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Back by popular demand, here is our annual "Avoiding Holiday Liability" issue of the Workplace Word.

AVOIDING HOLIDAY LIABILITY

'Tis the season to be jolly. However, while you are enjoying the holiday cheer and a cup of hot chocolate, don't forget to take a moment to assess the potential legal liability that this holiday season may bring. Seemingly common scenarios can raise complex legal issues and, if they are not handled properly, can result in serious legal consequences.

It is important for employers to consider the variety of issues that may need to be addressed this holiday season, such as what sort of seasonal and holiday decorating will be permitted, how to address requests from employees to take time off work for religious observances and what steps will be taken to reduce incidents and liability at company holiday parties. While employers do not need to avoid celebrating the holidays altogether, preventive planning can go a long way toward avoiding holiday problems.

Holiday Decorations

The most important thing to remember is that an employer

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cannot treat persons of different religions differently. This basic premise should not be forgotten when dealing with holiday decorations. Employers may choose to limit the extent that holiday decorations are permitted in the workplace in certain instances; however, this limitation must be uniformly applied to all individuals and their respective religions.

Many employers prefer to decorate the office with non-religious decorations, such as winter/snow scenes, candy canes and strings of lights. Each year sparks a new debate as to whether a Christmas tree is considered religious. The EEOC has acknowledged the U.S. Supreme Court's determination that wreaths and Christmas trees are considered "secular" symbols. Therefore, employers may hang otherwise non-religious wreaths around the office or have a tree in the building lobby, even if an employee objects to such decorations.

The best practice for employers is to be sensitive to the diversity of the workplace and to not support or appear to support one religion over another.

Holiday Religious Accommodations

Title VII of the Civil Rights Act requires an employer to reasonably accommodate an employee's religious observances, practices and beliefs, as long as the employee can do so without undue hardship on the employer's business operations.

An employee's religious beliefs do not have to be part of a widely recognized faith in order to qualify for legal protection. Religion includes not only traditional, organized religions, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people or that seem illogical or unreasonable to others. Err on the side of caution and do not jump to any conclusions that any given set of beliefs and practices, no matter how unusual, are not religious. If you are in doubt as to whether your employee's professed religious beliefs are subject to protection, it is wise to consult an attorney.

If an employer is going to deny a religious accommodation, it must be clear that such an accommodation requires more than ordinary administrative costs, diminishes efficiency in

other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work or that the proposed accommodation conflicts with other laws or regulations.

Thus, a request by a Jewish employee for a single day off on Hanukkah because his religious beliefs forbid working that day or a request by a Christian employee for the last shift off on Christmas Eve because his religious beliefs require attendance at a Christmas Eve service are usually reasonable and the employer should attempt to accommodate these types of requests. Other types of religious accommodations include modifications of dressing and grooming standards, changes of policies regarding the use of the employer's facilities for religious purposes and permitting religious expressions in the workplace.

Holiday Gift Exchanges

Employers have a duty to maintain a harassment-free workplace under Title VII. If employees participate in holiday gift exchanges, employers should make clear that gifts should be respectful and appropriate for the workplace. For example, employees should not be permitted to exchange materials containing graphic lyrics or content, or holiday cards of an adult nature. While one employee may find such gifts humorous, another employee may take offense, especially if the gift is presented in a room full of co-workers and strangers.

Holiday Parties

Holiday parties should be unforgettable because of the festivities and fun, not because of the legal consequences that follow. Employers should consider the following holiday party best practices to protect yourselves and your employees:

- Avoid using religious terms when describing your office celebrations. Rather than referring to your party as a "Christmas party," it should be referred to as a "holiday party" or "annual celebration."
- Holiday parties often present situations for unwanted sexual overtures that could also lead to complaints

of sexual harassment. Employers have a legal duty to prevent harassment at holiday parties, just like they have a legal duty to prevent harassment in the office. Therefore, publish or re-publish the company's sexual harassment policy before holiday parties take place. Remind employees that holiday festivities do not offer an excuse for violating a sexual harassment policy. If a company does not have a written policy, this would be a good time to implement one. In addition, given the proliferation of iPads and other technology devices, employers should be aware of, and take immediate action to prevent, any "techno harassment" at holiday parties and in the office.

- If alcohol is served, keep consumption in check. Limiting access to alcohol by placing restrictions on the type served, the time available (such as by closing the bar well before the party ends), or the number of drinks served (such as through drink tickets) may reduce the possibility that employees will drink to excess. Providing food is also a good idea, as it typically slows the absorption of alcohol into the bloodstream. Providing plenty of non-alcoholic beverages is also a wise choice.
- Hire professional bartenders and require IDs from guests who do not appear to be 21 years of age. Ask the bartenders to keep their eyes open for obviously impaired employees.
- Arrange designated drivers or cabs to ensure that all persons have a safe way to get home. Consider offering incentives to employees who offer to be designated drivers and/or pre-paid cab vouchers to employees.
- Make clear that employee attendance at the holiday party is voluntary and that employees are not required to attend.
- Invite spouses, significant others, families and important clients. Inviting employees' families and the company's important clients and others with whom the company does business can change the atmosphere of a company party and discourage inappropriate behavior.

- Most importantly, if there is a problem — deal with it promptly! Every act of sexual harassment — whether by a co-worker, client or supervisor should be taken seriously. Prompt action designed to stop any further harassment not only demonstrates that the employer does not condone such behavior, but may prevent certain behavior from being imputed to the employer. Also, a record of consistent and effective responses to incidents is important because the employer's entire record of dealing with such matters is considered when evaluating liability.

Conclusion

When getting ready for the holidays, don't forget the potential for liability, as compliance with the law takes no holiday. Have a safe and enjoyable holiday season and perhaps think twice before you hang mistletoe in the office.

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