

## Blog Post

# Halloween Parties Can Leave Employers “Haunted” By Discrimination

October 28, 2019

The last week of October can result in “double, double toil, and trouble” for employers. While workplace Halloween festivities may boost employee morale, they can also result in employer liability for discrimination and harassment in the workplace in violation of Title VII of the Civil Rights Act of 1964 and applicable state and local laws. To protect against this potential exposure to liability, employers must put the right ingredients into the caldron before they allow employees to cast a spell.

## Costumes and Discrimination

Many employers permit employees to come to work in costume for Halloween. Some employers even host a costume contest. The wide-range of Halloween costumes available to employees in the marketplace, however, increases the risk that employees will “cross-the-line” when it comes to discriminatory dress. Today, employees can easily find “Moses,” “Jesus,” a “sombrero and mustache,” or a “Turban & Beard Instant Costume” at retailers such as Amazon. Costumes such as these can expose employers to liability for claims of racial, national origin, or religious discrimination under Title VII and many state and local laws. To minimize the risk that employees will choose insensitive costumes, employers should remind employees that their attire must, at all times, comply with the company’s dress code and anti-discrimination and anti-harassment policies, and that violations of these policies will not

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be tolerated. This reminder notice should include examples of inappropriate and insensitive costumes.

### Sexual Harassment

Employers should also remind employees that costumes are not an excuse or invitation for inappropriate conduct. This includes, but is not limited to, touching another employee's costume to remove a mask or grabbing at another employee because the costume appears to "welcome" the touching. Employers must make it clear to employees that such conduct may be perceived as sexual harassment, and will not be tolerated by the company.

### Religious Accommodations

Finally, while Halloween is a secular holiday, its origins are in the Catholic holiday "All Hallow's Eve." As such, some employees may not want to partake in any company-sponsored Halloween activities or events because doing so may violate their sincerely held religious beliefs. To ensure that company-sponsored Halloween events and activities do not prompt claims of religious discrimination, employers should:

- Explain to employees that the festivities are intended as a secular celebration;
- State that the company recognizes that not everyone celebrates Halloween and that no employee should feel compelled to participate in any manner;
- Prohibit retaliation against any employee who refuses to participate in a Halloween-related event or activity; and
- Decorate the workplace in less "religiously charged" Halloween decorations (e.g., instead of decorating with images of ghosts, skeletons, or demons, consider using images of spiders, black cats, and pumpkins).

These guidelines are only a brief overview of some of the areas of concern employers should be conscious of when hosting Halloween-related events and activities. If you are thinking of hosting an event and have any questions, please reach out to an Akerman Labor and Employment attorney to ensure that your event remains “spooktacular.”

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