



December 2016

THE BUSINESS NEWSLETTER FROM AUSWILD & CO
PO Box 527 Kogarah NSW 1485
Chartered Accountants and Business Consultants

Website: www.auswild.com.au
Telephone: (02) 9588 0100
Facsimile: (02) 9588 7865

EMPLOYEE UNFAIRLY DISMISSED?

Well, here we are at the tail-end of another year and one thing is certain. Throughout the country businesses are swinging into party mode and are in the midst of organising and enjoying end of year staff and client functions.

When organising such events employers need to remind staff and clients to keep their behaviour in check – otherwise they could end up facing the fallout from claims of sexual harassment or such like the morning after the night-that-was.

So, what are the rules for the Christmas party?

Just to recap:

- It doesn't matter whether the event is held on work property or not – as the function is work related the usual rules and policies that apply at work also apply at the party. All staff need to appreciate this;
- Appoint a few guardian angels who will not be drinking and who are ready to step in or report if something goes awry;
- Make sure everybody is sent off safely on their way home - if you have kept them out late and plied them with alcohol you have an extra special obligation to make sure they get home safely; and
- Do not let the now well-lubricated Chairman wave the corporate credit card and lead the crowd to 'kick on' at that new bar on the other side of town.

All of this is old territory and pretty obvious, or maybe not so obvious. Issuing the warning to "Do the Right Thing" and then expecting the venue to manage the responsible service of alcohol will not be enough if the staff have free access to the keg, and nobody in authority ever says "Stop!".

These were the circumstances in a recent case where an employee who sexually harassed colleagues and told his bosses to "f--- off" at a Christmas party was found by the Fair Work Commission to have been unfairly sacked partly because the company had supplied him with a free flow of alcohol.

The Commission heard a male employee at *Leighton Boral Amey Joint Venture* had about 10 beers and one vodka and coke, including two stubbies before he arrived. At the Christmas party he told a company director and a senior project manager to "f--- off". He asked a colleague "who the f--- are you? What do you even do here?"

After the party had ended, he joined some colleagues at a public bar where he told one colleague that he used to think she was a "stuck-up bitch" until another colleague had said she was "all right". In another incident, the employee suddenly reached forward and held a colleague's face before kissing her on the

mouth. The woman said he later told her: "I'm going to go home and dream about you tonight." He denied making the comment.

While waiting for a taxi after the event, he told another colleague: "My mission tonight is to find out what colour knickers you have on." The woman said she was not offended by the behaviour, knowing the employee was intoxicated. She replied: "They are white, touch my skirt and I'll kill you."

The employee, who worked as a team leader, was dismissed for sexual harassment after he returned to work in January.

Commission vice-president Adam Hatcher said all incidents had been established as fact but only those that took place at the party venue from 6pm to 10pm when it was booked could be considered to determine whether the conduct warranted dismissal.

"It can be inferred from the evidence that the physical boundary of the function was the venue booked for it," he said. "Employees were informed in advance that, in substance, LBAJV's standards of conduct would apply at the function, but there was no suggestion of any expectation that those standards would apply to behaviour outside the temporal and physical boundaries of the function."

Mr Hatcher said there was no evidence that the employee's conduct at the Christmas party had ever taken place in the workplace, noting that he had a good record of continuous employment. "The conduct which I have found constituted a valid reason for his dismissal can fairly be characterised as isolated and aberrant in nature. That also weighs in favour of a finding that [the] dismissal was harsh," Mr Hatcher said.

The employee's conduct was the result of his intoxication at the Christmas function and this was a "mitigating factor", he said. "An exacerbating factor in that respect was the manner in which alcohol was served at the function. In my view, 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," Mr Hatcher said.

"If alcohol is supplied in such a manner, it becomes entirely predictable that some individuals will consume an excessive amount and behave inappropriately."

Some food for thought.....as you call for another round of drinks?

ausNEWS! ausNEWS! ausNEWS!

*Birthday Greetings go to **Trish Craven** and **Debbie Todd** who celebrate special birthdays this month. **HAPPY BIRTHDAY** to you both.....Our very best wishes for speedy recoveries go to **Kevin Walker** and **Juleen Brooker**. **GET WELL SOON!**.....Our deepest condolences go to **Louise Kittle** and family on the recent and sudden passing of Louise's mother.*

*Our office will be closed from 12 noon on Friday 23 December until Tuesday 3 January 2017. We take this opportunity to thank you all for your support during the year and to wish you a **"Merry Christmas & a Happy New Year!"***