



Legal Corner

By
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Alcohol at company events— when is the party over?

As the holiday season approaches, your organization may be planning its annual holiday party. As an employer, party preparation will be incomplete until you have made plans to limit employee alcohol consumption and ensure employees arrive home safely after the party. Failure to do so may expose your organization to significant liability for damages either sustained or caused by an impaired employee.

The Ontario case of *Hunt v. Sutton Group Realty* considers the scope of the duty of care owed by an employer to an employee who consumes alcohol at a company event. Ms. Hunt suffered injuries during a car accident which occurred while she was on her way home from the office Christmas party.

At the party, she had consumed alcohol provided by her employer at an unsupervised, open bar. After the party, she and a number of other employees went to a pub where they consumed more alcohol.

The Hunt decision expanded the scope of an employer's duty of care beyond the duty to ensure the plant, premises and/or methods of work are safe. In Hunt, the Court extended this duty beyond the employer's premises:

I find that the defendant Sutton, as the plaintiff's employer, did therefore owe a duty to the plaintiff, as its employee, to safeguard her from harm. This duty to safeguard her from harm extended beyond the simple duty while she was on his premises. It extended to a duty to make sure that she would not enter into such a state of intoxication while on his premises and on duty so as to interfere with her ability to safely drive home afterwards. . . He ought to have foreseen the dangerous conditions made worse by the intoxicated condition of his employee. He ought to have anticipated the possible harm that could have happened to her and, in fact, taken positive steps to prevent her from driving home.

Significantly, the Court also held that:

- By maintaining an open and unsupervised bar, the employer was incapable of monitoring alcohol consumption of employees.
- The employer's duty of care was not discharged by merely offering a cab to employees, nor even by specifically offering to drive Ms. Hunt home. The employer ought to have withheld Mr. Hunt's keys and physically ensured she did not drive.
- The employer's duty of care was not discharged merely by asking Ms. Hunt if she wanted her husband called to pick her up (the worst person to ask for guidance in this situation is the intoxicated person, whose judgment is impaired). The employer should have phoned Ms. Hunt's husband directly.
- If necessary, the employer could have called the police.

Ultimately, the court found that by allowing Ms. Hunt to become intoxicated then drive home, the employer and pub had breached their duty of care and were 25% liable for Ms. Hunt's injuries. Ms. Hunt was held liable for 75 per cent on the basis of self-induced alcohol consumption.

Employer appealed

The employer appealed the decision and in August 2002, the Ontario Court of Appeal ordered a new trial on the basis that the trial judge failed to consider several key facts relevant to the issues of negligence and causation (e.g. whether Ms. Hunt was "intoxicated" when she left the Christmas party).

Significantly, the Court of Appeal did not overturn the trial judge's analysis of the employer's duty of care. It remains very high.

As for the new trial ordered by the Court of Appeal, it will never happen.

The Hunt case settled in January 2003.

Options for employers

The Hunt case must be acknowledged as a warning

⇒ **PRUDENT, Page 6**

Prudent employers must be proactive

From Page 5
bell for employers.

Prudent employers must be proactive ensuring that employees do not abuse alcohol at employer-sponsored functions and drive home after.

The most cautious employer will simply not serve or provide alcohol at company events. However, short of the elimination of alcohol, the following steps may be taken to help minimize an employer's exposure to liability:

1. Hold social events outside regular working hours and off company premises. Attendance at events should be voluntary.

2. If events are on company premises, hire a professional bartender and/or servers with experience and training identifying intoxi-

cated individuals. Do not have a self-serve bar.

3. Instruct bartenders and servers not to serve employees who appear intoxicated.

4. Address intoxicated employees immediately and cut them off. Do not wait until they are about to leave the party.

5. Restrict alcohol consumption. Consider imposing a two-drink limit or alternatively provide drink tickets or a cash bar. Close the bar at a specific time.

6. Provide non-alcoholic beverage options and food for all employees.

7. Consider organized activities or entertainment.

8. Designate a non-drinker to monitor employee drinking and assist anyone who has become impaired and requires

transportation.

9. Provide employees with alternative methods of transportation, including a designated driver program and/or free taxi transportation.

10. Insist intoxicated employees turn over their keys. Do not take inoî for an answer.

11. Have appropriate liability insurance in place.

12. Senior management must lead by example.

Finally, every workplace should have a policy regarding the use of alcohol at company events. The policy should emphasize concern for employee safety and that company events are not an opportunity to drink to excess. In our experience, when management fosters a work environment that recognizes

appropriate limits to alcohol use, employees are more inclined to respect those limits at social events.

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