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THE BUSINESS NEWSLETTER FROM AUSWILD & CO  
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## DOING THE RIGHT THING THIS FESTIVE SEASON

Well, here we are at that time of the year again. With Christmas just around the corner, businesses throughout the country are swinging into party mode and are starting to enjoy end of year staff and client functions.

When organising such events involving alcohol, employers should ensure that alcohol is served responsibly, employees are supervised and they are clear on when the event ends. Employers also 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:

- You should already have in place policies concerning bullying, harassment and discrimination. If you haven't, now is as good as any time to have these policies in place;
- 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;
- Communicate with all employees in a friendly manner prior to the party reiterating that unacceptable behaviour could result in disciplinary action;
- Serve alcohol responsibly;
- Provide plenty of food at the function – not just nibbles;
- Provide low alcohol drinks, soft drinks and water;
- Restrict the amount of alcohol available (if held at a club or hotel, perhaps have the employees pay for mixed drinks);
- Ensure waiting staff are well briefed on limiting alcohol to people who are intoxicated;
- Appoint a few guardian angels who will not be drinking and who are ready to step in or report if something goes awry;
- Keep a close eye out for office juniors – if they are under 18, they are not allowed to drink alcohol – no exceptions;
- Ensure that employees understand their right not to feel pressured if they choose not to drink;
- Keep in mind that alcohol makes people say stupid things. People should avoid talking about performance or remuneration matters while celebrating as those conversations always come back to haunt the parties involved the next day;
- Ensure that employees do not resume work after drinking (particularly if the work involves tools and/or machinery);
- Try ending the party before public transport stops running. 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;

- Consider providing transport home and ensure that no one drives if over the limit or intoxicated;
- Restrict the time limit of the function;
- Have a no violence policy.
- Ensure that you have a grievance handling procedure; train managers, supervisors and employees to recognise possible conflict situations and how to diffuse a "heated" and alcohol fuelled conversation.
- If the party is held mid-week and employees are expected to be at work the next day, ensure that all employees are aware that disciplinary action would be taken if they fail to turn up for work because of over-indulging. Again, no exceptions; 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 well-documented unfair dismissal 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 and called one a "stuck-up bitch" and kissed another.

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

"An exacerbating factor 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," Commission Vice-President Adam Hatcher said. "The employee's conduct was the result of his intoxication at the Christmas function and this was a "mitigating factor".

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.

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

***ausNEWS! ausNEWS! ausNEWS!***

*Birthday Greetings go to **Jayne Woodley, Kim Blickling and Lyn Pearce** who celebrate special birthdays this month. **HAPPY BIRTHDAY** to you all!*

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this bulletin. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. This bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without prior approval.