Office Parties: Some Recommendations To Avoid Unwanted Consequences

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Here are five practical tips to keep in mind.

End-of-year parties provide a nice opportunity for organizations to thank their employees and to promote a deeper sense of belonging. However, although such celebrations may contribute to building team spirit by enabling all involved to get together in an informal setting, some excesses may arise from them, with the opposite effect. Planning the party and supervising its conduct may limit the pitfalls concerned. Here are five practical tips to keep in mind:

1. Limit Alcohol Consumption by the Party-goers

Over consumption of alcohol takes away the party-goers' inhibitions and is often the source of many slip ups. Harassing or offensive behaviour or comments of insubordination can occur when employees "let it all hang out". Greater moderation can sometimes avert these issues.

A recent decision from Australia considered inappropriate language used by employees when under the influence of alcohol. In *Stephen Keenan* v. *Leighton Boral Amey NSW Pty Ltd.* [2015] FWC 3156 (now under appeal), a team leader had drunk nearly ten beers and a dark vodka liqueur provided at a Christmas party organized by the employer. During the event, he was obviously intoxicated, yet no one refused him any drink or suggested that he stop or control his intake of alcohol. On the contrary, a number of employees continued supplying him with more drinks when he was already intoxicated. He began intimidating and sexually harassing female colleagues, as well as addressing them in vulgar language. The employer dismissed him for his behaviour, as well as for some previous incidents of intimidation. The employee contested the firing, contending that it was unjust.

Among the mitigating factors on which it relied in characterizing the dismissal as unjust, the Fair Work Commission took into account the fact that the employer had provided the employees with an unlimited number of alcoholic drinks, without exercising any control.

Although we are not convinced that the employee's acts would have been met with any mercy in Québec, under its legal provisions on psychological harassment (particularly

with respect to the acts of sexual harassment mentioned in the decision), it is noteworthy that certain decision-makers seem to be mitigating the impact of such acts when they are committed in a state of inebriation, in the context of an event under the control of the employer.

Consequently, it is highly recommended that the consumption of alcoholic beverages be limited (by a ticket system, for example, or by restricting "open bar" hours). One must also ensure that the merrymakers participating in the festivities have sufficient food available, so as to avoid people drinking on an empty stomach.

It is also recommended that such events be held outside the workplace, in a public venue, and to instruct the bar staff there to stop serving any consumer who appears to be inebriated. If security guards are available on the premises, they should be involved as well.

It is equally important to take measures so as not to allow guests who are impaired to leave the premises behind the wheel of any vehicle.

2. Arrange for Safe Rides Home

A number of employers make a drive-you-home service available to their employees. It is also possible to refund taxi fares for taxis taken by employees, up to a certain amount. Breathalyzers can also be provided, at low cost.

These practices are becoming more and more widespread since the *Hunt* case in Ontario, where an employer was condemned to pay its employee who was injured in a car accident when she was leaving an office party drunk. A new trial was finally ordered by the Court of Appeal (*Hunt (Guardian of)* v. *Sutton Group Incentive Realty Inc.*., 2002 CanLII 45019 (ON CA). It nevertheless remains that this decision, as well as a previous decision in British Columbia (*Jacobsen* v. *Nike Canada*, 1996 Can LII 3429 (BC SC)) have held that an employer who makes liquor available to its employees is obliged to take proactive measures to prevent their driving in an impaired condition when leaving the premises, just as that same responsibility rests with establishments that serve liquor.

Although those decisions cannot be applied automatically in Québec because they involve car accidents, compensation for which is not governed by the common law, it nevertheless remains that prudence is called for in this regard, in order to protect the health and safety of merrymakers.

3. Ensure that Some Authority Figures Stay Sober, with Instructions to Intervene if necessary

Towards the end of the evening, when the effects of alcohol become more and more obvious, it is not unusual to find that the members of the organizing committee of the event and the authority figures have left the scene.

In order to prevent any late-evening shenanigans, it is important to maintain a proper ratio of persons in authority, who stay sober and remain visible until the very end of the evening, so as to be able to take action should things get out of hand.

These measures will facilitate a truly festive atmosphere, while maintaining a proper professional framework for the event. Every professional must keep in mind at such an event that, even on the dance floor and in a convivial, warm and friendly context where the festive spirit invites the making of jokes, respectful behaviour must be observed -- something which the presence of authority figures implicitly encourages.

4. Remind Employees of Established Policies on Harassment

Policies on psychological, sexual and discriminatory harassment remain in force, even at office parties, since the work environment extends to such celebrations. In that regard, it may be helpful to remind staff of those policies in the weeks preceding the party, adding that management is counting on all involved to exhibit conduct worthy of a professional environment, despite the festive spirit that will prevail during the celebration.

In this regard, planning the theme of the evening and its activities must be carefully reviewed, in order to preserve a festive, yet professional, atmosphere. Québec jurisprudence was marked by the case of *S.H. c. Compagnie A*, 2007 QCCRT 348, where a complaint of psychological and sexual harassment was lodged by a female employee, after she suffered sexual touching by a superior at a Christmas party. In that case, the Christmas party involved the employees of a pub and its owner. In planning the Christmas supper to be held at the restaurant, the employees proposed holding an exchange of gifts having an erotic theme. The proposal, which was informal at first, was later sanctioned by the employer. During the evening, the gifts were exchanged and all put away, except for a pair of children's handcuffs. Colleagues amused themselves playing "tie 'em up". Two of the employees refused to be handcuffed. The pub owner then approached the complainant and handcuffed her hands behind her chair. What started as an attempted joke finally ended badly, when the restaurant owner prevented her from freeing herself and slipped some ice cubes down her sweater, despite protests voiced by the complainant herself and certain witnesses. The whole episode had harmful consequences in the employee's workplace, where she feared ever again being alone with the pub owner. The employee resigned shortly thereafter.

The tribunal held that the pub owner, as a person who exercised authority in the eyes of the complainant, and although he lacked any malicious intent, had nevertheless failed to recognize the impact of his action and had advanced some insincere apologies. Since this was a serious incident that had some enduring and harmful consequences for the employee, the Commission allowed the psychological harassment complaint.

Although this incident may sound crude, it was fostered by the choice of activities made, coupled with the consumption of alcohol. Had this incident occurred today, one can only imagine the images that might have been posted on social media, worsening the whole matter, which leads us to the next point.

5. Recirculate the Organization's Policies on the Use of Social Media

Those of you who recently attended our Toronto symposium may have heard Adam Guy and Duncan Marsden discuss the advent of the smartphone, which makes it possible to film and photograph live any scene of interest to the user of the device, sometimes to the detriment of the main characters appearing in such images. In order to foster respect for the privacy of all attendees at such festivities, it is advisable to

remind all party-goers that taking and publishing pictures of their colleagues is not authorized, unless those persons concerned consent.

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