

# EMPLOYERS' GUIDE TO HANDLING COMMON HOLIDAY SEASON ISSUES

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# INTRODUCTION

- Weather-related closures and absences
- Holiday party dos and don'ts
- Year-end gifts and bonuses:
  - Tax liability
  - FLSA compliance

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# WEATHER-RELATED CLOSURES AND ABSENCES: GENERAL

- **Issue:** Snowstorms, blizzards, ice storms, Nor'easters, etc. may cause your business to be closed for the day and/or prevent employees from getting into work
- Regardless of compensation issues, your business should develop an **Incident Weather Policy** covering:
  - Business closure notification procedures
  - Closures/absences impact on work schedules
  - Procedures if unable to make it to work due to weather
- Proper compensation depends on the employee's FLSA exempt or non-exempt status (as well as any applicable state or local laws)
  - **Non-Exempt:** Paid on an hourly basis
  - **Exempt:** Salaried + duties

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# NON-EXEMPT COMPENSATION RULES & GUIDELINES

- Easiest because employers generally must only pay for hours worked
  - *Subject to any union or individual employment agreements*
- Can require use of vacation/PTO time for office closures or absences for weather-related issues
- **Caution:** May want to consider allowing choice of no pay or use of vacation/PTO for employee relations purposes
- **Employee cannot leave work and continues working** = must be paid
- **Employee arrives, but is sent home shortly upon arrival** = pay for hours worked only (*subject to state or local laws*)

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# EXEMPT COMPENSATION RULES & GUIDELINES

- **General Rule:** Employer must pay exempt employees their full salary for any week in which they perform work (1 hour or 100 hours)
- **Office Closed:** May substitute/reduce accrued vacation or PTO time for time lost *if office is closed*
  - *Exception:* No pay required if office closed the FULL workweek
- **Snowbound, but Office Open?:** U.S. DOL says that if an employer is open for business and an exempt employee chooses not to (or is unable to) report to work, the employer may count this as time off for personal reasons
  - Can deduct from salary for time lost, but only in FULL day increments (i.e., noon arrival = no deduction)
  - No accrued leave = must pay the exempt employee
  - Out sick = can not deduct
  - Works remotely at all = can not deduct

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## QUICK WORD ABOUT FLU AND COLD SEASON

- Encourage employees create a clean work environment. Example actions:
  - Hand sanitizer dispensers throughout
  - Handwashing reminders in bathrooms
- Encourage sick employees stay home
  - Telecommuting may also be an option
- **AVOID** mandatory flu shot policies unless the law requires
  - Encouraging flu shots is general best practice
  - Union workers may have a right to bargain over such a policy
  - ADA and Title VII issues may arise with such a policy

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# HOLIDAY PARTY

- The holidays are upon us and so numerous employers plan to host/sponsor a party to celebrate for numerous well-intentioned reasons (e.g., employee morale)
- **However**, a landmine field of issues can arise at holiday parties serving alcohol if certain steps are not taken:
  - Unlawful employee harassment... or worse even
  - off-color jokes
  - political disagreements
  - fighting
  - etc.
- Recent SHRM report indicated 36% of employers reported misconduct at holiday parties
- Past issues when serving alcohol? Consider a catered lunch instead with no alcohol

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## HOLIDAY PARTY (CONT.)

- Review insurance policies and state/local “social host” liability laws
- Invite spouses/significant others
- Serve food and offer non-alcoholic beverages
- Dress code—no provocative clothing
- Consider only offering wine or beer
- Limit drinks (ticket system or cash bar, as well as closing the bar an hour before the party ends)
- Inform managerial/supervisory staff that they will be “on duty” during the party
  - Keep an eye on subordinates alcohol intake
  - Order them not to attend “after-parties”
- Remind all employees that workplace conduct rules still apply (especially harassment rules!)
- Hire professional bartenders
- Arrange for no-cost taxi services
- **NO MISTLETOE!**



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## HOLIDAY PARTY (CONT.)

- Holiday parties also raise Title VII religious discrimination/accommodation issues
  - Avoid religious symbols (Christmas trees or nativity scenes) and music (“Ode to Joy”), instead decorate with snowmen, sleighs, and sleds
- Make attendance voluntary and ensure managers/supervisors tell subordinates
- Schedule the party during or outside of working hours
- Be cognizant of dietary needs/restrictions, as well as food allergies
  - Tip: Allow employees to fill out an anonymous form checking off any food allergies or dietary needs/restrictions

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# PITFALLS IN GIVING YEAR-END BONUSES/GIFTS: TAX ISSUES

- **General Rule:** IRC taxes all forms of compensation unless specifically excluded by the IRC
  - Gift exception under IRC 102(c) does not apply in employer-employee context
  - “Cash” almost always excludable (sans rare special circumstances)
- **Exception:** “*De minimis* fringe benefits”
  - Generally means the property or service is of such a low value as to make accounting for it unreasonably or administratively impracticable
  - Too High to Qualify: \$100+ likely, best practice is to cap it at \$25-\$50

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## PITFALLS IN GIVING YEAR-END BONUSES/GIFTS (CONT.)

- Examples of “*de minimis* fringe benefits”:
  - Traditional birthday and holiday gifts of property (not cash) with a low fair market value (turkey for all)
  - Occasional cocktail parties, group meals, picnics for employees or their guests
  - Occasional theater or sporting event tickets
  - Coffee, doughnuts, and soft drinks
  - Flowers, fruit, books or similar property provided to employees under special circumstances
  - Occasional personal use of the employer’s copying machine
  - Local telephone calls
- Examples of non-excludable fringe benefits:
  - Season tickets to sporting or theatrical events
  - The commuting use of an employer-provided vehicle for more than one day a month
  - Membership in a private country club or athletic facility
  - Use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend

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## PITFALLS IN GIVING YEAR-END BONUSES/GIFTS (CONT.)

- What about gift cards?
  - Visa gift cards (or similar) for a dollar amount **must be taxed**
  - Gift cards for a dollar amount at a specific store **must be taxed**
  - Gift cards for a specific item (i.e., a ham or turkey) at a specific store **potentially may be excluded**

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# PITFALLS IN GIVING YEAR-END BONUSES: FLSA ISSUES

- Clearly such payments are taxable
- **Non-Exempt Employees:** Employers are required to pay overtime premiums on non-discretionary bonuses to non-exempt employees when those employees have worked overtime during the timeframe for which the bonus is paid
  - Holiday bonus discretionary if “gifts made at Christmas time ... as a reward for service, the amount of which are not measured by or dependent on hours worked, production or efficiency”
  - Holiday bonus non-discretionary if “the amount of the gift, holiday or special occasion award is determined by hours worked, production, or efficiency”
- **Exempt Employees:** Not an issue if annual salary (without including any bonuses) is \$23,660 or more per annum (\$455 per week)

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# QUESTIONS?



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# THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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