control based on religious beliefs



Best Practices

- Maintain a written policy that addresses religious accommodation requests
- Establish consistent procedures for making/handling requests
- Require that, whenever feasible, all time off must be requested in advance to allow adequate time to plan accordingly and adjust work schedules when necessary
- If the accommodation requested causes a serious conflict for the employer, alternative accommodations may be considered that would achieve the same or similar result (e.g., substitute employees, change work schedules, allow for flex schedules)



Weather/Attendance

Holiday Pay

- FLSA does not count holiday pay (where employee didn't work) toward hours for overtime eligibility
- Company policy or union contract might dictate otherwise, including premium pay for working on holidays
- Exempt employees that receive time off for holidays must be paid their full weekly salary for any week in which they worked
- Not appropriate to deduct from exempt employee's salary for any day in which the office was closed for the observance of a holiday (but could require employee to use personal/vacation time)
- If office open, exempt employees could have salary reduced for full day absences only
- Employers can implement a policy that requires employees to work the day before and the day after a holiday in order to be eligible to receive holiday pay.

Weather-Related Absences

- Under FLSA, not required to compensate non-exempt employees for time missed as a result of inclement weather
- Collective bargaining agreement, employment contracts, or company policies could provide otherwise
- If office open, then exempt employees could have salary reduced for full day absences only
- Company policy could permit employees to use personal/vacation time for such absences

Partial Day Closures

- Usually only required to compensate non-exempt hourly employees for hours worked.
- Some state laws require employers to compensate non-exempt employees for a set number of hours if they show up for a scheduled shift and are sent home early.
- Exempt salaried employees that are sent home early as a result of inclement weather, should not experience a deduction from their pay, but could be required to use PTO/vacation, if available, under company policy

Furloughs

- It is common practice for some industries to schedule a work furlough around the holidays, particularly during the week between Christmas and New Years.
- Employers are not required to compensate hourly, non-exempt employees for hours missed during the furlough.
- Furlough might trigger eligibility for unemployment.
- Exempt salaried employees must be paid for any week in which they provide services.

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Anna Escobedo Cabral

Treasurer of the United States

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Holiday Bonuses

Employee Bonuses

It is customary for some companies to provide bonuses to employees around the holidays to recognize and reward employees for their accomplishments.

Things to Remember When Issuing Holiday Bonuses:

- Holiday bonuses are subject to taxes
- Employers can categorize the bonus as a holiday bonus, but should stay away from labeling it a Christmas Bonus.
- A Discretionary Bonus is one in which the amount, eligibility and timing of payment are left entirely up to the employer and does not get applied toward the employee's regular rate of pay or get applied toward the calculation of overtime.
- A Non-Discretionary Bonus usually has eligibility requirements associated with it and should be set forth in a written policy. Often tied to good attendance, meeting production goals, incentive payments, or meeting quality or quantity metrics. Non-Discretionary bonuses must be included in a non-exempt employee's regular rate of pay and will impact overtime earned during the eligibility period for the bonus. Many employers fail to include non-discretionary bonuses in the regular rate of pay and do not go back and adjust the rate paid for overtime earned during the eligibility period.

Discretionary vs. Non-Discretionary

- Discretionary Bonus: amount, eligibility, and timing of payment are left entirely up to the employer.
 - not applied toward the employee's regular rate of pay
 - doesn't affect overtime calculation
- Non-Discretionary Bonus: usually has pre-determined eligibility requirements and should be set forth in a written policy.
 - often paid out for good attendance, meeting production goals, incentive payments, or meeting quality or quantity metrics.
 - must be included in a non-exempt employee's regular rate of pay and will impact overtime earned during the eligibility period for the bonus.
 - Many employers fail to include non-discretionary bonuses in the regular rate of pay and do not go back and adjust the rate paid for overtime earned during the eligibility period.

