

Holidays In The Workplace



In my latest Canadian HR Law Blog post, I discuss the myriad of issues that can arise in the workplace during the upcoming holiday season. These include discrimination, drinking and driving, harassment, among other concerns. Generally speaking, holidays and holiday parties can be an opportunity to improve worker morale, or they can have the opposite effect if not handled properly, while also exposing an employer to liability.

Thanksgiving is now over (at least in Canada), and Halloween is rapidly approaching. We all know what that means: soon, shopping malls and department stores will start to play holiday music, office holiday parties will be scheduled, and I will continue a relatively new holiday tradition: posting about holidays in the workplace and the issues that this season brings.

Two years ago, I wrote *Avoiding the risks of holiday parties and Merry Christmas, happy holidays and happy Hanukkah*. And then last year, I wrote *How to ensure your holiday party doesn't make the news*. On a related issue, I also posted the following in December 2012: *Do you force employees to use vacation days between Christmas and New Year's?*

The winter holiday season can be a joyful time for everyone, regardless of your personal background or beliefs. Getting together with colleagues to celebrate, whatever you happen to celebrate personally, can be a way to promote a positive work environment and allow people to get to know those that they work with on a more informal basis. In other words, it can be quite positive. However, there are many risks and dangers that employers should not ignore.

This is a bit of a highlight reel from previous posts.

As I wrote,

Whatever the nature of the event, most of us have seen employees who seem to forget the event is a work function and even though they might not be at their usual place of work, they should not let loose as they might on a Saturday night with friends. Whether it is dancing on a table, flirting with the boss or making offensive remarks, an employee's behaviour at a holiday party can have very serious implications.

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Whether there will be just cause for dismissal must be assessed like any other allegation of misconduct: The employer must adopt a contextual approach and consider not only the conduct in question, but the entirety of the relationship. This will include the employee's length of service, any past disciplinary incidents and the impact of the misconduct on the continuing relationship. Summary dismissal will only be sanctioned by the courts where it is proportionate to the misconduct, bearing in mind all of the other relevant factors. Otherwise, some lesser form of discipline will be appropriate.

In order to reduce the likelihood of problems at a holiday party, employers should have very clear policies and make it clear to management and staff that they apply in off-site situations, such as holiday parties. Sexual harassment and other policies should be highlighted, as should responsible drinking policies.

In tandem with those policies, the employer should make reasonable efforts to control employees' alcohol consumption. Among other things, this should include elimination of open bar events in favour of the ticket system, which allows some control over each individual's consumption (although this is obviously not foolproof). In addition, having trained servers can be helpful. Employers should also make reasonable efforts to ensure no one drives while intoxicated. They should have taxi cabs available, as well as individuals near the exits who will attempt to identify any employees who have had too much to drink and should not drive. Otherwise, an entirely different type of liability may arise. [Tweet "Employers can be liable for the actions of their employees, including those at the holiday party."]

Potential Liability from Holiday Party

Employers can be liable for the actions of their employees, including those at the holiday party.

The first is liability for harassment, including sexual harassment. There's also potential liability when an employee gets behind the wheel after having too many drinks. As we have said to many employers, if you choose to throw a holiday party, you want it to be one that everyone enjoys – but you don't want it to be one that ends up in the news. We have all heard the stories of managers and their subordinates "hooking up" at or after the holiday party, as well as the stories about people drinking to excess and driving home.

Not surprisingly, the first piece of advice that we offer as employment lawyers is to have effective policies in place. To begin with, employees should be clearly advised that all workplace policies will apply (with reasonable modification) to the workplace holiday party. They should understand the event is not the same as going out for a few drinks with their friends and that, while it is a party, it is also a work event. Policies such as those relating to harassment apply in full force.

In addition to having policies, companies must disseminate them so everyone (management included) is aware of them, and then ensure they are enforced. Supervisors and managers should observe employee behaviour and ensure nothing inappropriate occurs. Many holiday parties involve alcohol, and if that is the case, the flow of liquor should be controlled. This can be done in many ways. While not perfect, the use of drink tickets can help to limit the number of

drinks an individual will consume. Even more effective is the use of trained bartenders, who know when to stop serving an individual. There is a reason many employers are inviting the spouses of employees to a party – people tend to be better behaved when their other half is around.

Holidays in the Workplace and Inadvertent Discrimination

Of course, the “holiday season” is most commonly known as the Christmas season. However, other religions have their own celebrations at this time of year, including (but not limited to) Chanukah and Kwanzaa. Employers in Canada, and particularly those in multi-cultural parts of the country, should be mindful of the nature of their workforce and avoid situations where anyone feels excluded or that they are “second class citizens”. This can arise both with respect to time off, and with respect to holiday celebrations.

As we all know, statutory holidays in Canada include two Christian holidays: Christmas and Easter. As a result, a practice developed where organizations felt they had to give people of other religions two days off with pay as well. However, the general policy is employees are not necessarily entitled to paid days off, but are entitled to reasonable accommodation in the form of being allowed to have time off for religious observance without loss of pay. Effectively, what this means is that, if it is feasible, they should be allowed make up the time off when it is practical. This can involve banking overtime, or switching shifts or days off work or any other accommodation that would allow them to have the time off on the day that they need, but not end up being paid less at the end of the week or month. In other words, it is not necessarily required that an employer provide paid time off. Rather, what they should attempt to do is allow the employee to shift some of the time they work so they will be able to participate in their religious observance.

A similar issue is determining which holidays should be celebrated within the organization. I am not one of those people that recommends that all symbols of Christmas should be eliminated for the sake of political correctness. Rather, employers should make an effort to embrace all religions and holidays that are relevant to their workforce. However, rather than watering down one holiday, it is equally “fair” to acknowledge several religions equally. As appropriate, you can enlist staff of various backgrounds to assist. This does not mean every single religion should be recognized – organizations should be aware of their workforce and acknowledge those that are represented.

It is also important that organizations consider substance and not just form. For example, some organizations have renamed their Christmas party as a holiday party, but the party itself is entirely focused on Christmas with Christmas songs, Christmas decorations and even a visit from Santa. No other religions or holidays are even mentioned. In such a case, it is clearly a Christmas party in all but name.

Some tips for employers:

1. Have a policy regarding office social events that addresses: alcohol consumption, safe travel home confirmation that all other policies, such as those relating to harassment, apply to holiday parties as well.
2. Make sure everyone is aware of the policy.
3. Recognize all backgrounds and religions that are represented in your

workplace

4. Control the flow of alcohol.
5. Take measures to prevent drinking and driving and ensure safe travel home.
6. Consider inviting spouses.

Some tips for employees:

For employees, the advice is simpler: make the most of any holiday event by getting to know your colleagues and superiors, but don't do anything that will go down in corporate history as a "career limiting move".

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