



Armstrong
Teasdale

Holiday Warning: Cut Sexual Harassment From Your Holiday Party Invitation List

12.06.12

A recent federal judge's decision allowing a sexual harassment case to proceed against an employer is a sobering reminder that the lighthearted, and sometimes drunken, atmosphere at office holiday parties does not equate to a free pass for your employees to engage in unwanted touching, lewd comments and other types of inappropriate behavior that otherwise would not be tolerated. Indeed, employers who fail to protect themselves can be held liable for workers' conduct that might easily get out of hand at festive events particularly when there is drinking.

Just in time for the 2012 holiday party season, the U.S. District Court for the Western District of New York refused to dismiss a sexual harassment lawsuit filed against the State University of New York growing out of just such a party. (*Shiner v. State University of New York, University at Buffalo*, No. 11-CV-01024.)

The plaintiff, a clerk working at the University at Buffalo Dental School, alleged she had not wanted to attend the school's annual holiday party because the conduct at previous events made her uncomfortable. However, a supervisor encouraged her to attend the party, which was held at a local bar. During the party, an associate dean, with supervisory authority over the plaintiff, allegedly made sexual advances toward her that included fondling her, putting his tongue in her ear and pulling her onto his lap. Another department official with supervisory authority allegedly cheered him on.

The plaintiff filed claims of sexual harassment under state and federal anti-discrimination laws, as well common law claims of assault and battery. The judge is allowing the case to proceed to trial, exposing (no pun intended) the employer to a potentially large monetary liability.

Employers can reduce the threat of misbehavior that gives rise to these kinds of allegations by, for example:

- Reminding employees prior to the event that the company's code of conduct remains in effect during the event
- Establishing procedures in advance to handle any inappropriate behavior that might occur
- Limiting the amount of drinking

If an employee does come to you with a sexual harassment complaint, please consider it seriously and take prompt action as necessary to investigate and stop the harassment.

Wishing you a happy and safe holiday season.