The Success of Employer-Organized Christmas Parties: It Is Everyone's Business?

November 29, 2023

Authors

Geneviève Beaudin

Partner, Lawyer

Simon Gagné-Carrier

Lawyer

Workplace Christmas parties are just around the corner. While such celebrations are a great opportunity to strengthen team spirit and acknowledge everyone’s hard work, it is important to remember that it is not only up to employers to make sure they run smoothly—their entire workforces, managers and employees alike, are also responsible. Just think of potential situations of harassment where alcohol and fun times are combined. Who is responsible for what when it comes to Christmas parties?

Employer’s obligations

Legal framework

Generally speaking, many existing employer (and employee) obligations provided for in legislation, regulations or company policies, can be transposed to employer-organized Christmas parties. This is particularly true where harassment is involved. In recent years, the scope of legislation offering protection against harassment and violence in the workplace has broadened. In addition to the obligation to take reasonable steps to prevent psychological harassment[1], employers, since 2021, must take measures to protect an employee who has been “exposed to physical or psychological violence, including spousal, family or sexual violence, in the workplace.”[2]

Even more recently, on November 23, 2023, the Minister of Labour introduced Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace* (the “**Bill**”). Although the Bill is only at the introduction stage and may see a number of amendments, the Minister explains that its aim is to make workplaces healthier, more respectful and safer, and to eliminate unacceptable behaviour.[3] Further information on Bill 42 will be provided in a separate

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

publication.

Employer's management rights

When an employer witnesses or otherwise becomes aware of inappropriate behaviour at a Christmas party it has organized, it is well within its rights to investigate and take appropriate action, including disciplinary action up to and including dismissal.[4] For example, an employer could impose a three-day disciplinary suspension on an employee having committed a gesture of a sexual nature during a Christmas party.[5] Dismissal was also deemed to be an appropriate measure for an employee who committed acts of violence against his colleague and former spouse at a Christmas party.[6]

An employer's investigation can sometimes even cover events having taken place after a Christmas party, outside the workplace. For example, in a decision from 2022, an arbitrator reiterated that the employer in question was entitled to conduct an investigation into allegations of sexual assault and harassment that were said to have taken place in a hotel room after a Christmas party, because the connection between the personal activities and the employer was sufficient.[7] Despite the private nature of the events, they had a negative impact on the work climate and, therefore, an employer investigation in which employees were required to cooperate was warranted.[8] Similarly, another arbitrator upheld the dismissal of an employee who had assaulted his supervisor, even though the events had occurred during an after-party.[9]

Measures to avoid abusive and excessive behaviours

Employers can implement a number of measures before their parties to avoid abusive and excessive behaviours, including:

- Reminding employees of applicable policies, including codes of conduct and harassment prevention policies
- Authorizing only a limited number of alcoholic drinks per person
- Closing the bar or ceasing alcohol service a few hours before the party's end
- Making sure there is enough food, water and non-alcoholic beverages throughout the evening
- Providing individual hotel rooms
- Providing a safe-ride-home service

Obligations of employees

During employer-organized Christmas parties, employees who attend as part of their employment do so under the same status they hold with their employer.[10] They must therefore comply with their various obligations, including having good manners and being civilized, not endangering their or their colleagues' health and safety, using appropriate language and not engaging in harassment and, more generally, adhering to their employers' policies. In a sense, the party becomes an extension of the workplace. In the specific case of managerial staff, employers are entitled to have higher expectations of exemplary behaviour.

Moreover, when an employer investigates events that are said to have taken place during or after such a party, employees are required to cooperate in good faith.

What about witnesses?

As mentioned above, making sure that a Christmas party runs smoothly is everyone's business. However, is it realistic to rely on employees to report problematic behaviour they may witness during such events? Is the duty of loyalty sufficient to create a general obligation to report all wrongful

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

behaviour? The answer is not clear.

As for managerial staff who are employers' eyes and ears, they are even further bound by their duty of loyalty given their line responsibilities.[11] Employers can therefore expect them to report problematic behaviour that takes place at a Christmas party.

In the case of regular employees (non-managerial staff), the imposition of a general obligation to report all wrongful behaviour was deemed unreasonable,[12] as such an obligation "[translation] jeopardizes the serenity of the work climate."[13] However, there are cases where the obligation to report is legitimate. It applies where the obligation is intended to protect the health and safety of colleagues and the public. The very nature of the duties performed by an involved employee will be decisive in determining the validity of the obligation to report.[14] In all cases, that employee must dissociate themselves from the wrongful behaviour and avoid any participation.

Lastly, despite the absence of a general obligation to report harassment, employers may validly encourage employees to report harassment, without making it mandatory.[15]

Conclusion

Employer-organized Christmas parties are certainly something to look forward to. With the situation in recent years and the explosion of telecommuting and hybrid working conditions, such events are even more important to bring people together. However, they have to remain fun for everyone. With simple yet reliable measures, such as making everyone aware of their own responsibilities and mutual respect, such celebration can be a real success. Happy festivities to all!

---

1. The Act respecting labour standards, CQLR, c. N-1.1, section 81.19.
2. The Act respecting occupational health and safety, CQLR, c. S-2.1, section 51 (16).
3. Office of the Minister of Labour and Minister responsible for the Mauricie and Nord-du-Québec regions, "Le ministre Jean Boulet présente le projet de loi 42, Loi visant à prévenir et à combattre le harcèlement psychologique et la violence à caractère sexuel en milieu de travail Gouvernement du Québec" (quebec.ca), November 23, 2023 (in French only).
4. For more information, read the following bulletin: Lavery, "The return of Christmas parties: What employers need to know," December 9, 2022, URL: The return of Christmas parties: What employers need to know (lavery.ca).
5. Teamsters Québec, section locale 1999 and Univar Canada ltée (Jean-Martin Gobeil), 2020 QCTA 344.
6. Travailleurs et travailleuses unis de l'alimentation et du commerce, section locale 500 (TUAC-FTQ) and Royal Vézina inc. (St-Hubert), 2017 QCTA 304.
7. Syndicat des salariés(es) de l'agroalimentaire de Ste-Claire (CSD) and Kerry Canada inc. 2022 QCTA 224.
8. See also: CSN-Syndicat du personnel de bureau du CISSS de la Gaspésie and Centre intégré de santé et de services sociaux de la Gaspésie, 2023 QCTA 131.
9. Syndicat des inspecteurs du RTM-CSN and EXO (Charles-David Lapointe), 2020 QCTA 24.
10. Association internationale des machinistes et des travailleuses et travailleurs de l'aérospatiale, district 140, section locale 2309 and Servisair (Avo Minassian), D.T.E. 2009T-448 (T.A.).
11. Shell Canada ltée and Travailleurs unis du pétrole du Canada, section locale 121 du SCEP, D.T.E. 2010T-68 (T.A.); Journal de Montréal and Syndicat des travailleurs de l'information du Journal de Montréal (CSN), 2015 QCTA 52.
12. Id.; See also: Viterra inc. and Unifor, Local 2022, 2020 QCTA 565.
13. Shell Canada ltée and Travailleurs unis du pétrole du Canada, section locale 121 du SCEP, D.T.E., supra, note 11, para. 88.
14. Id.
15. Journal de Montréal and Syndicat des travailleurs de l'information du Journal de Montréal (CSN), supra, note 11.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.