



Don't tell Me That It Couldn't Happen at Your Workplace

Insights

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One of my recurrent themes is that an employer should never assume that its managers and employees will not act foolishly and exercise bad judgment. Poor judgment results in experienced craft workers skipping a step and getting killed. Poor judgment results in employees or managers engaging in sex harassment. Poor judgment results in coworkers teasing an employee so much that he blames the hostile environment on his race, national origin, age or sex. Sometimes poor judgment results in a manager doing something stupid, rude and inappropriate that isn't unlawful but gets the company sued.

Bad judgment does not occur in a vacuum. Generally the employer or its supervisors have set a bad example or turned away from horseplay, teasing and sexual innuendo. Even in our politically correct culture, conversation may slide into the gutter. We've all seen it. And bad judgment in one's relations with workers doesn't stop there. Do you really want the same person making major marketing, production or expansion decisions for your company?

Let's look at excerpts from the article below from the always interesting [Law360](#). When an executive's defense against alleged harassment is that he was too drunk to perform, you can assume that a lot of bad judgment had been exercised, regardless of whether the law was broken.

New York (January 26, 2015, 6:05 PM ET) -- Embattled ([Law Firm](#)) partner (name deleted) took the witness stand in New York federal court Monday to deny allegations that he sexually assaulted an associate after a holiday party in 2011, telling jurors he was too drunk at the time to "consummate the act."

The partner offered a detailed account of the events following the holiday party on December 15, 2011, when he and plaintiff returned to the firm's Midtown Manhattan office. Plaintiff has claimed during **the trial** that Partner forcibly had sex with her after she told him to stop, but Partner testified Monday that he was unable to perform because he had consumed between eight and 10 drinks that night.

"She was pushing me toward her," Partner testified. "We were both very drunk and it was awkward and we couldn't really consummate the act, so to speak."

...the Partner sought to describe Plaintiff as the instigator on the night of the holiday party, saying she had repeatedly grabbed his hand and kissed him. Immediately upon entering his office, Plaintiff

She had repeatedly grabbed his hand and kissed him. Immediately upon entering his office, Plaintiff fully disrobed and laid on the ground, he testified. "I should have walked away, but I didn't," Partner said, drawing an objection from Plaintiff's attorney.

According to the suit, the encounter after the holiday party was not an isolated incident. Plaintiff claims that on her third day of work in September 2011, Partner drunkenly kissed her and grabbed her breast without her consent outside a Manhattan bar. She also alleges he repeatedly made sexually charged comments in the presence of colleagues, creating a hostile work environment.

Partner acknowledged Monday that he had once made a crude joke about BJ's Wholesale Club, which the firm sued in 2011. Partner testified that he replied, "I don't know anything about what's going on, just that I like to get them — to get the BJs."

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In addition to the hostile work environment claim, the defendants face defamation and retaliation claims stemming from the firm's April 2013 countersuit alleging that Plaintiff was "obsessed" with Partner and was attempting to extort a large settlement. Faruqi later dropped the suit.

-Thanks to Mark Lebetkin for his excellent coverage.

Let's assume that the Partner's conduct was "welcomed" by his subordinate, and that the facts are as the Partner alleges. And he may be telling the truth. We don't know. Were any of these activities appropriate between a partner and an associate? Should the Partner have been drinking with and joking in this fashion with a subordinate? Or maybe things started in a mutually consensual fashion, but something changed.

We don't have to know all of the facts to determine that bad judgment was exercised and that the employer may not have adequately managed and created a professional culture.

So our message is to never ever assume that your people cannot act foolishly. And continually take steps to set a professional example and maintain a culture where people think before they talk or act, and where they take seriously their roles. No rocket science needed. Or you can make the national news. Your choice.

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