

A WORK CHRISTMAS PARTY - WHAT COULD GO WRONG?

In this article, Lauren Wilson of Just Employment Law warns of some potentially less festive consequences of a work Christmas party, and how to avoid them.

Work-related events, including social occasions such as a work Christmas party are likely to be considered 'an extension of the workplace' as the attendees would not have attended if it had not been for their connection to the employer. Whilst these events are intended to be fun and engaging for all attendees, it is worth reminding employers of the consequences of employees stepping out of line.

Vicarious liability is the principle whereby a third party is held strictly liable for the actions of someone they are connected to, even though they are themselves not necessarily at fault directly. An employer can be held vicariously liable for the acts of an employee if that employee is acting 'in the course of employment'. The connection between the employee's job and the act complained of must be sufficiently close to justify finding the employer liable for that act. It is worth bearing in mind that even if the employer has forbidden the conduct complained of, they can still be held liable for that conduct.

The significance of vicarious liability in the context of Christmas parties is that employees may not feel like they are at work and particularly when alcohol is involved, may not act like they normally would at work. The employer could be held vicariously liable in some areas of civil law, such as personal injury or employment law, such as discrimination if an employee misconducted themselves during a Christmas party. In civil law this could extend to liability for personal injury as a result of an assault carried out by an employee. The Equality Act 2010 specifically provides that any breach of the Act by an employee will be treated as though it was also done by the employer



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provided that breach was carried out in the course of their employment. As explained above, employees can be deemed to be acting in the course of their employment during a work social event. Therefore, any discrimination committed by an employee at a work Christmas party could result in an Employment Tribunal claim being raised against both the individual and the employer although in this scenario, the employer could seek to defend the claim by arguing that the employer took reasonable steps to prevent that individual from doing that thing, or something of that nature.

Another factor to consider is what action, if any, might be taken in relation to misconduct that occurs at a social event. As it is likely to be an extension of the workplace, an employer would be within its rights to take disciplinary action against an employee for misconduct committed during a Christmas party. However, discretion is commonly exercised in accepting some behaviour that it may normally not permit, the most obvious example being the consumption of alcohol which would usually be gross misconduct at work, but which is generally accepted at work events by most employers and indeed is often provided by employers.

In light of the above, it may be worthwhile reminding staff, prior to the Christmas party, that whilst they should enjoy themselves, relax and let their hair down, this will be a work event so they must behave sensibly and responsibly. It is also advisable to remind staff of equal opportunities and anti-harassment policies, and that misconduct may result in disciplinary action, notwithstanding the fact that it took place at a social event.

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