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BLOGS

Archives;Discrimination;Harassment

Tis the Season

Perhaps you think this is the most wonderful time of the year, or perhaps you think its the most stressful. Either way, its here, and our workplaces aren't immune from the impact of the holidays. It can sometimes be tricky for employers to allow goodwill and celebration without offending those who do not celebrate Christmas.

The topics of [religious accommodation](#) and religious discrimination have been touched on in previous posts. This post is focused on the specific issues that arise during the holiday season. Note that these comments are intended for secular employers only. Employers that qualify as religious institutions are not subject to the same constraints.

Here are a few quick tips for the next several weeks:

Tip #1:Happy Holidays vs. Merry Christmas: There's a difference between a secular celebration of the holidays and the celebration of Christmas, which is a central event in the Christian calendar. The line here can be difficult to draw, since so many symbols of the season are used as non-religious decoration (think decorated trees, wreaths, and Santa) even though they may have religious origins. A private employer does have the right to express the religious beliefs of its owners in the workplace, but it may not cross the line and require its employees to accept those beliefs in order to obtain career advancement or avoid discipline. If an employer allows expression of particular religious beliefs of its employees in the workplace, it must ensure that there is similar freedom of expression for all religious beliefs and views. Given all that, the safest course is to steer clear of Christmas celebrations and decorations and choose a more neutral happy holidays approach. At a minimum, an employer should take seriously any religion-based objections its employees may raise to the employers holiday observations, and may not retaliate for the expression of those objections.

Tip #2: Voluntary Participation vs. Forced Proselytizing: Employers should not force employees to participate in religion-based activities. If, for example, company management conducts activities that include overtly religious speech, music, or messages, and attendance at such activities is mandatory, a judge or agency (such as the EEOC) could find that the activity is improper religious proselytizing. Indeed, in one [case](#), the EEOC pursued a discrimination charge against a company that fired an employee who refused to wear a Santa hat and apron while performing her job duties in the gift wrapping department of a retail store. The employee refused based on her religious beliefs as a Jehovah's Witness, which prohibited her from celebrating Christmas. The [EEOC](#) has stated that it believes an employer is not required to, and should not strive to, forbid the expression of all religious expression in the workplace but may restrict the expression of religious beliefs if there are complaints from co-workers or a legitimate disruption of the employers business.

Employers risks aren't limited to religious discrimination. The holidays are no excuse for allowing employee conduct that would not be tolerated at other times of the year. That leads us to:

Tip #3: Bad Behavior at Company Celebrations: As any employment lawyer can tell you, January can be a busy time for outside counsel as employers deal with complaints arising from behavior at company holiday parties. Nothing fuels



potential sexual harassment, racially offensive speech, and other unguarded comments like a little alcohol. If your company insists on serving alcohol at company gatherings, consider limiting the amount and controlling the duration and location of the gathering. The presence of sober managers and supervisors can also serve as a deterrent to bad behavior. If problems occur or complaints are made, the employer needs to be prompt, serious, and consistent in its reaction.