

A Newsletter by Budd Larner, P.C.

Company Holiday Parties: A Breeding Ground for Sexual Harassment

By Mitchell Rait, Esq.

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With the holiday season fast approaching, companies should be aware of the increasing number of lawsuits alleging incidents of sexual harassment at holiday parties.

Employees are generally less careful when it comes to their conduct at office social events compared to during regular working hours, particularly when alcohol is involved. As such, holiday parties can be a breeding ground for sexual harassment claims.

Employees who are victims of unwanted advances or other harassing behavior at a company's holiday party may sue their employers for sexual harassment because holiday parties are an extension of the workplace.

Reported cases are replete with instances of sexual harassment at company holiday parties. This is especially true if part of a pre- or post-holiday pattern. Consider these reported facts from cases involving office parties:

- A supervisor who had too much to drink untied an employee's

sweater, and kissed her and another female employee;

- A man approached a co-worker and, while grabbing his own crotch, said “Here is your Christmas present!”;



- While at a bar after the company party, a male employee who was intoxicated said to a female co-worker that he admired her breasts and wanted to perform oral sex upon her;

- An assistant dean of a university followed a female professor into the bathroom, where he forcibly kissed and fondled her;

- A female manager drafted rules for a holiday party that said participants could earn points for giving oral sex, and she initiated kissing games at the party.

There are also numerous cases involving:

- Employees pressing their bodies up against co-workers and touching co-workers' buttocks and breasts;
- Supervisors asking subordinates to

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dance and then making romantic propositions;

- Christmas “gag gifts” such as lingerie and sex toys.

Preventive Measures

The lesson from these cases is that employers should approach the issue from a preventive viewpoint. Any party sponsored by an employer is really an extension of the office. As such, employers have a legal duty to prevent harassment at holiday parties, just like they have a legal duty to prevent harassment in the office. This means the company must show that it tried to deter potential harassers from engaging in such conduct in the first place.

In most states, including New Jersey, a company is usually automatically liable for a supervisor’s misconduct and is often liable for a co-worker’s behavior.

As the holiday season approaches, companies can strive to avoid such claims:

Re-publish the company’s sexual harassment policy before holiday parties take place

Remind employees that holiday festivities do not offer an excuse for violating policy. If a company does not have a written policy, this would be a good time to implement one.

Re-publish the company’s dress code and/or code of conduct

The reported cases are replete with instances where

the supposed victim of the harassment dressed provocatively or engaged in unprofessional behavior at an office holiday party. Unfortunately, the victim’s conduct in this regard may encourage other employees to act unprofessionally, leading to sexually harassing incidents.

Train managers about expected behavior guidelines

Many state laws hold employers automatically liable when supervisors engage in sexual harassment of subordinates. Supervisors should be reminded before a holiday party to set a professional example during the party. Supervisors should also be told not to invite co-workers out after the holiday party for small get-togethers at houses or local bars, since such “after parties” are frequently the occasion for harassing incidents.

Keep an eye on alcohol consumption

Even though the law only prohibits *unwelcome* sexual advances, people often alter their view of welcome when the alcohol wears off. Consider limiting alcohol consumption and implementing procedures for policing consumption. Also, have a “dial-a-ride” or designated driver program.

Conclusion

Taking these steps can set a professional tone to the holiday party and help prevent harassing incidents. Preventive measures cannot, of course, preclude all claims of sexual harassment. They may however, deter lawsuits and insulate a company from liability. Finally, such measures can create a more productive and harmonious workforce. ■

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