

# Everything You Need to Know about Holiday Parties and Ringing in the New Year (without a *Bang*)

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# Agenda

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## I. HOLIDAY PARTIES

- a. Identify the Applicable Laws
- b. Identify how Employers Get in Trouble
- c. Identify how Employees Get in Trouble

## II. GUNS IN THE WORKPLACE

- a. Identify the Applicable Laws
- b. Discuss Best Practices

# Holiday Parties

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# Discrimination is Prohibited in the Workplace Based on:

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- Sex/Gender
- Race
- Color
- National origin
- Age
- Genetics
- Veteran status
- Disability/handicap
- Religion
- Sexual Orientation\*
- Pregnancy

# Facts About Sexual Harassment in the Workplace

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- Most sexual harassment takes place between a man in a superior position and a woman in an inferior position.
- Women are nine times more likely to quit a job because of sexual harassment than are men.
- Women are five times more likely to transfer from a job because of sexual harassment than are men.

# Facts about Sexual Harassment in the Workplace

(continued)

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- Women are three times more likely to lose a job because of sexual harassment than are men.
- Men can be sexually harassed by women.
- Men can sexually harass men; women can sexually harass women.

## Sexual Harassment Defined

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**Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.**



# Illegal Sexual Harassment Defined

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Harassment is unlawful when it is a “term or condition of employment; when submission to or rejection of sexual advances is used as the basis for an employment decision; or when such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment.”



# Quid Pro Quo Harassment

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- By managers/supervisors
- “something for something”
- Decision/expectation based on sex
- Unwelcome advances
  
- ANYTHING SEXUAL
- Causal connection between conduct and tangible job benefit
  - firing, demotion, blocking promotions, transferring, performance evaluations; pay increases

# Hostile Work Environment

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**ANY CONDUCT THAT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING W/EMPLOYEE'S WORK PERFORMANCE OR CREATING INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT**

# HWE Harassment

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- Unwelcome Conduct
  - Sexual advances
  - Animosity based on protected class
  - Jokes, comments, touching
- No objection need be voiced
- **INTENT DOES NOT MATTER!**

## HWE Harassment (continued)

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- Severe or pervasive **BUT ONE INCIDENT IS SUFFICIENT**
- Unwelcome **BUT INTENT DOES NOT MATTER**

# Harassment Topics

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## ALL PROTECTED CATEGORIES

Race

Color

Religion

Sex

Gender

National Origin

Age (over 40)

Disability

# Who can harass and create HWE?

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- Managers/supervisors
- Co-workers
- Third parties
  - Vendors
  - Customers
  - Independent contractors

# Danger Zones!

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- Comments on personal appearance
- Work-related off-premises conduct
- Nicknames
- Stereotypes
- Touching
- Dating/initiating personal relationships
- Retaliating
- Cartoons, posters, pictures, apparel, t-shirts
- Email/Internet
- Jokes, sarcasm, or innuendo about race, color, religion, sex, gender, national origin, age, disability, sexual orientation, military service

# Work Environment

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- Did organization pay for or sponsor event?
- Is it a regular gathering of employees?
- Is it organized using organizational resources (like email)?
- Are there a number of employees present? If you look around and everyone you see is a co-worker, the policy probably applies, no matter where you are.
- Does the event get talked about a lot back at the workplace?
- Was work discussed during the gathering?



# Problems for Employers

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- The Untrained Supervisor
- Alcohol
  - The Drunken Supervisor
  - The Drunken Employee
  - Drinking & Driving
  - Alcohol Poisoning
- Not everyone has the same idea of what is fun!

# Problems for Employees

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- Not realizing that conduct at holiday party could support disciplinary action
- Being afraid to report conduct that occurred at the party
- Being embarrassed/ashamed of their own conduct at the party
- Posting pictures/making comments on social media

# Religious Issues and Accommodations

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- Be mindful of the different religious background of your employees – Do not assume everyone is Christian and celebrates Christmas!
- Remember that Title VII specifically places the burden on employers to make “reasonable accommodation” to religious “observances and practices” unless to do so would be an “undue burden.”

# Undue Burden

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- To demonstrate undue burden, the employer must be able to show that all conceivable accommodations would have imposed more than *de minimus* cost.

# Not Undue Hardship

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- Flexible scheduling
- Unpaid leave
- Allowing employees to use lunch or other breaks for religious prayer
- Voluntary substitutions or swaps
- Job reassignments and lateral transfers
- Modifications of grooming requirements in certain circumstances
- Other workplace practices, policies and/or procedures.

# Undue Hardship

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- Requires more than ordinary administrative costs (i.e. hiring substitute employee);
- Impairs workplace safety;
- Causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work;
- Changes a bona fide seniority system to accommodate one employee's religious practices by denying another employee the job or shift preference guaranteed by the seniority system.

