



Time for the Company Christmas Party. Enjoy – but be prepared!

Company liable for harassment at Christmas party

Christmas is a great time of year – office parties, Kris Kringles, a few drinks and letting the hair down to celebrate a good year and the upcoming holidays.

Sound familiar? Well, beware!

End of year Christmas functions are a regular source of discrimination and harassment claims than any other. As an employer, subject to your ability to take preventative steps, you are liable for any discrimination or harassment suffered by an employee in the workplace (which includes the company Christmas party).

Isn't the behaviour of my employees at the Christmas party a personal issue and up to their own judgement?

No, it is not. This is a common misconception of employers. Employers have a vicarious liability for the conduct of their employees in the workplace – this means if one of your employees harasses another employee at your Christmas party, then you may be liable for his or her conduct, unless you have done all that is reasonable to have prevented its occurrence.

What can you do?

Doing 'all that is reasonable to prevent discrimination and harassment' would include the following:

- Having a policy that details the Company's expectations on employee conduct in relation to discrimination and harassment and communicating that to all staff.
- Having a practical grievance procedure which sets out the steps that an employee should follow if they have a query or complaint about harassment, discrimination.
- Providing nominated Contact Officers for employees who have a query or issue about discrimination or harassment to go to; to lodge a complaint or to get information.
- Explaining the policy and what unacceptable conduct is. Ensure employees have read the policy and ask them to clarify any questions. Sign off on your instructions in this regard and their review of the policy.
- Enforcing breaches of the policy with counselling, disciplinary action or, in severe cases, termination. If you have a policy but don't enforce, it could be argued that the message sent

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to the workforce is that the company is not concerned about breaches; exposing the company to vicarious liability.

Back to the festivities!

Prior to commencement of festivities we advise clients to provide a memorandum to all staff detailing the following:

- If Kris Kringles (gifts between staff members) are part of the festive celebrations ensure that all staff know beforehand that gifts must not be potentially offensive or embarrassing for anyone. Gifts should not be lewd, racist, sexist or in any manner breach the discrimination and harassment Policy.
- Make sure you remind all staff that the discrimination and harassment policy applies at all Christmas functions and that employees should review the policy to ensure compliance and that they behave appropriately at Christmas functions. Refer them to examples of behaviour that is unacceptable in the policy.
- Where alcohol is provided or available at the Christmas function, remind staff of their obligation to drink responsibly and not to drive if they intend to drink. You may also consider assisting employees to obtain taxis on the evening.
- Staff should be informed that the Christmas party commences at a certain time, and more importantly, ceases at a particular time. The memorandum should state that should festivities continue after that time, regardless of where or who is in attendance, such festivities are outside of the company Christmas function and the company accepts no responsibility or liability for any actions or incidents which may occur.

While some employees may react by saying you have taken away their Christmas fun, the reality is that the requirements of the law are such that if an employer doesn't act in the manner described above it risks being liable. Who would want to throw a party and carry the liability because an invitee acts inappropriately – now that would be unfair!

Enjoy your Christmas festivities!

**For more information regarding the contents of this Update or Workplace Relations advice
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