

# The Wright & Kimbrough Report



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## RISK MANAGEMENT

# How to Reduce Your Holiday Party Liability

**I**F YOU'RE throwing your staff a Christmas party this year, don't forget that holiday soirees also mean increased liability for workers' comp, harassment and third-party injuries.

For example, did you know that if one of your staff is injured at your holiday party it could trigger a workers' comp claim, since it could be considered "within the course and scope of employment?"

The rules for this can vary depending on the state and how broadly the courts define "scope of employment."

In California, all company-sponsored events fall within the course and scope of employment, because they benefit the employer by improving employee morale and furthering employer-employee relations.

But the biggest issue is liability, particularly if alcohol is served at the function.

Here are 10 tips to help ensure that cheer does not turn into a legal nightmare:

1. Attendance must be voluntary. To

make sure that your employees understand this, clearly state it in the invitation and any announcements you may post about the party in your workplace.

2. Hold your event after working hours and at a venue other than your office. This reduces the likelihood the party will be perceived as work related.

3. Don't try to coax employees to come by implying that attendance can help them advance their careers or standing in the office, or that not coming would be viewed by other staff as the employee not being a team player.

4. Don't give out awards, bonuses or any types of recognition that would indicate that they are there for business reasons.

5. Strongly consider NOT inviting vendors, customers or others with whom your company conducts business.

6. Tell your employees that they can bring their spouses and significant others.

7. Remind employees that normal workplace standards of conduct should be

respected. When alcohol is served at parties, it may reduce inhibitions and can lead to sexual harassment or discrimination claims.

If you do receive a complaint about discrimination or harassment, don't shrug it off. Take it seriously and conduct a proper investigation and interview the employee complaining, the one who is accused and any witnesses.

8. Limit or not serve alcohol. Close the bar at least one hour before the end of the party. Also, hire a professional bartender who knows when to cut people off.

Arrange for no-cost transportation for any employee who should not drive home. If you serve alcohol, also serve plenty of food.

9. Tell employees not to post pictures from or comments about your company party on social media without a policy in place.

10. Discuss your exposure with us to make sure that you are properly covered for any liabilities that may arise out of the function. Call us! We are always here to help. ❖



## CONTACT US

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# As DOJ Targets Bosses, Your Execs Need Coverage

**T**HE U.S. Department of Justice is stepping up its efforts to prosecute individual executives for company misdeeds, which could see more directors and officers facing jail time and financial penalties.

The department issued a memo to its prosecutors outlining best practices and recommending that responsible individuals should be the focus of investigations, and that it only considers a company to have cooperated in an investigation if it turns over information about the actions of individuals at the firm.

This type of prosecution can cost the executives involved and the company hundreds of thousands of dollars in defense costs and fees, potentially bankrupting both the individuals targeted and the business.

The latest effort comes as the DOJ has been criticized for not doing enough to prosecute company executives, especially in the wake of the financial crisis.

With the stakes increasing, it's more important than ever that you protect your executives' and company's assets by securing a directors and officers (D&O) liability policy. A D&O policy provides coverage for defense costs and damages (awards and settlements) arising out of wrongful-act allegations and lawsuits brought against an organization's board of directors and/or officers.

But there are times when coverage questions may arise, or times when costs exceed the D&O coverage amount.

Some issues that could arise include:

- A company refusing to indemnify certain directors or officers because of concerns they may have done something wrong, or
- A company exhausting its D&O policy and then refusing to pay a director's legal fees.

There is an additional policy – an excess “Side A Differences in Conditions” policy – that would fill the void in these circumstances. This

policy will advance defense costs for directors and officers in the event the company doesn't pay an otherwise covered claim for any reason.

These policies have fewer exclusions than normal D&O policies. They can often fill the void when the underlying D&O policy is not triggered due to an exclusion. Also, there is usually no retention or deductible on Side A Differences in Conditions policies. ❖

## 3 Sides of D&O Policy

Coverage under a D&O policy typically has major coverage parts, or “sides”:

- Side A covers the director or officer in circumstances when the company is not legally permitted to provide indemnification.
- Side B covers the firm for indemnifying the relevant director or officer when the firm is legally permitted to provide indemnification.
- Side C provides some limited coverage for the company itself.

## TOP 5 REASONS FOR COVERAGE

1. Directors and officers can be held personally liable for claims.
2. D&O liability claims related to regulatory actions are increasing, representing 23% of claims.
3. More directors and officers want assurances beyond corporate indemnification. In fact, 43% desire added protection in the event their firm becomes bankrupt and/or insolvent.
4. Directors and officers and their employers may be targeted by a range of claimants, including shareholders, competitors, customers, employees and government entities.
5. D&O claims are increasingly common for private companies and nonprofits; 36% of all firms reported claims in the last 10 years.



# Avoid Future Liability, Report All Injuries Promptly

**I**F ONE OF your staff suffers an injury at work, it's your duty to report that injury to your workers' comp carrier.

Many employers think they can skip making a report if someone is hurt at work yet doesn't need to go see a doctor immediately. But the problem is that even what seems like a minor injury can turn into a major problem down the road.

