



November 2017

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

MINIMISING HEADACHES AT YOUR END OF YEAR PARTY

It's that time of the year again! With Christmas just around the corner, businesses are swinging into party mode and are either in the midst of organising or enjoying end of year staff and client functions.

A recent unfair dismissal case before the Fair Work Commission serves as a timely reminder to all business owners and employers that they need to make sure there are clear guidelines as to what acceptable behaviour is and what is not.

An employee who was dismissed by his employer because he had sexually harassed colleagues and told his bosses to "f--- off" at a Christmas party was found by the Fair Work Commission to be unfairly sacked partly because the company had supplied him with a free flow of alcohol. "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".

In today's increasingly litigious society, business owners need to remind their employees (and clients) to keep their behaviour in check. Irrespective of whether these functions are employer sponsored or not, and irrespective whether the event is held on work premises 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. In recent years, there have been an increasing number of issues arising from such functions.

What should you do to minimise the risk?

- 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.
- Communicate with all employees in a friendly manner prior to the party reiterating that unacceptable behaviour could result in disciplinary action.
- If held on the business premises, ensure the area where the party is to be held is clutter free;
- 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 senior manager for waiting staff to confer with if problems or issues arise during the party;
- Keep a close eye out for office juniors – if they are under 18 they are not allowed to drink alcohol – no exceptions;
- 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);
- Educate employees about the alcohol content in standard drinks and the risks of alcohol abuse;
- Try ending the party before public transport stops running. Consider providing transport home and ensure that no one drives if over the limit or intoxicated;
- Restrict the time limit of the function;
- Ensure that employees understand their right not to feel pressured if they choose not to drink;
- 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.

Another OH & S issue that rears its ugly head at this time of the year and particularly at the annual Christmas Party is sexual harassment. More often than not, this is fuelled by alcohol. Nevertheless, the law states very clearly that employers must do their best to ensure that their employees are not sexually harassed.

Basically any form of behaviour of a sexual nature that is not wanted, unwelcome and uninvited that makes a person feel humiliated, offended or intimidated constitutes sexual harassment. Depending on the circumstances and the legislative provisions in your state or territory, each of the following kinds of behaviour may be deemed to be sexual harassment –

- Material that is sexist, sexually explicit, homophobic and is displayed in the workplace, circulated or put in someone's work space or belongings, or on a computer or fax machine or on the internet;
- Verbal abuse or comments that put down or stereotype people because of their sex, homosexuality or transsexuality;
- Gestures that are sexually offensive;
- Staring or leering in a sexual nature;
- Sexual or physical contact such as slapping, kissing or touching;
- Intrusive questions about sexual activity;
- Sexual assault (also an offence under the Crimes Act);
- Unwelcome wolf whistling;
- Repeated sexual invitations when the invitee has refused similar invitations before;
- Jokes – there is a difference between harmless humour and using a sexist or stereotyping joke to have a "dig" at someone (and therefore to harass them).

Employers can take the following steps to help reduce the likelihood of sexual harassment from occurring –

- Reiterate your Sexual Harassment Policy to employees;
- Advise employees that such behaviour will not be tolerated at any time (including work functions) and an alcohol related excuse is unacceptable;
- Educate employees regarding what would constitute Sexual Harassment (including the anonymous exchange of gifts for Christmas);
- Ensure that you and your managers do not encourage such behaviour including inappropriate entertainment, venue, gifts, jokes etc.

ausNEWS! ausNEWS! ausNEWS!

CONGRATULATIONS to Kevin & Nancye Booth (Gosford) who recently celebrated their 60th Wedding Anniversary.....**HAPPY BIRTHDAY** to Gary Pearce who celebrated a special birthday earlier this month.....and our **CONDOLENCES** to Peter Bretell and family on the passing of Peter's wife, Patricia.