AB Court Says Employer Not Liable for Worker's Drunk Driving Death



At this time of year, many companies hold picnics, barbeques or other outings at which alcohol may be served. But when workers drink alcohol at work or work-related events, their employers could face liability if an intoxicated worker gets into an accident and injures or kills himself or someone else. There are steps, however, that a company can take to avoid liability in such situations. A court in Alberta recently handled a case involving a worker's death in a drunk driving accident. Here's a look at what happened and how the employer fared.

THE CASE

What Happened: After 5:00 pm, two friends of the principal of a company arrived at his office with whiskey. The three men had a drink. Around 7:00 pm, they invited a female office worker to join them for a drink, which she did. Other people—both employees and non-employees—came and went from the impromptu gathering, some bringing beer. Around 9:00 pm, the company principal left. Other people also left at the same time. At this point, the office worker didn't appear to be drunk. She and another individual stayed until 2:00 am. On her way home, the worker got into a head-on collision with a truck and was killed. Her blood alcohol level was three times the level at which driving a vehicle was illegal. Her family sued

the employer for negligently allowing the worker to consume alcohol on the premises and drive home intoxicated.

What the Court Decided: The Alberta Court of Queen's Bench dismissed the lawsuit.

How the Court Justified the Decision: The court considered whether the company owed a duty of care to the worker by asking when the principal let the worker drink alcohol in the office, should he have foreseen that she'd get drunk and then try to drive' In distinguishing similar cases, the court noted that here, the company didn't provide the alcohol the worker drank. Also, the worker didn't appear inebriated to the principal or anyone else when he left. In addition, when the principal left, he reasonably believed that the others were leaving, too. In fact, most did leave around that time. The principal couldn't have known that the worker would stay for several hours more and continue drinking. And in light of a company policy permitting workers to take a taxi home at company expense at any time, he had no reason to believe that if the worker *did* get drunk, she'd drive home when she could take a free cab. Based on all of these factors, the court concluded that the company didn't owe the worker a duty of care because it was unforeseeable that she would become so intoxicated by alcohol that her ability to drive would become impaired and that, in that state of impairment, she would choose to drive her car and get involved in an accident [*Jenkins v. Muir*, [2012] ABQB 352 (CanLII), May 28, 2012].

ANALYSIS

The company in the *Jenkins* case did many things right that other companies should emulate. For example, it had a company policy barring workers from using or possessing alcohol on the job. And it paid for workers to take a taxi whenever they needed one—no questions asked. Those actions helped it avoid liability for the worker's death. But the company also did something wrong—despite the company policy on alcohol, a

company principal permitted workers to drink in the office on that fateful night. Having a company alcohol policy is only effective if it's enforced. And it certainly shouldn't be undermined by a member of senior management.

OHS Insider Resources

For other cases involving workers who had accidents after drinking at work, see "Is Employer Liable for Traffic Accident Caused by Worker Who Drinks at Work'" And for more information on employers' liability risks if they serve alcohol at company events, see "What's Your Liability for Serving Alcohol to Workers at the Holiday Party'"