

Punch Bowls and Personnel Don't Mix: How Employers Should Throw a Party

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As America grapples with sexual harassment in the workplace, holiday parties present a challenge

Everyone is excited for the annual holiday party ... you think. The employees are like one big family ... you think. Everyone feels safe at work ... you think. This holiday season, especially, take nothing for granted and take precautions before you close the office early for some cheer.

Make it Voluntary

How do we define work? Is it based on what you are doing, who you are with, where you are, or a little of everything? Intuitive employers might not be surprised to learn that most employees consider it work when they are with you, no matter the context. The Department of Labor tends to agree. When an employer is on your time, and not their own, they are working. Even when throwing a holiday party or other special event, employers must ensure that their employees are compensated if they are required to attend. Employers wishing to avoid this cost should make attendance voluntary. Doing so has more than monetary benefits: it also avoids feelings of pressure by employees who might not be in the partying mood. The employee who avoids the party could find aspects of the party offensive, harassing, or upsetting, increasing employer liability. The gist is this: if she doesn't want to be there, don't force it.

Party Professionally, While Monitoring for Misbehavior

The holidays may be romantic, but holiday parties shouldn't be. Twinkling lights, Dean Martin, and red wine may lower inhibitions and blur lines, causing headaches for the employer. Where one employee harasses another at a company-sponsored event, the

company may be accused of facilitating a hostile work environment. *Respondeat superior* places the company in the shoes of the employee, imputing liability for a rogue employee's actions.

For an employer to be liable under a hostile work environment claim, "the plaintiff essentially must first show that the employer knew or should have known of the existence of harassment." *King v. Finish Line*, 997 F. Supp. 987, 993 (N.D. Ill. 1998) (citing *Zimmerman v. Cook Cnty. Sheriff's Dep't*, 96 F.3d 1017, 1019 (7th Cir. 1996)). The victim may put the employer on notice by furnishing sufficient information to make a reasonable employer think that he or she was being harassed. This information may also come from persons other than the victim. See *McDonnell v. Cisneros*, 84 F.3d 256, 260 (7th Cir. 1996). **When the harassment is "particularly pervasive, knowledge on the part of the employer may be inferred."** *King* at 993 (citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 72, (1986)). Note that quid pro quo harassment (a promotion for engaging in a sexual act, for example) does not generally require proof of negligence by the employer; it's supervisors and managers are deemed to act on their behalf, and as such, employers face liability for this sort of abuse of power.

Parties are breeding grounds for poor judgment and bad behavior. **Employers must anticipate and work to prevent risk.** Remember: sexual harassment cases are fact-specific, and liability does not require a pattern or culture of ignoring or encouraging illegal behavior. In an example of an isolated incident of sexual harassment where the Court found that an employee had suffered from a hostile work environment, the employer ignored an employee's pleas for help when a client harassed her at a holiday party. *Stathatos v. Gala Res., LLC*, 2010 U.S. Dist. LEXIS 50511 (S.D.N.Y. May 20, 2010). Remarkably, one of her bosses even encouraged the behavior, teasing her

about how the client “wants to date you.” It should be noted that the Court had no sympathy for the Company, ***even though the harasser was not an employee, but a client.*** It is just one example of courts expecting the employer to take seriously employee complaints, no matter who the offender. Badly behaving guests at company events may also bring liability.

Steps to Take Before you Two-Step

You should still throw that party. For most, it's a welcome event and may boost morale. But before you do, consider these practical tips to minimize liability for sexual harassment:

- Prior to the holiday party, re-train your employees on the definition of harassment *and* your company's zero tolerance policy
- Appoint a handful of HR staff and/or committee members to keep an eye on behavior. If you see something, say something
- When possible, throw your party in the middle of the day
- If possible, don't serve alcohol
- Consider an employee-only party, rather than permitting guests to attend
- Steer clear of opportunities for inappropriate gifts (White Elephant, Secret Santa, and other swaps or exchanges could lead to something offensive on display)
- To the extent possible, do not provide opportunities for close physical contact. While you can't control what adults do, it would be prudent to avoid a dance floor, Mistletoe, and anyone asking Santa for anything (via a lap or otherwise)
- If you receive a complaint at the party, or following the party, ***investigate immediately.*** Take every allegation seriously.

Employers risk liability simply by virtue of being employers. Common law negligence and a variety of statutes demand that employers and their leadership take simple steps to prevent claims arising from parties and other gatherings. Regularly training employees, closing monitoring party-goers (in a non-creepy way), making social occasions optional for those not interested in attending, and investigating complaints are steps employers should take to minimize injuries, litigation, and costs.