

Bodman PLC

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The Holiday Gift Employers Don't Want - Mitigating Risk During the Holiday Season

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The holiday season is generally a time for celebration. However, employers should be vigilant in their efforts to mitigate risk for employment claims. Below are some issues to keep in mind.

Audit Employment Records: Ensure personnel files, I-9s, and payroll records are complete and accurate. Michigan has specific requirements under the Bullard-Plawecki Employee Right to Know Act for what must be included or excluded in a personnel file.

Review Wage and Hour Compliance: Year end is a great time to review exempt/non-exempt classifications and ensure each employee is properly classified. These classifications impact overtime requirements and state-level salary thresholds may have increased.

Reduce Risk at Holiday Parties: Holiday parties offer a great opportunity to connect with co-workers and colleagues. However, employers should consider the risks of providing or permitting consumption of alcohol. Event coordinators and vendors should ensure that intoxicated individuals are not served. If an employee is intoxicated, they should not be permitted to drive. An employer could potentially be subject to liability if it permits the overserving of an employee and there is an automobile accident. Also, holiday parties could increase the risk of harassment complaints as the celebration and alcohol could lower inhibitions. Be vigilant in investigating any claim of inappropriate harassment arising out of a holiday party. Additionally, remind managers that if they see inappropriate behavior at a celebration, they have the same obligation to report or correct the issue.

Review Holiday/End-of-Year Bonuses: Make sure to review your pay practices regarding bonuses to ensure that they are compliant with the Fair Labor Standards Act. Non-exempt employees may be entitled to have their overtime recalculated to include bonuses in their regular rate of pay for overtime premium calculations. Discretionary bonuses, paid at the sole discretion of the employer and not according to a formula, do not count towards the regular rate of pay and do not need to be factored into any overtime calculations. However,

non-discretionary bonuses, which are based on a pre-determined formula or metric, must be counted towards the regular rate of pay and must be figured into any overtime calculations. Consult legal counsel with questions.

Assure Compliance with Youth Employment Rules: If your company employs minor students during the holiday season, make sure to comply with Michigan's updated rules governing youth employment. First, minors must be issued a work permit from the issuing officer of their school. The permitting system is scheduled to change in October 2026. Second, there are restrictions on the number of hours and times of day that minors can work. There are also other restrictions on the type of work that minors can perform, e.g. no work defined as "hazardous."

Review Your Employee Handbook: The end of the year is a smart time to review your employee handbook and consider implementing any policy or procedure changes early in the new year. Handbooks should be reviewed annually due to both potential changes in company policies and changes in legal requirements at the federal and state levels. Michigan law has changed significantly during 2025, including the implementation of Michigan's Earned Sick Time Act. Consult legal counsel to ensure you are in compliance.

Consider Delaying Terminations: Consider whether it makes sense to delay non-critical terminations until the new year in light of the holiday season. If an employee has engaged in serious misconduct or there is a severe downturn in work, a delay in taking action is likely not an option. However, if less serious performance or conduct issues have arisen, consider building your documentation of the issues and addressing the issues at the beginning of the new year. The optics of terminating employees with long-standing issues in the middle of the holiday season could raise the potential for legal action.

Please contact the author, Mackenzie Clark (mclark@bodmanlaw.com | (313) 392-1069), or any member of [Bodman's Workplace Law Group](#) if you have any questions about steps your business can take to mitigate risk during the holiday season and in the new year. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

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