

## Holiday Safety Tips



Holiday safety is an issue that burns brightest from late November to mid-January, the time when families gather, parties are scheduled, and travel spikes. By taking some basic precautions, you can ensure your whole family remains safe and injury-free throughout the season.

### To Prevent Fire in Your Home:

- Never leave burning candles unattended; blow them out when you leave a room.
- Keep candles out of reach of children.
- Never sleep in a room with a lit candle and extinguish all candles before going to sleep.
- Make sure candles are on stable surfaces, where they can't easily be knocked over.
- Don't burn candles near trees, curtains, or any other flammable items.
- Don't burn trees, wreaths, or wrapping paper in the fireplace.
- The Chimney Safety Institute of America recommends checking and cleaning the chimney and fireplace area at least once a year.

### Decorations

Putting up decorations is one of the best ways to get in a holiday mood, however an estimated 15,000 injuries involving holiday decorating were seen in emergency rooms during the 2012 season. Even angel hair can hurt.

- "Angel hair" is made from spun glass, and it can irritate your eyes and skin; always wear gloves when handling it, or substitute non-flammable cotton.
- When spraying artificial snow on windows or other surfaces, be sure to follow directions carefully; these sprays can irritate your lungs if inhaled.
- Decorate the tree with your kids in mind; move ornaments that are breakable or have metal hooks toward the top.
- Always use a proper step ladder; don't stand on chairs or other furniture.
- Lights are among the best parts of holiday decorating; make sure there are no exposed or frayed wires, loose connections or broken sockets.
- Plants can spruce up your holiday decorating, but keep those that may be poisonous (including some Poinsettias) out of reach of children or pets; the national Poison Control Center can be reached at (800) 222-1222.
- Make sure paths are clear indoors so older adults do not trip on wrapping paper, decorations, toys, etc.; National Security Council provides tips for older adults on slip, trip, and fall protections.



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**Holiday Travel**

Many people choose to travel during the holidays by automobile, with the highest fatality rate of any major form of transportation. In 2013, 343 people died on New Year’s Day, 360 on Thanksgiving Day and 88 on Christmas Day, according to Injury Facts 2015. Alcohol-impaired fatalities represented 31 percent of the totals.

- Use a designated driver to ensure guests make it home safely after a holiday party; alcohol, over-the-counter, or illegal drugs all cause impairment.
- Make sure every person in the vehicle is properly buckled up no matter how long or short the distance being traveled.

- Put that cell phone away; distracted driving causes one-quarter of all crashes.
- Make sure the vehicle is properly maintained, and keep an emergency kit with you.
- Be prepared for heavy traffic, and possibly heavy snow.

Remember, when guests are staying in your home, make sure areas have night lights or easy-to-reach lamps in case they need to get up during the night. And, whether you are visiting someone else’s home or you have guests in your home, make sure all medications are kept up and away and out of sight from young children.

**Legal Updates**

In recent training for AB 1825 compliance, a question that was raised was, “What is severe and pervasive behavior in the workplace? How do you identify it?” While usually this is a question for a jury to decide, there have been recent court decisions that provide a legal definition to this issue. While the work environment is full of social interaction between co-workers, sometimes these interactions can provide the seeds for litigation.

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## Managing Risk [continued from page 33]

One such decision that is relied on is: *Haberman v. Cengage Learning Inc.*, Cal.App.4th (2009)

The California Court of Appeal recently affirmed the grant of summary judgment in favor of an employer in a sexual harassment and retaliation case. This case is instructive from both legal and business viewpoints. First, Haberman illustrates what type of conduct does not meet the criteria for sexual harassment and retaliation as a matter of law. Second, the case shows that those in the business world would benefit from keeping workplace relationships on a professional level because, even if a future lawsuit is completely meritless, the company and individual defendants must participate in the litigation process.

The facts in Haberman demonstrate how a disgruntled employee can splice together a series of isolated comments into a sexual harassment lawsuit. The plaintiff, Haberman, worked as a sales representative at a textbook publishing company. She and her supervisor, Bredenberg, worked closely as they attended conferences and traveled to various sales meetings. Haberman's eventual lawsuit for sexual harassment and retaliation was based on thirteen separate incidents and comments over the course of a three-year period. Among other things, Bredenberg told Haberman that she was "drop dead gorgeous," he had the "hots" for her and wanted to date her, that she was amazing for having "five children with no father in the picture," asked her several times if she had friends who only wanted a sexual relationship with him, and asked how she "looked so pretty so early in the morning."

Because Haberman had failed to meet her sales goals for the third

consecutive year, Bredenberg and another supervisor, Reed, counseled her several times over the course of five months and warned her that she would be placed on a performance improvement program (PIP) if her sales did not improve. She was eventually placed on PIP, and she filed a sexual harassment and retaliation complaint with the company's human resources department two days later.

In affirming the trial court's grant of summary judgment, the Court of Appeal first held that none of Bredenberg's comments constituted sexual harassment as a matter of law. The Court applied the standards for sexual harassment claims recently reiterated by the California Supreme Court in *Hughes v. Pair*, 46 Cal.4th 1035 (2009), which explained that hostile work environment sexual harassment is actionable only when it is pervasive or severe. This means that "occasional, isolated, sporadic, or trivial" conduct is not sexual harassment as a matter of law. However, while this does not mean that isolated acts can never be actionable, those acts must be "severe or extreme." An isolated incident can be actionable if it involves a "physical assault or a threat thereof." Thus, short of actual or threatened physical harm, a single highly vulgar comment is not actionable.

Applying *Hughes*, the Court of Appeal held that although the comments were "too personal and inappropriate" for the workplace, they were made over the course of several years and thus did not rise to the level of "a concerted pattern of harassment of a repeated, routine, or generalized nature." Moreover, because Haberman had never been physically threatened or

assaulted in any way, these sporadic incidents could not constitute actionable sexual harassment as a matter of law.

Turning to the retaliation issue, the Court of Appeal upheld the grant of summary judgment because Haberman complained to human resources after she had been warned for several months and placed on PIP. The Court noted that because Haberman's supervisors had no knowledge of her complaint at the time they placed her on PIP, this discipline could not have been imposed in retaliation for the complaint. Moreover, the discipline was justified because there was substantial evidence that Haberman had failed to meet her sales goals for three consecutive years.

**The takeaway lesson from this case for those in the business world is clear: you can diminish the likelihood that you will be sued if you act professionally in the workplace.**

The takeaway lesson from this case for those in the business world is clear: you can diminish the likelihood that you will be sued if you act professionally in the workplace. Haberman was able to weave together a series of sporadic unprofessional comments precisely because those comments had actually been made. While it is true that the sexual harassment laws are not, as the Court of Appeal noted, "a civility code and not designed to rid the workplace of vulgarity," such unprofessional behavior in the workplace can lead to a very long - and public - lawsuit. ▲