

A Labor and Employment Audit of Santa's Workshop

With that first real chill in the air, the holiday season is suddenly upon us. For parents, it is a time to relive our childhood, watching with our children all of those holiday specials ranging from *It's the Great Pumpkin, Charlie Brown* to *Santa Claus is Comin' to Town*. Unfortunately, for members of our misfit profession, 'tis the season" is not so much about being jolly, but more about defending lawsuits.

And speaking of lawsuits, a daily perusal of employment law blogs and periodicals reveals that there is no shortage of new and innovative ways to sue an employer. The seemingly endless tide of profligate litigation makes me shiver like Linus in the Pumpkin Patch about what would happen if the Department of Labor, the EEOC, or the plaintiff's bar set its sights on Santa and his manufacturing plant in the North Pole. For this reason, I offer the following guidance to Mr. Kringle d/b/a Santa on how to clean up some glaring employment law violations. (**Disclaimer:** Our guidance to Mr. Kringle is not intended to be legal advice nor should it be a substitute for him retaining local counsel familiar with the laws in his local jurisdiction. I would also include the obligatory tax advice disclaimer, but I believe Mr. Kringle is tax-exempt.)

I will discuss individual lawsuits below. However, my main concern in terms of liability is in the arena of the class action. I say this with all due love and affection, "Mr. Kringle, your workshop is a treasure-trove of wage and hour violations." The elves work, quite obviously, more than 40 hours a week. They work through meal periods and weekends and holidays. Where is their overtime pay? While efficiently furnished, I don't see any punch clock for your employees. Can we say liquidated damages and attorneys' fees?

Your workplace is also quite literally an accident waiting to happen. The elves have no protective equipment. There is an Abominable Snowman on the shop floor. Can we all say, "OSHA"?

Mr. Kringle, despite your big heart, your workplace is rife with harassment and discrimination. For example, there is Rudolph's red nose and the universally known harassment and bullying to which he has been subjected ("used to laugh and call him names"). The un-remedied mocking of Rudolph makes for a great holiday gift for the plaintiff's lawyer who signs up Rudolph and his "slam dunk" suit. (We make no representations as to whether any plaintiffs-side lawyers are on the "Nice List" and worthy of such a gift). I think it is imperative that all of your reindeer immediately receive anti-harassment training. So too with poor Hermey. The Seinfeldesque "[Anti-Dentite](#)" environment that you have condoned is ripe for litigation and is otherwise an insult to dentists world-wide. That leads us to our *Faragher* defenses. Are your EEO policies translated into "Elfish" and properly distributed with a clear record of same?

Of additional concern, have you taken care to make sure that the post-toy delivery workplace celebration does not cross the proverbial "line" of appropriateness and result in more than just hangovers at the workshop the next day?

Finally, we need a word about the Island of Misfit Toys. Notwithstanding that the public may want all lawyers permanently deposited in this desolate place, it is nonetheless illegal to segregate your workforce on the basis of such protected characteristics as being a cowboy who rides an ostrich. And, who among us wouldn't want to ride an ostrich?

Of course, Mr. Kringle is not the only one staring down the barrel at punitive damages. Yes, I'm talking to you, Mr. Burgermeister Meisterburger. Making toys is plainly a recreational activity under state labor laws and interfering with concerted activity in this regard will get you an unfriendly knock on the door from the NLRB.

So, to our clients, I wish you all a joyous holiday season in front of a warm fire surrounded by friends and family, without any visions of EEOC complaints or Department of Labor audits dancing in your heads.

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