

Discussing Nude Recreation in the Workplace

By Erich E. Schuttauf, J.D.

Imagine this scenario: It's lunchtime and you're back in the breakroom with a few co-workers. The conversation turns to one person's account of a recent vacation they enjoyed and, eventually, to the question "What's the best vacation you've ever taken?" Eventually, the question works its way around the table to you. Should you tell these people about that trip to the nude beach at Club Orient?

Imagine that you do. Lunchtime ends, then it's back to your desk. Two weeks later, you're surprised when you're called into the Human Resources Director's office only to learn that there's been a sexual harassment complaint lodged against you. The problem? The discussion about nude beaches offended someone who took it to be "sexual" in nature. What do you do?



Several times a year the AANR office receives telephone calls from members experiencing similar situations. We obviously enjoy nude recreation and we'd like the option of talking to others about it. Is it sexual harassment? Is it illegal? Can you be fired?

Does simply talking about nude recreation in and of itself constitute sexual harassment?

The short and perhaps overly technical as well as simplistic answer is "no." In the case of *Gleason v. Mesirov Fin.*, 118 F. 3d 1134, 1145 (7th Cir. 1997) the U.S. Court of Appeals for the Seventh

Circuit held that a supervisor had not committed harassment, although he told a subordinate that he had visited a nudist club over the weekend and on another occasion left a brochure on her desk with a note inviting her to join him.

Employers may restrict conversations.

Does that mean you're free to say anything you want? Not so fast there. Just because a conversation didn't meet the legal test for the judges, doesn't mean that your employer will be okay with it. The fact is, in order to avoid finding themselves in court on close calls, many companies opt to draw a line well clear of anything that might trigger a lawsuit. Keep in mind that most Human Resources staff are not lawyers. They're going to err on the side of caution and may choose to take disciplinary action against you.

With some gray areas in both law and customs, many--and especially those for whom losing a job would be especially costly--wisely and rightfully choose to confine their conversations about nudism to family and friends outside the workplace. For those who feel they know co-workers better (or who have co-workers who already know about their nude travel), there are some guidelines that at a minimum, should be strictly observed:

- Review your employee handbook and company policies on sexual harassment and acceptable conversations in the workplace;
- Make sure any conversations occur on personal time, not work time. In some cases, it's not what was said but when and where the person said it that infuriates an employer. After all, you're being paid to further the company's business;
- Small groups are usually better forums than one-on-one conversations where there are no other witnesses to what was and wasn't said;
- Avoid directing or "targeting" comments about nude recreation to members of just one gender;
- If there happens to be a discussion, it may be best to keep things brief and to points like "we went to a club in Florida" or "a beach in St. Marten" at first, and leave it to others to follow up with questions at a later time;
- This should go without saying, but avoid anything bordering on the suggestive;
- If anyone appears uncomfortable with the discussion, or voices discomfort with the subject, it's best to end the conversation or turn to a different subject immediately.

Please remember that these general rules of thumb are not a substitute for using common sense.

If you are questioned about a discussion on nude recreation, AANR is available to assist you with educating employers or union representatives about the laws concerning sexual harassment and nudism.

A Few Additional Words about Some Special Circumstances.

- Be especially careful if your workplace involves regular contact with minors who may be in earshot of the discussion such as a school or daycare center.
- If you have been counseled by an employer or otherwise "warned" against having these types of discussions, then your company's position is clear.
- Many workplaces adopt strict Internet usage policies that prohibit using company computers for personal use and, especially for anything bordering on what it considers to be "pornography." While you may understand the difference between that and researching your next nude holiday, don't assume that your employer will.

Editor's Note: Erich Schuttauf is the Executive Director of AANR and a licensed Florida attorney. He received his Juris Doctor from Duke University School of Law and his BA from Purdue University. Erich is the author of two books, The Recruiting Manager's Guide and The Performance Management Guide, published by CCH Press.