The return of Christmas parties: what employers need to know

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After two years of navigating COVID-19, the end of 2022 will be an opportunity for employers to organise larger activities for their employees, such as Christmas parties. The purpose of this newsletter is to make employers aware of their obligations during the holiday season festivities. Below, we will address the following three issues: industrial accidents, disciplinary measures and psychological harassment.

Although Christmas parties are generally held outside of the workplace and outside normal working hours, an incident that occurs on such an occasion may qualify as an “industrial accident” within the meaning of the *Act respecting industrial accidents and occupational diseases.*[1] Courts will consider several factors in weighing whether or not such an incident will constitute a work-related accident, including the purpose of the party, the time and place where it was held, whether or not it is organized and financed by the employer, and the presence or absence of a relationship of subordination at the time of the incident. None of these factors are decisive: they serve as a guideline for the tribunal. As many decisions have both granted[2] or rejected[3] claims in such circumstances.

In one case where a Christmas party had been organized by the employer and was intended to encourage a sense of cohesion and belonging amongst the employees, an injury to the coccyx suffered by an employee while dancing with a co-worker was qualified as an industrial accident.[4]

However, in another case where an employee was injured on an escalator while escorting a drunken co-worker after a Christmas party, the tribunal ruled that the female employee had not suffered an industrial accident due to the absence of authority exercised by the employer at the time of the fall and also because the event was only intended to permit colleagues to fraternize and spend time together and not to improve the work environment.[5]

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In the context of its management rights, an employer may, in certain circumstances, discipline an employee for behaviour which occurred during a Christmas party.[6] The degree of the employer's involvement in the organization of the party and the private nature of the party are important factors in determining whether the employer is justified in imposing disciplinary measures in such a context.

For example, an arbitrator upheld the dismissal of an employee who repeatedly hit a colleague and former spouse during the employer's Christmas party held on its premises.[7] The fact that the violent acts were committed during a party rather than in the direct context of work was not considered a mitigating factor. This disciplinary power is part of the employer's obligation to ensure a violence-free workplace. This obligation has gained in importance since the recent addition to the *Act respecting occupational health and safety*[8] of the employer's obligation to "*take the measures to ensure the protection of a worker exposed to physical or psychological violence, including spousal, family or sexual violence, in the workplace*".[9]

In another case, the arbitrator concluded that the employer could not discipline an employee for acts committed at a Christmas party organized and entirely financed by the employees and which took place outside the workplace.[10]

On another note, a single act of serious conduct at a Christmas party may constitute psychological harassment. A complaint for psychological harassment was upheld against an employer in a situation where the owner had touched the breast of an employee by slipping an ice cube into her sweater.[11] This contact, a single gesture, was qualified by the arbitrator as serious conduct amounting to psychological harassment. The arbitrator also concluded that excessive alcohol consumption had no mitigating effect on the seriousness of the act committed. Sexual comments, forced touching and kissing by an employee during the Christmas party were also deemed to constitute psychological and sexual harassment by the courts justifying, in certain circumstances, dismissal.[12]

Conclusion

In light of the foregoing, an employer must exercise caution and adopt measures to reduce the risks associated with the organization of Christmas parties, given that they may be held responsible for accidents or various acts or behaviour that occur during such gatherings.

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[1] CQLR, c. A-3.001, s. 2.

[2] See in particular *Fafard* et *Commission scolaire des Trois-Lacs*, 2014 QCCLP 6156; *Battram* et *Québec (Ministère de la Justice)*, 2007 QCCLP 4450.

[3] See in particular *Environnement Canada* et *Lévesque*, 2001 CanLII 46818 (QCCLP), par. 35-39; *Desjardins* et *EMD Construction inc*., 2007 QCCLP 496.

[4] *Boivin* et *Centre communautaire juridique de l'Estrie*, 2011 QCCLP 2645 [.

[5] *Roy-Bélanger* et *Ressources Globales Aéro inc*., 2021 QCTAT 1739 [Quebec's Tribunal administratif du travail].

[6] *Teamsters Québec, section locale 1999* et *Univar Canada ltée (Jean-Martin Gobeil)*, 2020 QCTA 344 (L. Viau).

[7] *Travailleurs et travailleuses unis de l'alimentation et du commerce, section locale 500 (TUAC-FTQ)* et *Royal Vézina inc. (St-Hubert) (Hicham Alaoui)*, 2017 QCTA 304 (F. Lamy).

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[8] CQLR, c. S-2.1.

[9] *Act respecting occupational health and safety*, CQLR, s. 2.1, a. 51, par. 1 (16). This obligation was added pursuant to the *Act to modernize the occupational health and safety regime* (2021, c. 27, a. 139),

[10] *Syndicat de la fonction publique et parapublique du Québec* et *Société de l'assurance automobile du Québec (Joffrey Lemieux)*, 2021 QCTA 439 (C. Roy).

[11] *S.H.* et *Compagnie A*, 2007 QCCRT 0348, D.T.E. 2007T-722 (T.A.) (F. Giroux).

[12] *Pelletier* et *Sécuritas Canada ltée*, 2004 QCCRT 0554 (M. Marchand).

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