



N.J. Human Resources Law Alert

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Holiday Party Liability

Employer's should be mindful that holiday parties, especially those at which alcohol is served, have the potential to lead to inappropriate behavior and may lead to claims brought by employees or third parties based on injuries suffered during or after the event. While planning and monitoring the event, employers should consider these risks and take precautionary measures:

- review your insurance coverage to confirm you have adequate coverage;
- remind employees of the Company's expectations;
- remind members of management to set a good example;
- limit and monitor the amount of alcohol consumed;
- avoid customs that have the potential to create romantic or sexually-charged situations, such as hanging mistletoe;
- hold the event at an outside venue that has a liquor license so that alcohol is distributed by a professional;
- arrange for alternate transportation;
- consider allowing employees to bring guests because employees may be more reserved and less likely to engage in offensive behavior when accompanied by their significant other or unfamiliar faces; and
- consider making the event after work hours and voluntary.

Frightful Weather and Delightful Holiday Bonuses Give Rise to Wage and Hour Issues

Snow, ice and Hurricane Sandy are enough motivation to make us review some workplace compliance issues like time off from work, workplace safety issues and end of the year bonuses.

In deciding whether to compensate employees for time off from work due to weather related conditions, employers must focus their analysis on the employee's

Fair Labor Standards Act (FLSA) status, i.e., exempt or non-exempt. If the workplace is closed for bad weather, for a day, exempt workers should be paid while hourly non-exempt workers have to be paid for actual working time unless a contract or policy requires otherwise. If the office is closed, however, for a week, exempt workers need not be paid for “any workweek in which they perform no work.” (Wage-Hour Opinion Letter, April 30, 1975). If the office is open and an exempt worker cannot make it in due to bad weather, his/her pay may be docked if no work is done at home or otherwise.

Employers must also keep the FLSA in mind when awarding bonuses. If you distribute a non-discretionary bonus to a non-exempt employee, that bonus must be included in the computation of pay for overtime purposes. “Non-discretionary” means a bonus that is agreed to, promised or contracted, such as for a signing bonus, attendance bonus or one that is part of a collective bargaining agreement. To avoid DOL violations, it is important for employers to review employee handbooks, employment agreements and collective bargaining agreements prior to the issuance of bonuses in order to determine the discretionary status of the bonus.

EEOC Enforcement Actions Cost Employers a Record \$365 Million

Employers beware – liability for employment discrimination continues to rise to record levels. In 2012, the EEOC secured a historic monetary recovery of \$365 million through its private sector administrative enforcement efforts. Although the Equal Employment Opportunity Commission Performance and Accountability Report for the 2012 fiscal year shows the EEOC filing fewer lawsuits in 2012, the Report shows that the number of systemic discrimination investigations has increased four-fold. The EEOC has refocused its efforts “in recent years on the efficient and effective enforcement of the nation’s equal employment laws.” As a result, the pipeline of potentially high stakes cases is significant.

About the Authors

For over 30 years, [Sean Kelly](#) has focused his practice on counseling employers and defending employment cases, and has successfully tried many employment cases to verdict. He is certified by the Supreme Court of New Jersey as a Civil Trial Attorney, has been repeatedly included in New Jersey Monthly Magazine's list of New Jersey “Super Lawyers,” holds the highest rating awarded by the Martindale-Hubbell Lawyers Directory, has been named a Master of two separate American Inns of Court, and is included on the New Jersey Superior Court roster of court-approved mediators.

[DanaLynn Colao](#) focuses her practice on business litigation with an emphasis on employment issues. She counsels and provides training for clients on a wide array of issues that arise in the workplace including medical leaves of absence, wage and hour claims, employment agreements and non-compete agreements. Strategic thinking and

affirmative measures enable DanaLynn to significantly reduce potential liability for her clients. DanaLynn was selected to the *New Jersey Law Journal's* list of leading lawyers in the "Forty Under 40" selection and she has been listed since 2009 in the NJ Super Lawyers "Rising Star" category.

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