

Holiday Parties, Gifts Can Lead to Sexual Harassment Claims

By Karen Sutherland

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Businesses planning holiday parties and gifts rarely take the potential for sexual harassment claims into account. But the risk is there, and, for most businesses, it is uninsured.

Think it can't happen in your business? Think again. Flirting and a relaxed party atmosphere go hand in hand, particularly when alcohol is added to the mix. And flirtatious behavior by one employee towards another, when it is unwelcome, is sexual harassment. Nibbling the exposed neck of a co-worker whose hair is swirled upward in a party hairdo, greeting a co-worker with a hug and a kiss, stroking the back of a co-worker in a backless dress, grabbing a breast while helping a co-worker on with her coat, are all situations that happen during office parties.

Supervisors need to be especially careful in settings that mix business and pleasure because employers are strictly liable for claims of "quid pro quo" harassment, where a subordinate's response to sexual overtures, comments or behavior from a supervisor affects the subordinate's work conditions (such as getting or keeping her job, raises, promotions, better shifts, better performance evaluations, etc.). If a subordinate feels pressured to put up with a supervisor's jokes, suggestive comments and/or physical contact because the subordinate is concerned about her career, then the employer will be liable for sexual harassment, even if the employer is unaware of the supervisor's actions.

With non-supervisory employees, conduct at work-sponsored holiday parties can be considered part of a "hostile work environment," which is a form of sexual harassment, if the sexual remarks, behavior or atmosphere are severe or pervasive and affect an employee's ability to do his or her job. Behavior at an office party may not be enough, alone, to create a "hostile work environment," but the ongoing gossip or teasing that arise from a party incident may reach the level necessary to support a sexual harassment claim, or may be combined with other conduct that is occurring in the workplace as part of a sexual harassment claim.

There are simple steps that can be taken to reduce the possibility that a company-sponsored party or banquet will result in a sexual harassment claim:

- Meet with supervisors ahead of time and remind them that they are role models, and that their behavior at the party will set the tone and that it reflects on the company's reputation as a whole. Remind them that workplace rules regarding harassment apply at all work-sponsored events, including parties.

- Restrict access to free alcohol. For example, offer drink tickets that allow one or two free drinks and then put the alcohol away or make employees pay for subsequent drinks.
- Assign a non-drinking supervisor to watch for over-imbibing and for overly rambunctious or socially uninhibited behavior and quietly send anyone engaging in such behavior home in a cab or with a designated driver.
- Offer alternatives to alcohol, such as juices, sparkling cider, and lots of food.
- Reduce the opportunities for physical contact and personal revelations. For example, avoid slow dancing, hot tubbing and party games such as "Twister," "Truth or Dare," and "Scruples."
- Do not hang mistletoe.
- Invite spouses and significant others. Their presence sometimes (though not always) causes employees to flirt less with each other.
- Keep an eye out for people who appear to be cornering a co-worker or are otherwise are focused away from the party (i.e. following a co-worker into a bedroom or cloakroom) and encourage those individuals to re-join the party.
- If a situation that could constitute harassment does occur, promptly investigate even if no formal complaint is made. In any case where a supervisor knows of the conduct, a formal complaint is not required for an employer to be liable. Follow the investigation with discipline if harassment is established.
- Avoid sexually-related joke gifts. Sex "how-to" guides for a recently married co-worker, an inflatable doll for a single co-worker, underwear, a list of internet sites featuring pornography and similar gifts are inappropriate at a work-sponsored function.
- Avoid giving employees gifts, joking or otherwise, that have romantic connotations. A dozen red roses with a gushy card, lingerie, sleepwear or bedding, perfume, makeup, massagers, gift certificates to "Tubs" or some other romantic establishment and similar gifts, particularly if given to a subordinate, may send the wrong message.

All of the steps described above can be taken with a minimal amount of disruption to the "holiday spirit," and are, in the long run, likely to decrease friction in the workplace and the possibility of sexual harassment claims.

Happy holidays!

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