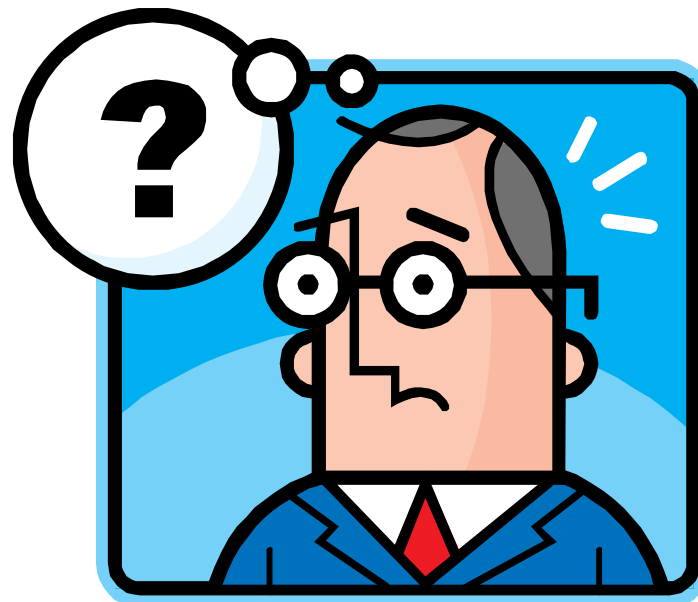
# The Lesson

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- Work with employees on a case-by-case basis to determine whether an accommodation can be made.

# QUESTIONS

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# Gun Issues in the Workplace

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## Second Amendment of the U.S. Constitution

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**“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”**

# Gun Violence in the Workplace

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- Pursuant to the Occupational Safety & Health Act (“the Act”), employers are required to provide employees with a reasonably safe workplace.
- In complying with its general duty to provide a safe and healthy workplace, employers are always concerned with workplace violence.
- One typical rule of conduct used by many employers is the absolute ban of firearms on workplace premises.

# Mississippi's King of the Castle Doctrine

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- Senate Bill 2426 became effective on July 1, 2006.
- A person who kills another while protecting himself in his dwelling, occupied vehicle, *place of business* or ***any place of employment or in the immediate premises thereof*** will be justified in his actions.

# Mississippi's "New" Open Carry Law

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- “The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying *concealed weapons*.”
- Mississippi Constitution of 1890, Art. 3, Sec. 12

## Miss. Code Ann. Sec. 97-37-1

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- Made it illegal to carry certain weapons “concealed in whole *or in part.*”
- What does “in part” mean?
- Is a holstered pistol “concealed”?
- Is carrying a revolver suspended from the neck by a leather thong “partially concealed”?

# Attorney General

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- Advisory Opinion - June 14, 2012
- Weapons must be “totally concealed.”

## 2013 Legislature Amends Sec. 97-37-1

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- Defines “concealed”:

Hidden or obscured from common observance and shall not include ... a loaded or unloaded pistol carried upon the person in a sheath, belt holster or shoulder holster that is wholly or partially visible, or carried upon the person in a scabbard or case for carrying the weapon that is wholly or partially visible.



## Hinds County D.A.

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- Petition Hinds County Circuit Court to block the law.
- Hinds County Circuit Court enters injunction, finding the law as “unconstitutionally vague.”

# Miss. Supreme Court

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- Overturns Hinds County Circuit Court.
- 9-0 Decision
- Thus, effective July 1, 2013, unless otherwise prohibited (i.e. a felon), it is legal for a person to openly carry a weapon without a permit.

# Exceptions?

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- The only one provided by statute - Educational Property

## June 2013 AG Advisory Opinion

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- Open carry does not require a permit.
- Open carry applies equally to shotguns and rifles as it does to handguns.
- Private property owners can prohibit the carry of firearms and perhaps charge the open carrier to trespass charges.
- Courthouses and other public buildings can prohibit the open carry of firearms in certain situations.

# Best Practices

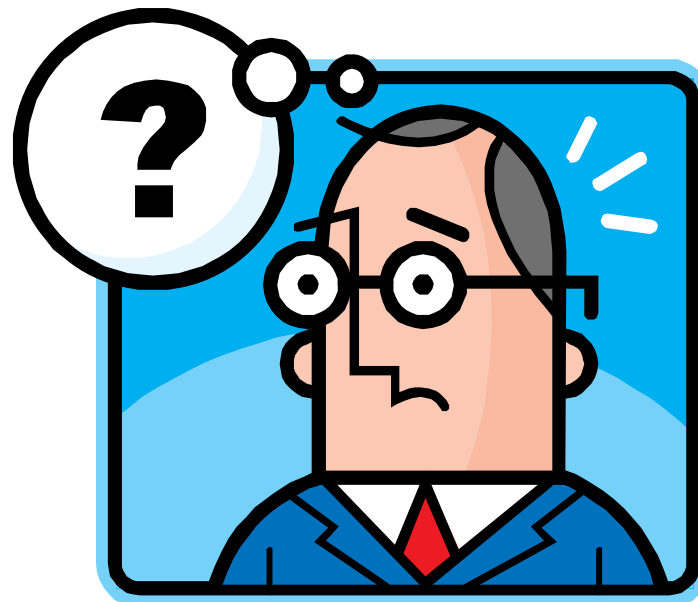
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- Decide your company's gun policy and put it in writing!
- Have a disaster/workplace violence plan!
- Train your managers and staff.
- Post notices.



# QUESTIONS

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