

In the Spirit of the Law

What an Employer Risks When Employees Drink At Functions

By *ROBERT S. MURPHY, Esq.*

It's a call that any business owner would dread.

The night before, your employees enjoyed the evening at a business-sponsored event. Food was provided, and alcohol was available on a 'bring-your-own' basis. On the way home, one of your employees was involved in a two-car intersectional accident. You are relieved to learn that no injuries resulted, but you can't help but think: what if?

In legal terms, the 'what if' in this scenario is called 'employer-host liability.' An employer-host is judged under the same legal standard as a social host. Since 1986, Massachusetts law has imposed liability on social hosts in limited circumstances.

A social host is one who serves alcohol or makes it available to a guest. An employer-host is an employer who serves alcohol or makes it available to an employee. A person making a claim under the theory of employer-host or social-host liability must first demonstrate that the host knew or should have known that the guest was intoxicated; second, that the host provided alcohol or permitted the guest or employee to continue to drink alcohol; and, finally, that because of his intoxication, the guest/employee acted in a negligent manner and injured a third party. If these elements are met, the injured third party may successfully bring a claim against an employer or social host.

Massachusetts law does not extend employer-host or social-host liability so far as to allow the drunken guest/employee to make

a claim for injuries. Recovery is limited to foreseeable third parties.

As the courts have wrestled with the concept of social-host or employer-host liability, they focus on whether the host controlled — and, therefore, could regulate — the supply of alcohol at the function. In the example above, a court would determine the potential liability of an employer-host under the same standards as a social host. Liability may arise when the employer either furnishes or controls the alcohol served at the party. Only when a host-employer exercises control over the liquor supply is it reasonable to assume that the host has the ability to monitor a guest's alcohol consumption.

Similarly, the state Supreme Judicial Court (SJC) found no liability for an employer-host who sponsored and partially paid for a holiday party with a cash bar at a banquet facility. Control is the triggering event which leads to liability. In a case where the company did not furnish or pay for the alcohol consumed by its employees, and absent a showing that the company had any control over the manner in which the commercial establishment performed its bartending duties, it is unlikely that liability will be found.

In 1991, the SJC further refined the social-host standard when it discussed under what circumstances a social host would be held liable for 'permitting' a guest to take an alcoholic drink as opposed to actually serving the guest. The court held that 'per-

mitting' meant "where a social host makes the host's liquor available to an intoxicated guest so the guest can continue to serve himself."

In that case, the court held that the social host was not liable because he had merely hosted a 'BYOB' party and did not serve or make alcohol available.

In 1994, the SJC dealt with a variation on the employer-host theory of liability. In that case, an employer was sued by a third party for injuries caused by an employee who had been drinking on the job. The employer was aware that the employee used the company's refrigerator to store beer. The employer also knew that the employee consumed beer at work on the day of the accident and made no attempt to stop his drinking.

The employer stipulated that they knew or should have known that the employee left its premises in an intoxicated state. Shortly after leaving work, the employee was intoxicated and driving negligently when he struck a third party. The court declined to extend liability to the employer under those circumstances. Relying heavily on the fact that the employer did not furnish alcohol to the employee, the court declined to extend liability to the employer.

The question of whether or not a company-sponsored open bar gives rise to liability has not been decided directly in Massachusetts. However, in 1988 the SJC ruled that the promoter of an event at a licensed bar where free beer was provided was

not liable to a third party who was injured by a drunk driver who had become intoxicated at the event. The court reasoned that the defendants, a radio station that promoted the event, and a beer manufacturer that provided the free beer had no control or right to control the distribution of the free beer at the event. The court pointed to the fact that neither of the defendants had a license that would permit them to control the distribution of the beer, i.e., a liquor license.

Based on the SJC's reasoning in that case, it could certainly be argued that a company that provides an open bar for a company function at an establishment licensed to sell alcoholic beverages cannot be held liable as an employer-host.

Obviously, an employer wants to provide an enjoyable setting for its business-related social activities. Consumption of alcohol at such functions is more often the rule than the exception. A prudent employer must recognize that, if he is supplying the alcohol, he or she may be responsible for injuries to innocent third parties that are directly related to the intoxication of the employee.

In such cases, the employer should take steps to ensure that its employees are not intoxicated, or that they have safe transportation home. ♦

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