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“Santa's unwelcome gift!”

The end of a long, hard, satisfying and productive year... time to kick back and enjoy the festive season... and the staff Christmas party... well, sorry! If you are a manager or director of any but the smallest organisation, then you will find an unsolicited Christmas gift in your Christmas stocking - vicarious liability; which simply explained means the second legal responsibility you have for the actions of your staff.

Now the legal logistics of all this are well known to most. Unwelcome attention of a sexual nature that offends, intimidates or humiliates and occurs at work or in connection with work, is sexual harassment. “In connection with work” is an interesting phrase and may well include the retirement dinner, the staff social club BBQ, the residential training program and even drinks after work between a team of people who work together. Many landmark cases determined in state and federal jurisdictions support this premise.

However the rebirth of corporate ethics, the power of the brand and the consciousness regarding the triple bottom line all point to a higher order corporate motivation than trying to keep our collective bottoms from hanging out the window on an harassment complaint. Those who have managed a case of alleged or actual sexual or other harassment in the workplace will vouch for the idea that it is never just about the incident. It is often the aftermath that is often so difficult to resolve. Legal right of redress, complaint procedures, policies, the appointment of contact officers are only one part of the equation. The indirect costs of sexual harassment and bullying involve stress, anxiety, lost productivity, workplace accidents, absenteeism, polarisation of the workforce, damage to reputations and relationships external to work and loss of talent. These costs can apply whether it is the respondent in the case (alleged perpetrator) who is dismissed or resigns in disgrace or the complainant who leaves the organisation; disgruntled or disheartened with the way in which their issue has been dealt, or their perception that it has not been dealt with at all.

Three recent cases I have been asked to help manage, reinforce various salient points. All are factual.



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Scenario One

A group of people involved in a key company project went for celebratory drinks on a Friday evening together upon completion of a major milestone. Regrettably, several of them stayed too late and drank too much. One of the men present who had previously enjoyed a productive and professional relationship with one of the young women, decided he'd like to tell her what he'd very much like to do with her if he wasn't so drunk at the time. Not only was she mortally offended but so were several of the other staff members present.

I was asked to 'sit with' her on the following Monday morning. She had bloodshot eyes, looked haggard and confessed she'd had a very tormented weekend. She told me she had seen the "offender" that morning and that he had apologised to her (looking about as dishevelled as she did). She told me that she realised he had been drunk, that what he'd said had been out of work hours and that he was sincere in his apology. But then she asked me very soulfully how she was meant to forget that when he'd been drunk enough to tell her how he really felt, he had told her very crudely and directly that he had sexual designs on her. In a sense she was grieving over the loss of a previously safe and enjoyable relationship tainted by his disclosure that she felt had changed their relationship forever. She said it would take her a lot of time to be able to be in his company again, particularly alone, without feeling highly intimidated and very awkward.

Scenario Two

A General Manager hosted a Christmas party late last year and went outside at one stage in the evening to have a cigarette. He observed two subordinates in various stages of undress, canoodling under a tree some short distance away. He was immediately outraged as he knew the partners to which the respective individuals were married. He called me to debrief the situation, to sort out his feelings and to establish what was and wasn't his right to pursue in respect of their behaviour at a work-related function. After some lengthy discussion he was able



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to appreciate that his "traditional" views regarding their behaviour, whilst very powerful, ought not influence any decisions regarding the way in which the situation should be handled. However he knew that he had every right as their manager to talk about the inappropriateness of that behaviour at a work function where indeed any number of others could have (and may have been) embarrassed and offended, even where the behaviour of the pair was obviously consenting!

Apart from any personal objections he had to their behaviour, it took some time before he was able to quell his feelings of resentment at the lack of respect he believed the couple had shown for their reputations, their colleagues and the awkwardness he experienced in having to raise the issue after what should have been an enjoyable time for all. At a workshop I ran last week, a participant proclaimed her belief that 'we have all had too much to drink at a work function and said /done things we regretted the next morning' and while I've heard this expressed many times, I would challenge the assumption that this is inevitable and universal. Surely this assertion does not appear to give the rest of us any credit for either self control or self preservation.

Scenario Three

Several employees attended an in-company residential training program. Evenings were very social. People stayed up late, gave the CD's a spin and alcohol flowed freely. Two people, let's say Bob and Mary, from different departments spent quite a lot of time together. Some weeks after they returned from the program Bob complained to Human Resources that Mary had contacted him at home several times causing significant awkwardness with his partner, sent him emails that contained suggestive innuendo. He wished to know how he could get her "off his back". When Mary was interviewed she insisted that Bob had shown considerable interest in her at the program and while sexual intimacy had not occurred she seemed sure that he had wanted to pursue a relationship beyond the program.

After a facilitated discussion was held between the three of us, Mary understood that her attention was clearly unwelcome and she would do well, under threat of disciplinary action, to leave Bob alone. However perceptions and feelings of both parties



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were very real. It was clear that a part of her still felt “used”; believing that Bob had been happy to spend time with her while he was away and that as soon as he arrived home, Mary had been dumped. She was highly offended and bitter regarding his allegation that he was “being stalked”. He was angry and defensive about the aspersions she had cast, once she felt rejected, on the state of his current relationship and also concerned that details of the complaint would harm career prospects in a family oriented, values-driven organisation.

Regardless of the facts of the case, or readers’ perceptions of any rights or wrongs, this case is typical of situations in which unwelcome attention and unreciprocated affection, cultivated by overly familiar settings and poor judgment can lead to significant stress, feelings of rejection and confusion, strain on important relationships outside work, considerable workplace embarrassment for both parties and impact on productivity and performance. So perhaps the lesson to bear in mind is to have a good time at the Christmas party, but not too good a time!