

Free Beer? Think Again: Liability Considerations for Brewers with "Free Beer" Policies for Employees

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One of our blog posts last month — Last Call: Labatt Phases Out Retiree Perk of "Free Beer For Life" — discussed the fallout from Labatt's recently announced decision to phase out its longtime practice of providing "free beer for life" for the brewer's retirees. That post highlighted the obvious upside for craft brewers who offer such a perk to employees or retirees, but cautioned brewers to take care in how they communicate or formalize any such policy in order to manage employee expectations and avoid possible backlash from future changes or removal of such policies. After reading that post, the tort defense lawyer part of my brain wondered what kind of liability issues, aside from the obvious liability that might arise whenever any alcohol vendor over-serves a visibly intoxicated person, might arise from a brewer providing "free beer" to its employees under such a policy.

After some research into this issue, I came across a 2003 North Carolina case filed against Miller Brewing Company (Miller) and a former Miller employee by an individual who was injured after the employee consumed some "free beer" provided by Miller. While the case was ultimately unsuccessful against Miller, it highlights some concerns any craft brewer who has or is considering a "free beer" policy should consider in implementing any such policy.

In Green v. Walker and Miller Brewing Company, Walker, who was employed by Miller, was entitled to receive free of charge three cases of beer per month while employed by Miller under a written company policy. While off-the-clock and at home, Walker allegedly became intoxicated after drinking several of Miller's "free beers" and was involved in an argument with Green which escalated, became violent and culminated in Walker shooting Green with a shotgun. Green later sued Walker and Miller for negligence. Walker's liability was clear, but how was Miller to blame? Well, as to Miller, Green alleged that Miller knew Walker was an alcoholic, yet Miller continued to provide him with free beer. He further alleged that it was foreseeable that giving free beer to an alcoholic would result in injuries to third parties "by drunk driving or other violent conduct." The court decided, however, that Green's claims were not legally recognizable and dismissed the claims against Miller.

The court's logic in reaching its decision was essentially that the brewery could not have reasonably expected its

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employee to assault another person while under the influence of the "free beer" because it had no knowledge of any aggressive tendencies when the employee consumed alcohol or of any prior history of alcohol-related criminal conduct on his part. While Miller dodged a bullet in this case, the court's decision provides some helpful guidance to craft brewers who are considering or already providing "free beer" as a perk to employees. To avoid similar claims or potential liability, brewers likely should not provide "free beer" to any employees who have a *known history* of driving under the influence, prior arrests or convictions for such offenses, or a history of aggressive or violent behavior or other criminal conduct after consuming alcohol. Additionally, brewers likely should not provide "free beer" to employees with a known history of drug or alcohol abuse or similar health issues.

In addition to these important points taken from the North Carolina case, craft brewers who are considering or already providing "free beer" to employees should consider two further thoughts in crafting any such policy. First, as referenced above, any providing of "free beer" to be consumed by employees on the brewer's premises can always result in potential liability if beer is supplied to a visibly intoxicated or underage person who then goes on to cause injury to a third-party. Thus, employees should be treated just as any other taproom visitor in this regard. Finally, brewers should consult with their insurance broker and/or liability insurer to confirm they have insurance coverage for possible legal claims arising from any "free beer" policy.

While the benefits of offering "free beer" as a perk to employees are obvious, any such policy should be implemented in a reasonable and sensible manner with the above points in mind in order to avoid potential liability issues that may arise.

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