

WORKPLACE HALLOWEEN PARTIES CAN BE SCARY FOR REASONS YOU MAY NOT HAVE CONSIDERED

By Karen Sutherland

LEGAL BACKGROUND

This month marks the beginning of the holiday party season as many employers celebrate Halloween with a party in office or other work facility. Parties can be a wonderful thing, allowing employees to learn more about each other in a less formal setting and to loosen up in an otherwise trying economic time. Whether they are a potluck lunch event or a full-scale catered endeavor held in the banquet room of a hotel, they can be a lot of fun. However, they also pose liability risks that most employers may not have considered.

Halloween parties can be risky because employees may choose to appear in costume, and not all costumes are appropriate for the workplace. For example, a French maid costume, a pimp costume or a costume that entails makeup or dress that mimics people of another race or religion would not be appropriate at a work-sponsored Halloween party. In addition, some costumes may encourage employees to change their personalities in order to act “in character” with the costume, such as dressing as a Saturday Night Live character and making comments or engaging in activities that are in character, but that other employees could reasonably find offensive.

Some employees also respond to others’ costumes in inappropriate ways, such as grabbing at an employee’s costume to see where the costume ends and the person’s body begins, attempting to remove portions of another employee’s costume in order to see who they are, or grabbing at someone in costume because they think the costumed person is a friend who would not mind being grabbed, and they turn out to be wrong. Also, employees may make inappropriate jokes or double entendres about other employees’ costumes. These types of incidents can lead to claims of harassment.

Alcohol adds another dimension of liability risk. People feel freer to say inappropriate things or behave in inappropriate ways when their inhibitions are loosened by alcohol, which can lead to claims of harassment or discrimination. Drinking can also lead to liability for overserving or for allowing employees to drive while intoxicated, which is discussed in the article that begins on page 3 of this notebook.

PRACTICAL GUIDANCE

- Develop guidelines about when (if ever) costumes can be worn and distribute them before Halloween. If your workplace does not allow costumes, or only allows them for employees who are not seen by the public, expressly say so in your policy. If your policy allows costumes only during a party at lunch or after work, be clear on this expectation.
- If you do allow costumes, consider setting some guidelines that are safety-related. For example, you may want to limit masks that obscure vision or costumes that excessively muffle sound.
- Consider setting guidelines that limit the use of accessories or props with costumes, such as guns, knives or swords (real or fake), whips, chains, torches or other devices involving fire.

- Adopt guidelines that prohibit costumes that are offensive based on age, sex, religion, national origin, race, or other protected class, such as costumes that reflect stereotypical images of people who are members of a protected classes.
- Adopt guidelines that prohibit sexually suggestive costumes.
- Remind employees that they must behave with professionalism even while in costume, and to refrain from engaging in behavior while in costume that they would not normally engage in, such as touching, grabbing, inappropriate comments or gestures, biting at people's necks, etc.
- If there are employees in your workplace who are likely to ignore guidelines, talk with them ahead of time about what they are planning for Halloween to be sure it is appropriate.
- Limit the consumption of alcohol by cautious pouring or by only providing a limited amount of alcohol for free and providing non-alcoholic options and food along with any alcohol.
- Arrange for transportation for anyone who appears to be under the influence of alcohol or other drugs.
- Pull aside anyone who dresses or behaves inappropriately on the spot and discuss the situation with them before it gets too far out of hand. In a party situation, others may pick up on the bad behavior and follow through, especially if the person involved is a supervisor or a popular employee.
- Stress to all supervisors and managers that they are responsible for setting the tone with appropriate costumes and behavior, and for stopping any conduct that gets out of hand before the situation deteriorates further.
- If you give awards for costumes, establish awards that will encourage creativity in areas that are not likely to lead to a harassment or discrimination claim (e.g., best group outdoors theme, best vegetable costume, etc.)
- Do not play group games that are likely to encourage employees to tease or touch each other, such as Twister or Truth or Dare.

The above suggestions are broad, general comments only, and are not legal advice. Individual situations require individual analysis. For assistance with a specific situation, contact an attorney with experience in this area, such Karen Sutherland, Chair of the Employment and Labor Law Practice Group of Ogden Murphy Wallace, P.L.L.C. Karen Sutherland can be reached at (206) 447-7000 or by e-mail at ksutherland@omwlaw.com.