



**Christmas parties and labour law.
Romania and Portugal**



With the Christmas season rapidly approaching, companies are typically busy organizing seasonal events for their teams.

As is usually the case with management of employees, the key to organizing a Christmas party while avoiding unpleasant situations is **balance** – while everyone understands that the atmosphere at such events is

typically more relaxed, communicating ground rules to avoid accidents or undesirable interactions is also important.

In this article, our experts from Portugal and Romania reflect on the different rules of employment law applicable in Portugal and in Romania to this season's corporate events.



Portugal & Romania – A shared legal framework



Corporate events destined to promote team building, such as Christmas parties, have been a part of the Portuguese business world for several years. Similarly, Romanian companies are also enthusiastic about these events, as they tend to focus on fostering a good time and enjoyable experiences rather than emphasizing scores or performance metrics. Under both Portuguese and Romania law, employers must ensure health and safety conditions in all aspects related to work, applying the necessary measures and taking into account general prevention principles.

Furthermore, employers have a duty to provide good working conditions, both from a physical and from a moral standpoint. Within this framework, the employer must also prevent within the workplace all acts which may affect the employee's dignity, including all acts which may be considered discriminatory, harmful, hostile or humiliating, such as harassment.

While this is not categorically established by law, Courts have frequently considered that in team building activities, such as Christmas parties, both the employer and the employees are still subject to the core duties arising from labour law.

In order to demonstrate the above, we will analyse below two different scenarios – work accidents and cases of harassment.



Work accidents in Christmas parties

If an employee falls victim to an accident during a Christmas party organized by the employer, as a general rule, this will be considered a work accident. This will apply even in the case where the employee attended such event voluntarily.

In this respect, Portuguese Courts have considered that, even if they are not working, employees attend these team building events in a professional capacity, and not on a personal level. Furthermore, these events are specifically organized by employers to promote and improve relationships within teams and, while the employees benefit from these events, so does the employer.

The fact is that even the voluntary aspect of these events is questionable – while employees may not, in principle, suffer disciplinary sanctions from not attending the Christmas party, they may fear the risk of other types of retaliations or of future harm to their careers.

Within this scope, courts such as the Tribunal da Relação do Porto (Process no. 589/I5.0Y7PRT.PI) have decided that the occurrence of an accident during a team building event should be considered, for all legal purposes, as a work accident.



Work accidents in Christmas parties

Similar to Portugal, any incidents that occur during these events will be considered work-related accidents and will be subject to specific legislation on the required investigation procedures.

Although there is no explicit regulation outlining health and safety compliance requirements, the common approach involves evaluating whether the planned activities necessitate additional instructions from the employer or if the general rules of attendance and conduct, along with those established by the event provider, are sufficient.



Harassment in Christmas parties

The environment in Christmas parties is typically more relaxed and of a more personal nature than the office setting. This type of environment may lead to behaviours which would be deemed inappropriate or unacceptable both in respect of the relation between the employer and the employees and in respect of the relationship between colleagues.

Employers have a specific duty to prevent harassment in the workplace – which will be deemed to include, in this case, team building events organized and managed by the employer, such as Christmas parties.

Avoiding harassment in a Christmas party may include several elements, such as establishing balanced rules for interactions between colleagues and ensuring respect for each and every employee, including, for example, by way of avoiding religious discrimination or by catering to reasonable needs of all employees (e.g. by offering vegetarian meals, meals appropriate for celiacs or alcohol-free drinks).



Harassment in Christmas parties

Employers in Portugal have a duty to adopt codes of good conduct to prevent and combat harassment at work, whenever the company has seven or more employees. It would be relevant to suggest, in this case, that employers include specific rules applicable to team-building events to avoid unwanted and harmful behaviours from occurring at such events.

Prior to the approval of legislation on the prevention and combat of harassment in the workplace, Portuguese Courts had already considered the special relevancy of office events for the employees. For example, the Supremo Tribunal de Justiça (Process no. 07S4219) granted to an employee compensation for moral damages resulting, among other forms of discrimination, from a lack of invitation to the company's Christmas party – when all other employees had been invited – considering that such behaviour put the employee in a marginalized situation, causing her relevant grief and sadness.

Should the employer become aware of a suspected practice of harassment, in accordance with Portuguese law, it must initiate a disciplinary procedure with the intention of investigating the veracity of such facts and to, if necessary, apply relevant disciplinary sanctions to the perpetrators. This rule would apply even when the harassment was practiced on the Christmas party, and not in the office.



Harassment in Christmas parties

In contrast to Portugal, legislation on the prevention and combating of workplace harassment applies to companies of all sizes, regardless of the number of employees.

Although not directly related to the execution of their work duties, participation in such events is regarded as an extension of the work environment and connected to the execution of the employment relation. Consequently, employers are obligated to investigate any complaints arising from these events, including any incidents that take place during after-parties.

Another potentially challenging aspect connected to these events involves remote employees or those working in secondary offices located far from the main event's venue. In such cases, employers often weigh the costs of transportation and accommodation and may be reluctant to incur such high expenses, leading them to exclude these employees from the events.



Harassment in Christmas parties

While this distinction may be based on financial considerations, specific legislation—particularly regarding telework—explicitly requires employers to take measures to prevent the isolation of remote employees from their on-site colleagues.

Although minimizing costs may appear to be a valid reason, it can also be perceived as unfairly excluding certain categories of employees.

Special attention should also be given to more sensitive situations, such as ongoing work conflicts, like the reinstatement of an employee after the cancellation of a dismissal, or less formal issues like ongoing disciplinary investigations. In many cases, employers may choose not to invite these individuals, fearing they might disrupt the atmosphere or cause a scene, particularly if clients are also attending. Some may even attempt to discourage or prevent them from attending.

However, in the absence of substantial and justifiable reasons, such actions are not recommended and could be construed as harassment or retaliation against the respective employee. Establishing clear and fair guidelines remain the recommended approach to ensure that the professional and cordial atmosphere of such events is maintained throughout the event.



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