

Recent Case Is a Reminder of Possible Liability at Company-Sponsored Events



At certain times of the year, including the summer and over the holidays, companies often hold parties, barbeques and similar events for their employees. Although these events are supposed to be fun, they can lead to bad behaviour, especially if alcohol is involved. And if the company didn't take proper precautions, it can be held liable for that behaviour.

A recent case from Ontario is a good reminder of the risks employers can be exposed to when they hold company events.

A 19-year-old woman worked in the maintenance department of a waterpark. She went to the employer's end-of-the-season staff party, which was held at the park. The employer provided food and drink; attendees were free to use the facilities and to bring in alcohol to drink.

While the worker and her supervisor were swimming in one of the park's pools, she claims that he sexually assaulted her. She also claims he got into her car without her consent and forced her to drive while putting his hands down her pants and under her shirt, becoming more violent and aggressive.

The worker was eventually able to get him out of her car. She then called the police and went to the hospital.

The worker sued the supervisor and her employer, claiming it was vicariously liable for her sexual assault by her supervisor at the company-sponsored party. The company asked the court to dismiss the case.

The Ontario court refused to dismiss the sexual assault claims against the employer. It focused on whether there's a connection between the employment enterprise and the alleged wrong that justifies imposition of vicarious liability on the employer for that wrong, in terms of fair allocation of the consequences of the risk and/or deterrence.

That is, did the employer materially increase the risk that the unauthorized acts of sexual assault and/or assault would occur'

In answering that question in the affirmative, the court relied on these facts:

- The alleged sexual assault occurred at an employer-sponsored staff party, which the employer had an interest in and directly benefited from hosting.
- The party took place at the employer's waterpark, which has extensive grounds where supervision would be inherently difficult 'if not impossible' and where individuals such as this young worker could easily become isolated and vulnerable.
- The employer permitted the consumption of alcohol at the party, without having a bartender on hand who could control consumption.

So the court concluded that the employer could be found vicariously liable for the sexual assault committed at the party and thus refused to dismiss the case [*K.L. v. 1163957799 Quebec Inc.*, [2015] ONSC 2417 (CanLII), April 14, 2015].

Bottom line: Company parties and events are a great way to thank and reward employees. But make sure that you take steps to ensure that everyone has a good time and behaves well, and that things don't get out of hand.

For example, make sure to have adequate supervision at these events. And if you choose to provide or allow alcohol, take steps to control its consumption and ensure employee safety, such as:

- Hiring professional bartenders, who are trained to keep an eye on how much people drink
- Issuing drink tickets, limiting how many drinks each employee can get
- Assigning individuals to monitor the intoxication of attendees (see, Intoxication Monitoring Instructions)
- Appointing designated drivers, giving out taxi vouchers or reserving hotel rooms where drunk attendees can go to 'sleep it off' to prevent anyone from drunk driving.

Here are some additional resources to help you protect your workers and your company from liability at company social events:

- 10 tips for planning a safe company party
- Holiday party safety checklist
- Tips on reducing employer liability during holiday parties
- Alcohol & Xmas Parties: Managing the Liability Risks.