

## MODERN MANAGEMENT

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### 'TIS THE SEASON – HOW TO SURVIVE THE OFFICE HOLIDAY CELEBRATIONS

The Department of Labor has published “Nine Tips for Office Celebrations:”

1. Be honest with employees. Make sure your employees know your workplace substance abuse policy and that the policy addresses the use of alcoholic beverages in any work-related situation and office social function.
2. Post the policy. Use every communication vehicle to make sure your employees know the policy. Prior to an office party, use break room bulletin boards, office e-mail and paycheck envelopes to communicate your policy and concerns.
3. Reinvent the office party concept. Why have the typical office party? Try something new like an indoor carnival, group outing to an amusement park or volunteer activity with a local charity.
4. Make sure employees know when to say when. If you do serve alcohol at an office event, make sure all employees know that they are welcome to attend and have a good time, but that they are expected to act responsibly.
5. Make it the office party of choice. Make sure there are plenty of non-alcoholic beverages available.
6. Eat...and be merry! Avoid serving lots of salty, greasy or sweet foods which tend to make people thirsty. Serve foods rich in starch and protein which stay in the stomach longer and slow the absorption of alcohol in the bloodstream.
7. Designate party managers. Remind managers that even at the office party, they may need to implement the company's alcohol and substance abuse policy.
8. Arrange alternative transportation. Anticipate the need for alternative transportation for all party goers and make special transportation arrangements in advance of the party. Encourage all employees to make use of the alternative transportation if they consume any alcohol.
9. Serve none for the road. Stop serving alcohol before the party officially ends.

If alcoholic beverages are provided at office social functions, state laws regarding their use and resulting legal responsibilities should be consulted and addressed. This information provided by the U.S. Department of Labor is not intended to be a substitute for legal advice and should not be relied upon to determine what steps employers can or should take to address potential legal liability.

### IMMIGRATION OVERHAUL ON 2010 TO DO LIST

Congress will face the task of overhauling immigration in 2010 as the Obama administration pushes measures to give legal status to over 12 million illegal immigrants. Homeland Security Secretary Janet Napolitano said “officials will argue for a three-legged stool that includes tougher enforcement laws against illegal immigrants and employers who hire them, streamlining the system for legal immigration, and a tough and fair pathway to earned legal status.”

With health care being in the spotlight and unemployment over 10 percent, both sides were unsure if President Obama would keep his pledge to address illegal immigration in 2010. Napolitano went on to state that “a legalization program would enhance national security and, as the economy climbs out of recession, protect American workers from unfair competition from lower paid, easily exploited illegal immigrants.” Under this plan, illegal immigrants seeking to gain legal status would be required to register, pay fines and taxes, pass a criminal background check and be proficient in English.

### NLRB WINNING MORE ELECTIONS, GREATER SHARE

The percentage of elections won by unions skyrocketed by 66.5 percent for the first half of 2009. The increase was seen even with unions participating in fewer resolved representation elections conducted by the National Labor Relations Board (“NLRB”).

## GINA EFFECTIVE NOVEMBER 21

The Genetic Information Nondiscrimination Act (“GINA”) went into effect on November 21, 2009. As reported in the June 2009 issue of *Modern Management*, GINA prohibits employment discrimination based on the genetic information of an individual and his or her family members and bars employers from acquiring or disclosing such information except under specific circumstances set out in the law. Employers should update workplace posters, employee manuals and any other internal documents to include information about the new law. The EEOC has issued a revised standard anti-discrimination poster for covered employers to display. For more information please visit: [www.eeoc.gov/laws/types/genetic.cfm](http://www.eeoc.gov/laws/types/genetic.cfm).

## FIREFIIGHTERS GET PROMOTION ORDER

On November 24, a Connecticut federal district court ordered the promotion of 14 white and Hispanic firefighters in New Haven. As reported in the July 2009 issue of *Modern Management*, the Supreme Court ruled that New Haven had violated the Title VII rights of white and Hispanic firefighters who had passed the exams by refusing to certify the test results because the city believed the exams had a racially disparate impact on black candidates for promotion. The justices reversed a U.S. Court of Appeals for the Second Circuit ruling in favor of the city, which had summarily affirmed a federal district court decision that New Haven's fear of disparate impact liability to black test-takers was a valid defense to the white and Hispanic candidates' claims of intentional race discrimination.

## GREETINGS FROM THE DHS

The Department of Homeland Security (“DHS”) sent out greetings to 1,000 employers nation-wide notifying them of an impending audit. The immigration compliance audits are an attempt to identify violations and are part of the effort by the Obama administration to increase pressure on employers not to hire illegal immigrants. Audits involve a comprehensive review of Form I-9s.

## EEOC—CHARGES INCREASED IN 2009, EXPECTED TO CLIMB IN 2010

As indicated in the Equal Employment Opportunity Commission’s (“EEOC”) annual report, 93,277 private sector discrimination charges were received in 2009. This is the second highest number in 20 years. It is projected that the number will exceed 100,000 in 2010. It is speculated that the increase is due to the additional statutory authority given to the agency through the Americans with Disabilities Act Amendments Act of 2008 (“ADAAA”) and the Lilly Ledbetter Fair Pay Act of 2009. The 2010 numbers will also be impacted by the Genetic Information Nondiscrimination Act of 2008 (“GINA”).

## MISCLASSIFICATION—INDEPENDENT CONTRACTORS OR EMPLOYEES

Several state legislatures and administrative agencies are stepping in to fill the federal void when it comes to misclassification. There are federal laws that address misclassification, but there is very little coordination between the various federal agencies enforcing wage, labor, and tax laws. In 2009, there was a move to adopt statutes and state regulations that expand remedies for employees and subject employers who misclassify employees to sanctions and criminal penalties.

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