Surprise! Don't Let an Office Birthday Party Cost You $450,000

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You may recall the Seinfeld episode where Elaine Benes consumes a $29,000 piece of cake from the 1937 wedding of the Duke and Duchess of Windsor. A birthday cake from an office party in Kentucky may have that pricey wedding slice beat. If you haven't heard already, a Kentucky jury just served an employer with a $450,000 bill associated with a surprise office birthday party gone awry. Does this massive legal loss spell the end of office birthday parties as we know them? Thankfully, no. Despite the media attention the April 15 verdict has garnered, it had less to do with the fact that the employer threw a surprise party than with how it handled the situation – and particularly the fallout. All kidding aside, this case has important reminders for employers about how you should handle disabilities in the workplace – and you can easily avoid a similar fate by following some commonsense steps.

The Worst Birthday Party Ever?

This case stemmed from a surprise birthday party thrown by Gravity Diagnostics LLC for lab worker Kevin Berling. According to his lawsuit, Berling suffered from an anxiety disorder and specifically asked his office manager *not* to celebrate his birthday party in the office. Coincidentally, the office manager was out of the office on Berling's big day and his co-workers decided to plan him a surprise birthday celebration. When Berling caught wind of it, he alleged that he suffered a panic attack and spent his lunch period hiding out in his car.

But it's what happened next that was particularly damning for the employer. According to Berling, his managers subsequently called him into a meeting and scolded and belittled him for his reaction. In fact, according to media reports, Berling said he was accused of "stealing his co-workers' joy.

This in turn led him to suffer another panic attack where he used methods such as clenching his fists to deescalate the situation. According to the lawsuit, his behavior alarmed the employer, who feared Berling might respond violently. He says they asked him to immediately leave the property. He alleged that the company terminated him several days later.

Berling sued his ex-employer for disability discrimination and by the time the case went to the jury the only claim to decide was whether Gravity Diagnostics reasonably failed to reasonably accommodate his disability. After deliberating for merely one and one-half hours, the jury awarded Berling $450,000 – which consisted of $120,000 in lost wages and benefits, $30,000 in future lost

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earnings, and $300,000 for pain and suffering, mental anguish, embarrassment, humiliation, mortification, and loss of self-esteem. At some point in the near future, the court will tack on reasonable attorneys' fees and costs, which could considerably increase the final tally that Gravity has to pony up to Berling.

All in all, that's a costly payout for a birthday cake and some decorations.

What Can You Do to Avoid a Similar Fate?

What went so wrong with this seemingly joyous occasion? The alleged facts of the case offer some simple steps for employers to take to avoid a similar fate:

1. **Listen to Your Employees and Be Aware of Potential Disabilities**

   There was some dispute in this case about whether Berling had explicitly informed his employer about his anxiety order. Regardless of what happened here, it's a good reminder to be attuned to your employees that may have disabilities and are seeking reasonable accommodations – even if not specifically couched in those terms.

   If an employee is expressing significant unease with an office social function, they may very well be signaling that they suffer from some form of disability such as an anxiety disorder. A request not to throw a party or to not participate in a similar workplace function could be construed by a court as a request for a reasonable accommodation if the employee ties such request to something that is health related. At a minimum, you should be aware that issues such as this could trigger your obligation to engage in an interactive process to discuss this issue further with your employees.

2. **Understand We Are in a New Post-COVID-19 Era**

   While many employees are excited about returning to the office, seeing co-workers again, and getting back into the swing of social interactions at work, you should be aware that this may not be the universal sentiment for all employees. In the post-pandemic world, many employees may still be cautious or even fearful about such social interactions – especially those who may be immunocompromised or live with vulnerable family members.

   As much as you may want to promote employee engagement and interaction, you should realize we are in a new era. Some employees may simply choose to be more cautious while interacting with others. After the trauma of the last two years, in fact, some employees may find that this discomfort rises to the level of an anxiety disorder or similar disability.

3. **Train Staff on Proper Approaches to Handle Similar Situations**

   You should train your employees – especially HR folks and front-line supervisors and managers – to be attentive to such issues. They should know the specific steps to take in response to requests for reasonable accommodations and handling potential disabilities. The outcome in this

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case may very well have been avoided had the employer provided good training to the office manager and other employees about how to respond in such situations. Leaving employees to navigate these issues on their own and figure things out "on the fly" is almost always a recipe for disaster.

4. **Explore Alternatives to Immediate Termination**

   Before taking any adverse action against a worker, you should consider working with appropriate staff to look into whether there have been performance issues, disabilities, or any mitigating circumstances before making a final decision to discipline an employee. This process should be well-documented and consistent across the board.

   In this case, the company alleged that it was concerned about violent behavior by Berling and acted on its "zero tolerance" policy towards workplace violence in making the decision to discharge him.

   Depending on the circumstances, removing an employee from the workplace may be the right call from a workplace violence prevention standpoint. If an employee makes a threat or commits an act of violence, termination may simply be the best course of action. When an employee has not made a direct threat but you have witnessed behavior that may suggest the employee could be violent, you may want to remove the employee from the workplace until you can more carefully evaluate what you observed and make an informed decision concerning continued employment. This would include following up by asking the right questions, investigating, and figuring out what was happening with the employee in the specific situation. In some cases, a "cooling off" period of paid leave might be worth considering to assess the situation further and determine the appropriate course of action – rather than immediately making the decision to terminate without having all the facts.

Conclusion

Cases such as this generate a lot of attention and buzz due to their novelty. The facts of this case may certainly be unique. But cases like this are a good reminder for all employers to take a step back and contemplate how you would have handled a similar situation, and what you would have done differently. Keeping the points above in mind may help you avoid a similar outcome and ending up with egg (or birthday cake) on your face.

We will continue to monitor further developments and provide updates on this and other labor and employment issues, so make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Employee Leaves and Accommodations Practice Group.

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