Take the case of a man who was working for Louis Truth Dairy, when a crate with milk containers fell down a shoot and hit him in the shin.

The force of the impact knocked him to the ground and left a welt. Despite the bruise, he did not think the injury was serious, so he didn't report it to his employer.

But the welt became a boil that eventually opened up and became infected. The man then sought care from his doctor, but did not mention the wound to his employer until three months after the workplace injury was incurred.

Although, in this instance, the employer had no control over the delay, it's common for workers not to report a minor injury, such as a small cut on the hand.

But you never know when an injury can become infected or otherwise develop into something more complicated.

## Consequences of late reporting

- A delay in seeking treatment may cause a deterioration in the employee's condition.
- Your ability to investigate the claim may be hindered, as witnesses may no longer be available or key evidence may not be preserved.
- The ability to deny uncompensable claims can be affected. Many states have laws that prohibit denial of claims after a specified time period.
- It may affect your ability to deny a claim if the worker was under the influence of drugs or alcohol at the time of the incident.
- The opportunity to direct the initial treatment to an occupational health clinic that specializes in treating workers' comp injuries and coordinates with the employer's return-to-work program may be lost.

## First-aid claims

In California, employers are permitted (under specific guidelines) to directly pay first-aid claims.

This practice can help minimize the impact on future experience modifications, and reduce the future cost of premiums. But you need to carefully make a decision on first aid.

## Definition

First aid, as defined by the California Labor Code and Regulations, is any one-time treatment, and any follow-up visit, for the purpose of observation of minor scratches, cuts, burns, splinters or other minor occupational injuries, which do not ordinarily require medical care.

Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid, even though provided by a physician or by other registered professional personnel.

## Reporting

In California, you are not required to report first-aid claims to your workers' compensation carrier.

We can assist you if you have any claims questions and we can work with your carrier to help you be certain that such claims are classified as first-aid only. ❖

## Examples of first-aid treatment

- Application of antiseptics
- Treatment for first-degree burns
- Application of bandage(s) during any visit to medical personnel
- Use of elastic bandage(s) during first visit to medical personnel
- Removal of foreign bodies not embedded in an eye if only irrigation is required
- Removal of foreign bodies from wound if removed using tweezers or another simple technique
- Use of non-prescription medications and administration of a single dose of prescription medication on first visit for minor injury or discomfort
- Soaking therapy on initial visit to medical personnel or removal of bandages by soaking
- Application of hot or cold compress(es) during first visit to medical personnel
- Application of ointment to abrasions to prevent drying or cracking
- Application of heat therapy during first visit to medical personnel
- Use of whirlpool-bath therapy during first visit to medical personnel
- Negative x-ray diagnosis
- Observation of injury during visit to medical personnel



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# Flood Insurance Can Save Your Firm from Calamity

**W**ITH FORECASTERS predicting significant rainfall thanks to the El Niño weather phenomenon, you could be putting your business at risk if you are not properly insured.

The average commercial flood claim is \$89,000, according to the National Flood Insurance Program.

And 25% of businesses that shut down after events such as floods never reopen.

Damage from flooding, including flooding generated by hurricane-generated storm surge, typically is not covered under a standard commercial policy, including a Commercial Package Policy or a Business Owners Policy.

Business located in flood plains will usually carry some flood insurance, but 30% of all floods in the U.S. occur outside flood plains.

When evaluating whether you need flood insurance, consider your expectations and your needs. In many aspects, flood insurance differs greatly from other coverage for your business.

Here are the major issues, according to the Insurance Information Institute:

## What does flood insurance cover?

Flood insurance covers damage to your building and contents caused by flooding.

This includes losses resulting from water overflowing from rivers or streams, heavy or prolonged rain, storm surge, snow melt, blocked storm drainage systems, broken dams or levees, or other similar causes.

Also, damage from mold and mildew resulting from the after-effects of a flood is covered, but each case is evaluated on an individual basis.

Mold and mildew conditions that existed prior to a flooding event are not covered, and after a flood, the policyholder is responsible for taking reasonable and appropriate mitigation actions to eliminate mold and mildew.

Generally if water comes from above – for instance from rain or melting snow overflowing gutters and leaking onto your inventory – you’ll be covered by your standard commercial property insurance.

## What’s my risk for flooding?

This is a key question, of course. By far the best indicator for the risk you face is location: Is your business near the coast or a river, lake or stream?

What’s the weather like? Is there a threat of hurricane, tornado or severe storm?

Is the business – and its primary equipment and inventory – on the bottom floor of the building or higher up, where it would be safer?

## Coverage Limits

Commercial flood insurance typically provides up to \$500,000 of coverage for your building and up to \$500,000 for its contents.

You can purchase what’s called excess insurance coverage to rebuild properties valued above those limits, and this type of coverage usually includes protection against business interruption.

## Think ahead

Don’t wait too long. Most flood policies won’t take effect until 30 days after the purchase, so you can’t wait until a threat surfaces to make this decision. ❖

We can assist you in evaluating whether your business property is located in a risk area and if you may need to secure flood insurance.

**CALL US TODAY!**

