

Employer's liability: the office party. Christmas time, mistletoe and wine: a recipe for a claim in the Employment Tribunal

"Tis the season to be jolly".... But beware, the festive spirit at your office Christmas party may have the effect of giving rise to claims.

Providing the opportunity to drink a free barrel dry could make it difficult to pursue disciplinary action against brawling employees who may argue their drunkenness was condoned by their employer's provision of unlimited free alcohol. There are the obvious health risks associated with excessive alcohol consumption which, the employer should warn and remind employees of. Offering alcohol makes it even more incumbent upon the employer to consider the employee's journey home, perhaps laying on transport directly or at least providing details of local taxi firms. The availability of public transport may also influence the timing of the event, to enable staff to make the last bus, tube or train home.

The majority of claims arising out of the Christmas party are likely to be discrimination-based, where the nature of the party though equally open to all employees has a

detrimental impact on a minority of guests by reason of their race, religion or religious beliefs, sex, age, disability or sexual orientation. To avoid this, the following issues might be considered:

- **The Venue:** Make sure this will not offend against religious beliefs. Muslims, for example, may be unable to attend events where alcohol is served. Consider the building's accessibility for guests who may suffer from any disability. By hosting the event at a bar or nightclub you may unfairly exclude or alienate older employees and consider the implications for female staff if a "Gentleman's Club" is used.
- **The Menu:** Again, have regard to guests of all faiths who may not eat any or certain meats and provide soft drinks both to cater for those whose religion forbids it and as a health and safety measure.

- **Entertainment:** A seemingly innocuous raffle could present a plethora of problems. Certain faiths prohibit gambling, so employees should not feel under any pressure to participate. Have regard also to the suitability of the prizes up for grabs. For example, having all alcohol-based gifts could offend faiths that prohibit drinking. You may not be able to please everyone but if your workforce spans several generation gaps try and bridge them with a variety of classic and current music for example, otherwise there could be issues of discrimination.
- **Guest List:** Invitations to employees' partners must be extended to same sex partners.

Sexual harassment could present a real problem for employers hosting Christmas parties, where alcohol may cause a loss of inhibition. Requests for sexual favours, comments on appearance, leering and intimate questions about one's private life are all examples of sexual harassment.

Importantly, both the employer and the individual 'harasser' can be liable and pursued through the Tribunal. The prospect of being personally liable for unlimited compensation which, can be awarded in a successful discrimination claim, should serve to deter many a "would be harasser".

One senior City lawyer paid £1 million to settle a claim for sexual harassment, constructive dismissal and victimisation, having allegedly commented on a female colleague's breasts and sex life at the Christmas party. Holding back on the mistletoe and limiting the alcohol could be a preventative step in the right direction!

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Practical Points

- Ensure you have in place an up to date Equal Opportunities and Anti Harassment policy, expressly including such events within its remit
- Send out the relevant policy document ahead of the social event, setting out expected standards of behaviour and potential sanctions for non-compliance
- Provide relevant training and examples of what would amount to unacceptable behaviour
- Appoint responsible supervisors and identify them to guests in advance of the party
- Keep records of any steps taken
- (Provide soft drinks and food to soak up the alcohol!)

If incidents are reported after the party take them seriously and deal with them properly, failure to do so could amount to a breach of the relationship of mutual trust and confidence and provide the basis for a constructive unfair dismissal claim and further discrimination.

Seasons Greetings and a prosperous New Year, with very few Tribunal claims in 2008!