

Office Christmas Parties And Social Media: When The Friends Of My Friends ... Are Not My Friends!



The first snowflakes have fallen. The stores are filled with Christmas decorations, and carols are playing on the radio ... All the signs are there – the office Christmas Party is fast approaching!

Despite the festive and casual nature of an office Christmas party, employers need to be on their guard, as many troublesome situations can arise at such an event.

And because you will be organizing a sensational evening for your employees, many of them will no doubt be posting comments about the highlights of the evening on social media ... replete with photographs! Despite the best of intentions, many such comments by employees can have negative effects that employers must counter swiftly.

Here then are some explanations about the legal consequences of errant social media postings, and some advice on how to avoid them.

The legal consequences of errant social media postings

Any inappropriate language or images posted on social media by one of your employees can easily cause harm to someone else. And when that someone else is your company or one of its officers or employees, you as an employer may have the right – or obligation – to intervene.

Regardless of the specific social media used, be it Facebook, Twitter, Instagram or some other platform, the result will essentially be the same: the publication on any such platform of inappropriate language or images can infringe a variety of rights and duties. In the labour relations context, prominent examples are protection of one's reputation, the right to privacy, an employee's duty of loyalty, and the right to work in an environment free from psychological harassment.

Of course, your employees have the right to freedom of expression, which is protected by Quebec's *Charter of Human Rights and Freedoms* (the "Charter"), but that right is not absolute: its exercise is subject to the other fundamental rights mentioned above.

Defamation

It is widely recognized that freedom of expression does not extend to defamation and its consequences. This principle applies unabated in a labour relations context. An employee cannot distribute or publish denigrating photographs of his or her employer, superiors or co-workers, including on social media.

In a decision rendered before the era of social media – but still highly relevant today – Quebec’s Court of Appeal defined defamation as follows: [TRANSLATION] “*a communication of spoken or written words that causes another person to lose self-esteem or consideration in the eyes of others, or that gives rise to unfavourable or unpleasant feelings about that person. ... It entails unjust damage to such person’s reputation due to negative comments about the person, or because of the hate, disdain or ridicule to which the person is exposed*”.¹

Obviously, defamation can result from the communication of erroneous information, but it can also be caused by information that is true but devoid of any public interest². If a senior manager has too much to drink at an office party and makes a fool of himself or herself on the dance-floor, information to that effect, despite being true, cannot be published for all to see on the Internet. Not everything that is true deserves to be known, much less known to all the world!

It is important to note that malicious intent is not a necessary component of defamation. Mere negligence suffices. Thus, if an employee publishes an unflattering photo of a colleague on the web, the employee may be liable even if he or she did so without malicious intent.

Moreover, the fact that the words or images in question were meant to be seen by only a limited number of people on social media doesn’t mean they won’t be found defamatory and harmful to the person targeted. The communication of such words or images to just one other person can be sufficient³. Also, the fact that the employee who posted the objectionable content did not realize how many people could potentially view it will not prevent him or her from being found liable and ordered to pay damages⁴.

Privacy

The publication of inappropriate words or images may also infringe the targeted person’s right to privacy, whether he or she is an employee or manager. The right to privacy, which is protected by both the Charter and the *Civil Code of Québec*, is multifaceted, encompassing the right to anonymity, the right to dignity, and the right to control one’s image or likeness.

Such publication can also harm the image and reputation of the employer. No employer wants to be associated with photos published on the Internet showing inappropriate behaviour at the company Christmas party. A photograph of a group of smiling employees, glass of wine in hand, is one thing, but one of those same employees in a compromising situation is quite another.

As in the case of defamation, a breach of privacy or of the right to control one’s image or likeness will be found to have occurred even where the person posting the objectionable content did so without malicious intent.

Moreover, even if your office Christmas party is held outside of the workplace and after normal office hours, your employees must nevertheless continue to abide by their duty of loyalty towards their employer. And that duty continues after an employee gets home after the party and decides whether or not to post on social media

some of the pictures he or she took at the party with a smart-phone.

Thus, in addition to causing damage to the employer's reputation, the posting of inappropriate words or images can lead to disciplinary sanctions against the employee in question.

Harassment

Finally, employers must also be mindful of their duty to provide a workplace environment that is free of psychological harassment. The posting of words or images of or concerning the office Christmas party is capable of degenerating into a form of harassment of a colleague or superior. In such a situation the employer may be obliged to intervene to ensure that the "posting" employee ceases any such harassment.

Some advice on avoiding social media faux pas

1) An ounce of prevention is worth a pound of cure

- All employers should by now have adopted and disseminated a policy on the use of information technology by employees. If you have not done so, put this at the top of your list of New Year's resolutions!
- Your policy should be broad enough to cover not just IT use in the workplace but beyond the confines of work as well, whenever such use is connected in any way with the employer or its officers and employees.
- If it has not already done so, your organization should also adopt a policy on the use of social media.
- Any such policy must be made known to all of your organization's employees and officers. Regular reminders of its existence and content would be prudent as well.
- Such reminders can consist of emails to employees, sending them a printed memo, or verbal reminders during staff meetings (with a record of attendance, of course).
- Ideally, a reminder of your policy should be given to all employees shortly before the Christmas party. You might want to take that occasion to remind them of your policy on harassment as well.
- Inform your managerial and supervisory staff of the importance of respecting such policies.
- If you haven't already done so, establish a simple and effective procedure for reporting any breach of your IT use policy to a designated management employee responsible for following up on such reports and taking any necessary action.

2) Act quickly

Once inappropriate language or photographs have been posted on the Internet, it is very difficult to control their spread. In fact, social media sites often make texts, photos and videos available for sharing by hundreds if not thousands of users, intentionally or not! And don't forget that those users can in turn add comments of their own ...

A prudent employer will thus want to take remedial action as quickly as possible.

- Upon learning of an occurrence that could involve the breach of a right or duty such as those mentioned above, the employer must conduct an investigation.
- Don't forget to keep a written record of the steps you take, and to preserve and file any evidence that may be relevant.
- Take whatever measures are necessary to put a stop to the breach. Require the

offending employee to take the necessary steps for removing the inappropriate content from the Internet, if possible.

- Determine whether any other action needs to be taken (legal action, disciplinary measures, written apology, etc.).

Obviously, the foregoing advice does not cease to apply on Boxing Day, and can serve as a guide throughout the entire year.