

## The sobering reality of the work Christmas party: employers and their duty of care

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Alcohol and employment don't necessarily mix well. A few beers and some inappropriate behaviour can lead to a serious legal "hangover" for employers. But let's face it... not many people celebrate a dry Christmas! By taking a few simple precautions, such as revising sexual harassment and alcohol and drug policies, employers can protect themselves against claims arising from Christmas party antics and still put on the show of the year.

### **Duty of care**

It is now reasonably obvious to most that attendance at the work Christmas party may be considered to be "in the course of employment". Employers need to be aware that their duty to ensure the health, safety and welfare of employees applies equally at the Christmas party and may even extend to the "after-party" for any employees with the stamina to kick-on.

**If employers do not meet their duty of care, then bullying and sexual harassment, compensation, termination of employment and work health and safety claims become major concerns when it comes to the Christmas party.**

For example, sexual harassment claims frequently arise after Christmas parties, where alcohol tends to make people a little uninhibited. Employers risk being vicariously liable for the actions of employees if they fail to take reasonable steps to prevent conduct such as unwelcome touching, hugging or kissing; unwanted sexual advances; suggestive comments or jokes; or inappropriate Kris Kringle gifts. The list of potentially inappropriate workplace conduct is a long one!

A good example of an employer being found vicariously liable for sexual harassment is set out in the decision of *Lee v Smith & Ors*. In this case, an employee was raped by a co-worker following a dinner party. The employer was held liable on the basis that the rape "was a culmination of a series of sexual harassments that took place in the workplace". Similarly, in the decision of *Ewin v Vergara (No 3)*, the Court held that inappropriate sexual conduct that took place in a taxi and at a hotel was connected to employment on the basis that the behaviour was part of a course of conduct that started at the workplace.

So what can employers do to make sure that issues such as sexual harassment do not take the "ho ho ho" out of the silly season?



## Be prepared

Our top ten tips for a safe and successful Christmas party are:

1. Remind staff about what is appropriate workplace behaviour and that these standards apply even if the party occurs outside of working hours and away from the office.
2. Review workplace policies on sexual harassment and alcohol and drug use and ensure that employees are trained in their content.
3. Warn employees about the consequences of inappropriate behaviour.
4. Set clear start and finish times and do not serve alcohol beyond this time.
5. Encourage employees to know their own limitations when it comes to alcohol consumption and ensure management lead by example
6. Serve plenty of food and non-alcoholic drinks
7. Ensure that the venue is close to safe transportation home and advise employees that they should not drive if they intend to drink.
8. Inspect the venue for possible hazards and make potential risk areas out of bounds.
9. Appoint a senior employee to stay sober to oversee the function, which may include taking appropriate action to address escalating behaviour such as sending some people home or even closing the bar.
10. Deal with all complaints promptly and properly.

No amount of Panadol will prevent a legal "hangover" so it is crucial that employers carefully address the above matters before pulling on the party hats.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