Holiday Bonus Trap

- Employers typically treat holiday bonuses as discretionary since they are not expressly guaranteed to the employee.
- However, if the employer has a consistent practice of providing employees with a holiday bonus, employees might rely upon the holiday bonus each year and consider the holiday bonus amount in their overall annual compensation.
- Thus, the bonus might no longer qualify as discretionary.
- If there appears to be a standard calculation used by the employer to determine the amount of the holiday bonus and the employee's attendance and performance are factors used toward the calculation, the bonus might become wages due to be paid.
- Such a bonus would also need to be factored into the employee's regular rate of pay for overtime purposes.



Stay Updated!

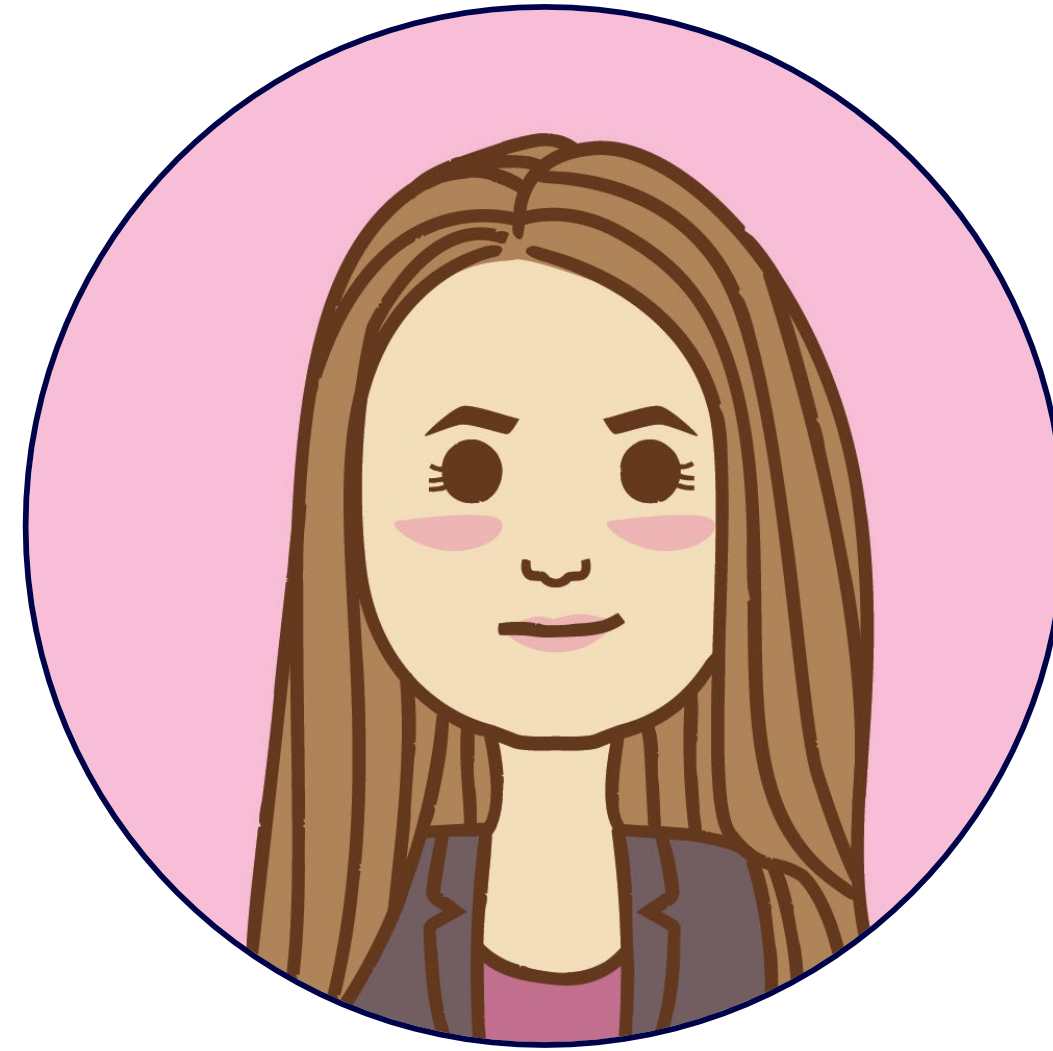
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Thanks for your time!

Questions?

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