



Legal INSIGHTS

with Jeffrey W. Larroca

Advice for a Happier New Year!



If there is one thing that can ruin the holidays and a new year, it is employment-related litigation and liability. As such, here are some suggested New Year's resolutions for 2013.

Deck the halls, but not each other: Workplace violence is on the upswing, and the desire to protect employees from the same has led to the introduction of numerous anti-bullying laws in various states. Courts often differentiate harassment based on a protected category (sex, race, national origin, etc . . .) from other abusive behavior in the workplace. In the words of the Supreme Court, anti-harassment laws do not constitute "a general civility code for the American workplace." Now, legislatures are considering such codes, so it is a good time to get ahead of the curve by revising policy.

Make a list and check it twice: Every year, new laws and regulations go into effect in each state and municipality. Make you sure you know what they are because they can be significant. If you doubt it, take a look at what has been enacted in California in 2013: new breastfeeding-at-work protections; new social media use protections; and new employee rights for the inspection of personnel files, to name just a few.

Should old acquaintance be forgot: Facebook and other online media are fast becoming a significant form of communication by employers and a tool for those employers to check up on potential and current employees. Beware the pitfalls. Here are two: First, the National Labor Relations Board has taken the position that disciplining employees for what they post on Facebook may well be a violation of their labor rights, so before you take action against an employee for updating their status to "I HATE MY BOSS," consider the ramifications. Second, be wary of too much intrusion upon employees

using social media. It is perfectly acceptable to insist that they mind their work rather than their online friends, and by all means, if an applicant makes his or her information public, click and learn. But a recent attempt by a Maryland governmental employer to require employees to provide their Facebook passwords resulted in quick passage of a law stating in sum and substance that employers cannot require workers and job applicants to turn over passwords to private social media accounts as a condition of employment. Maryland was the first state to pass such a measure, but similar laws are pending in California, Illinois and Michigan.

Then one foggy Christmas Eve: The holidays means parties, which mean alcohol, which means liability. Short of an alcohol-free soiree, be wary of overserving, and consider precautions, from picking up the tab for taxis to arrangement of alternate transportation for office partygoers. Other smart ideas include hosting at a restaurant or bar whose liability insurance would provide coverage; using tickets that limit the number of drinks; limiting drinks to beer and wine and maybe egg nog; and sending a message before the party that having a good time is required but excessive imbibing will not be tolerated. If this seems stuffy, I offer you a recent blurb in a legal reporter:

HEAD-ON COLLISION — CHRISTMAS PARTY DEATH

Plaintiffs in this case were the wife and three adult children of decedent, a man in his 50s. Decedent was killed when his auto collided head-on with an auto driven by defendant employee, who had just left a Christmas party held by defendant employer at a local bar open to the public. Both decedent and a defendant employee had blood alcohol levels in excess of legal limits. Plaintiffs contended that defendant employee caused the

subject accident; that he was acting in the course and scope of his employment at the time; and that defendant employer was liable for compensatory and punitive damages for the actions of its employee. Defendant employer contended that the party was purely a social function of no benefit to the employer; that the employee was responsible for his own actions; that decedent himself was drunk and was responsible for the accident; and that he died instantly, so that punitive damages were inapplicable.

RESULT: *The case settled before trial for \$1,100,000.*

I saw mommy kissing Santa Claus: The debate over whether an employer should have a non-fraternization policy is a long-standing one. On the one side, the argument is that adults should be able to regulate their own personal lives and that many people meet soon-to-be spouses at the workplace. On the other are legitimate concerns over harassment (either in an employee proposing a relationship or often in the aftermath of a failed office romance, where one employee takes it harder than the other). There are also concerns over the issue of favoritism and conflict of interest. As such, no matter where you fall on the advisability of an anti-fraternization policy, at a minimum, consider a prohibition on relationships between supervisors and subordinates or employees in the same reporting chain.

Happy New Year!

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