



RISK NOTE

SUBJECT: Host Liquor Liability

Canadian court cases such as *Jacobsen vs. Nike Canada Ltd.* have placed a higher duty of care on employers who provide alcohol to employees at work-related social events. This duty of care stems from the nature of the employee-employer relationship and extends beyond the workplace. In these situations, the duty imposed by law on the employer is the same as commercial drinking establishments to take “positive steps” to prevent the employee from driving while impaired. In the past, drinking establishments have been held liable for injury not only to patrons, but for injuries that they have caused third parties (i.e. other drivers). The employer must act reasonably to avoid the risk of foreseeable harm to the employee and others.

Childs v Desormeaux (2006) tested the liability of “Social Hosts” (i.e. not employers, but those hosting an event unrelated to the workplace) to third parties when the event is a “B.Y.O.B.” While the court did not find a relationship leading to a duty of care, it left the door open to liability in cases where “public policy reasons” justified it.

Therefore, facilities should be aware that in hosting social events, their status as an employer, and possibly even as a “social host,” leads to potential liability. To mitigate the risks involved in the provision of alcohol at work-related social functions, the Health Care Protection Program recommends that its members develop a written policy addressing the service of alcohol at these events, communicated to staff during the planning stages of the function. In the development of this policy, consideration should be given to the following risk controls:

- Consider having the event remain a no-alcohol permitted function;
- Hold the function outside of work hours with voluntary attendance by employees who are guests only and not performing any work duties (i.e. no “drinking employees”);
- Advise the invitees in writing by either personal invitation or a posted bulletin of the date, time and place of the event, including a reminder to drink responsibly and arrange for safe transportation home prior to the event;
- Hold the event at a location other than the Health Care Agency’s premises, such as a hotel, restaurant or hall;

- In advance of the function, designate a reasonable number of individuals for the size of the event (including security personnel or outside law enforcement) who will not be drinking alcoholic beverages, to monitor alcohol consumption at the function;
- Do not provide free drinks or free drink vouchers. Have a “cash bar” requiring guests to purchase their own drinks and which closes at least one hour prior to the scheduled end of the event;
- Hire a professional bartender who is certified in the Serving It Right program with written instructions to:
 1. dispense moderate to light amounts of liquor,
 2. not serve anyone who appears to be impaired,
 3. bring to the attention of a designated monitor anyone who appears to be impaired;
- Require the professional bartender to carry commercial general liability insurance, including host liquor liability coverage and a requirement that the Health Care Agency be added as an additional insured under such insurance;
- Do not announce last call for bar service;
- Provide food, particularly those high in fat and protein;
- Provide a variety of non-alcoholic beverages;
- Make free transportation available to and from the event (e.g. prepaid taxi vouchers or a shuttle service). Have a designated monitor make inquiries of guests as they are leaving whether they require transportation;
- Provide clear instructions to the designated monitors that no individual should leave while intoxicated without suitable arrangements for safe transportation. If an individual appears intoxicated and does not have suitable transportation, the monitor should:
 1. ask the individual for his/her car keys,
 2. call for a taxi, shuttle service or other safe transportation,
 3. escort the individual to such transportation, ensuring he/she actually takes it.

If the individual resists this procedure, the monitor should call the police to provide assistance in protecting the safety of the impaired individual and the public; and

- Make arrangements for accommodations, particularly where guests may come from out of town.

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It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note please contact your organization's risk manager or chief risk officer to discuss.