



## Keating, Ritchie & Swick

8050 Hosbrook, Suite 200  
Cincinnati, OH 45236  
Phone: (513) 891-1530  
Fax: (513) 891-1537  
krslawyers.com

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### BUSINESS & EMPLOYMENT LAW NEWSLETTER

#### Office Holiday Parties

**Q:** As we approach the holidays, many people will soon be attending office parties. What issues should employers keep in mind when planning these parties?

**A:** Many employers give office holiday parties for employees or non-employees such as vendors and customers. However, recent years have seen an increase in litigation brought against employers to recover for injuries to employees or those injured by the actions of an intoxicated employee.

**Q:** What sort of issues are associated with these events?

**A:** While well-intentioned, these events can be a source of claims, including dram shop law violations, harassment claims, workers' compensation claims, and wrongful death actions.

\* Dram shop laws allow a person who is injured as the result of another's intoxication to sue the individual or business that provided the alcohol. Generally, employers are not liable under dram shop laws for merely hosting a party. However, liability may be extended if the intoxicated person is a minor or if the employer knew an

employee was intoxicated and continued to serve the employee alcohol.

\* Harassment claims, and particularly sexual harassment claims, may result when one employee (or even a non-employee) becomes intoxicated and makes inappropriate advances or comments toward another employee.

\* Workers' compensation covers only employee injuries sustained within the scope of employment. If an employee is intoxicated, the injury does not necessarily result from actions taken within the scope of employment. If an employer maintains a post-accident drug testing policy and otherwise complies with Ohio statutes addressing drug testing issues, there will be a presumption that the injury is not compensable. If attendance at an office party is mandatory, however, some injuries that involve alcohol may be considered work related, and therefore, compensable.

\* Wrongful death actions may be brought by the estate of a deceased employee to recover from the person who caused the death. An employer who was responsible for the employee's intoxication while within the scope of employment may be sued for wrongful death.

Q: How can employers protect themselves?

A: All employers should have a drug and alcohol policy stating that employees will be subject to discipline, up to and including termination, for the use, sale, or possession of alcohol or illegal drugs on company premises or while working. As previously noted, that policy should comply with legislation addressing drug testing. The policy may permit alcohol to be consumed at employer-sponsored functions, but the policy also should specifically state that at no time should alcohol be consumed to excess. Many employers choose not to serve alcohol at holiday parties or have the parties during the day to reduce the expectation that alcohol will be served. For holiday parties where alcohol will be served, employers should:

1. Remind employees about the company alcohol policy;
2. Remind employees about the company harassment policy;
3. Limit the availability and/or amount of time that alcohol is served;
4. Have a cash bar to avoid using company funds for alcohol;
5. Not allow supervisors to buy drinks for employees;
6. Hold events at sites not affiliated with the employer;
7. Provide cabs or establish a designated driver program;
8. Not make attendance at holiday parties mandatory and make sure that employees who attend know they may leave at any time.

### **Check 21 Effective on October 28, 2004**

The Check Clearing for the 21st Century Act ("Check 21") became effective October 28, 2004. The Act is intended to encourage

banks to handle check processing more efficiently.

The law allows a financial institution to convert your check into an electronic image, which can be instantly presented for payment. Presently, banks must physically move original paper checks from the bank where the checks are deposited to the bank that pays them. This can be inefficient and costly.

"The days of writing a check, putting it in the mail, and having two days to get the money in the bank to cover it are over. Check 21 will clear checks faster and consumers need to be prepared," said Attorney General Jim Petro.

The use of substitute checks should facilitate the collection and return of checks in electronic form by permitting, for example, a depository bank in California that receives a check drawn on a bank in New York to transfer check information electronically to a collecting bank in New York which, in turn, would create a substitute check to present to the New York paying bank. Under the Act, the New York paying bank would be required to take presentment of the substitute check that met all the legal equivalence requirements. Thus, instead of processing and transporting the original check across the country, the California bank could collect the substitute check using only local New York transportation. While banks would not be required to create electronic checks or substitute checks, they would be required to accept substitute checks from other banks instead of the original checks.

## Things Consumers Need to Know About Changes in the Processing of Checks:

Financial Institutions using Check 21 will not return original checks, but will provide a substitute check, which will be the electronic image made of the original check cashed. The electronic image of the check will be the legal equivalent of an original check as proof of payment. If a bank or its customer requires a paper check, the bank can create a paper “substitute check” from the electronic image.

- Financial institutions are not required to participate in Check 21, so ask your bank if it participates.
- Federal law requires banks and other financial institutions to provide notice to customers regarding Check 21 policy.

Fully understand how the policy affects you and your rights.

- Checks will clear faster. Be sure to have a sufficient balance when paying by check.
- A substitute check is a paper copy of the front and back of the original check. A substitute check is legally the same as the original check if it accurately represents the information on the original check and includes the following statement: “This is a legal copy of your check. You can use it the same way you would use the original check.”
- Check 21 contains a special refund procedure (called “expedited recredit”) for a consumer who suffers a loss related to a substitute check he or she received.

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