

MANAGING EXPOSURES DURING THE FESTIVE SEASON

The festive season is here!

Many employers will be celebrating the end of 2015 with their employees, with many work Christmas parties beginning to be celebrated across the country.

Work Christmas functions are a great opportunity to celebrate and have fun with your colleagues, but as is still too often the case, work Christmas parties can become a source of considerable distress when inappropriate employee conduct at these functions puts employers at risk of claims of sexual harassment, bullying, adverse action and unfair dismissal.

One cause of this inappropriate conduct that can expose employers is lack of diligence in relation to the serving of alcohol at work events. For example, excessive consumption of alcohol by employees that took place at a work Christmas party for Leighton Boral Amey NSW Pty Ltd in 2014 ended up in the Fair Work Commission this year, and resulted in the dismissal of an employee, a subsequent unfair dismissal claim, and a decision by VP Hatcher in which the Vice President observed that:

"it is contradictory and self-defeating for an employer to require compliance with its usual standards of behaviour at a function but at the same time to allow the unlimited service of free alcohol at the function."

In this case involving Leightons, the employee had repeatedly made undesired romantic and sexual propositions towards a female employee, despite her clear refusals. The employee had also suddenly kissed another female employee in an unsolicited and unprovoked manner. Both of these incidents occurred during and after the work Christmas function, and while the employee was significantly under the influence of alcohol. Both of the incidents also exposed the company to potential sexual harassment claims, and did in fact result in an unfair dismissal hearing before the Fair Work Commission.



KEY RISK MANAGEMENT RECOMMENDATIONS FOR EMPLOYERS:

As we enter the festive season for 2015, we remind employers to have regard to the following practices in order to minimise their exposure to claims arising from inappropriate conduct at Christmas parties:

- Ensure that access to alcohol at Christmas parties is via trained wait staff only, so that employees are not able to "help themselves" to the fridge or the esky where alcohol is stored;
- Ensure alcohol is provided at a venue where responsible service of alcohol requirements are followed;
- Task a manager with the responsibility of supervising the overall running of the Christmas party including appropriate alcohol consumption;
- Task a manager with supervising the conduct and behaviour of staff at the function including appropriate alcohol consumption;
- Do not let the function "run itself". You as the employer have a responsibility to manage, monitor and take responsibility for the running and conduct of the event;
- Remind your employees prior to the function of the company policies and expectations of behaviour at work Christmas functions; and
- Provide employees with access to taxis to get home, or a shuttle bus, depending on where the function is being held.

ASSISTANCE FOR EMPLOYERS:

Harmers can assist employers with reviewing company policies for appropriate workplace behaviour, legal advice should an incident occur, as well as workplace behaviour training. If you need advice throughout the festive season, please contact our team on **+61 2 9267 4322**. We are open for business as usual except for the public holidays of Christmas Day, Boxing Day and New Years Day.

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