

# Is Employer Liable for Worker's Drunk Driving Death?



## SITUATION

A secretary at a delivery company stays after hours at work, socializing with the company owner, co-workers and some clients. Although company policy prohibits drinking on company property, the clients bring alcohol to the informal gathering, which everyone drinks. The owner leaves at 9:00 p.m. with most of the participants. He thinks the secretary is leaving soon, too. At that time, she doesn't appear intoxicated. However, the secretary stays with one of the clients and continues to drink, leaving at 2:00 a.m. She decides to drive herself home despite the company's program providing free cab rides to workers' no questions asked which she has used in the past. Her car collides head-on with a truck and she dies. Her blood alcohol level was three times the legal limit. The secretary's family sues the company for her death, claiming it was negligent.

## QUESTION

**Is the company liable for the secretary's death?**

- A. Yes, because she got drunk in the workplace.
- B. Yes, because the company's owner knew she'd been drinking.
- C. No, because she was off duty when she was drinking.
- D. No, because it was unforeseeable that she'd drive drunk.

## ANSWER

**D. The company isn't liable because it had no reason to expect the secretary to drive drunk.**

This hypothetical is based on a case in Alberta in which a secretary died in a drunk driving accident after drinking in the workplace. The court explained that employers are only responsible for foreseeable risks of harm. It ruled that her

employer had no reason to foresee that she would drive home while drunk and get into an accident. First, the secretary's boss and other witnesses testified that the secretary didn't appear intoxicated when they left the workplace. Additionally, the company provided free cab rides home for workers and the secretary knew that this service was available. In fact, she'd used it on other occasions. Therefore, although the gathering violated company policy against drinking in the workplace, the court found the employer had no reason to know she was drunk or that, if she were drunk, she would drive. Thus, because the secretary's fatal drunk driving accident was unforeseeable, her employer wasn't liable.

#### **WHY THE WRONG ANSWERS ARE WRONG**

**A is wrong** because the fact a worker got drunk in the workplace doesn't necessarily mean her employer is liable if she's subsequently injured. Employers are only responsible for protecting workers from *foreseeable* injuries and hazards. Here, the secretary didn't seem intoxicated when the owner left her. And, even if she was already drunk at that time, the owner knew that she was aware that she could get a free cab ride home. Thus, the secretary's decision to drive home drunk rather than take a cab at no cost to her wasn't foreseeable.

**B is wrong for two reasons.** First, although the company's owner knew the secretary was drinking, when he left, he didn't have any reason to believe she was intoxicated and thus unable to safely drive. Second, even if she was drunk when he left, he knew that the company provided free cab rides home. And he knew that the secretary knew about the free rides because she'd previously taken advantage of this service. Therefore, even if the owner thought the secretary was drunk when he went home, he knew she wouldn't need to drive herself home.

**C is wrong** because, in some circumstances, employers *can* be liable for injuries suffered by a worker drinking after hours. For example, an employer could be liable if it permits workers to drink at work after hours or supplies alcohol to them, especially if it knows those workers will then have to drive themselves home. Here, however, the company didn't supply the alcohol for the gathering. And it did provide a way for intoxicated workers to get home without having to drive themselves.

**Insider Says:** 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 as the holiday season approaches, you should understand the risks of serving alcohol at your holiday party.

#### **SHOW YOUR LAWYER**

*Jenkins v. Muir*, [2012] ABQB 352 (CanLII), May 28, 2012