



Date: 28/10/2019

End-of-year workplace parties: Be good or yule be sorry

By Mick Sayers – Principal Lawyer, Slater & Gordon

With the end-of-year party season in full swing, it's also that time of year to remind employees of their rights and responsibilities when attending workplace celebrations.

The work Christmas or end-of-year celebration is considered a work function, so employers have a duty of care to ensure a safe environment, but employees also need to remember that inappropriate behaviour could cost them their job.

There are certainly cases around Australia where workers have had their employment terminated due to their actions at end-of-year events.

Examples of employment being terminated include:

- An IT worker was dismissed for urinating from a balcony onto restaurant customers after drinking excessively at his work end-of-year event in Sydney;
- A man was fired for drunkenly pushing his fully-clothed manager into a pool during a work end-of-year event in Fremantle, Western Australia, before swearing at the General Manager and starting a physical fight;
- A kickboxing trainer in Melbourne was dismissed for lying about his sick wife as an excuse to leave his work's end-of-year awards night early to attend a competitor's event.

Discrimination, sexual harassment and workplace health and safety laws – do these apply at end of year events?

As end-of-year events organised by employers are deemed to be work functions, employees and employers should be mindful of their obligations under discrimination, sexual harassment and workplace health and safety laws.

Employers may be liable if an injury occurs at a work end-of-year event, and an employee may be entitled to make a claim for workers compensation as the injury may be deemed to have occurred within the course of the employee's employment.



Examples of the above include:

- A sexual discrimination complaint upheld against a Sydney business for not inviting the only female staff member to the end-of-year event so that they could hire a topless waitress to which she had objected; and
- A workers' compensation case in the ACT where an employee fell over and broke her leg at the Christmas party. The party was held to be during the course of her employment even though the function was after hours.

However, if an employee's injury is deemed to have occurred outside the course of employment, a workers compensation claim might be denied. This can vary in each State and Territory.

In the NSW case of *Scharrer v The Redrock Co Pty Ltd*, an employee was seriously disabled in a car crash while driving home from the work Christmas party with a blood alcohol reading of more than twice the legal limit. While attending the end-of-year event is within the course of employment, driving home is not viewed in the same way in NSW, so she was not eligible for workers' compensation.

The Checklist

We recommend the following checklist when attending your end of year event:

- ✓ Employees should treat any end-of-year celebration like any other day at work and behave accordingly, and in line with any relevant code of conduct applicable to your workplace.
- ✓ Even if the function is unplanned or spontaneous, it can still be considered within the course of employment.
- ✓ Being drunk is no excuse for an employee's actions or comments.
- ✓ Insist that employers meet their obligations, including to:
 - Responsibly serve alcohol;
 - Provide food and non-alcoholic drinks; and
 - Provide options for employees to get home safely after the festivities.
- ✓ Be aware of and abide by relevant workplace policies including:
 - Workplace health and safety rules;
 - Anti-discrimination policy;
 - Sexual harassment policy;
 - Social media guidelines.
- ✓ Pause before posting any content on social media or sending by email of end-of-year celebrations and reflect on the following:
 - Nothing is private on the internet so posting inappropriate photos or comments about your work could be a breach of your employment contract;
 - Maximum privacy settings have been proven not to protect employees in Court, especially if they have co-workers as friends;



- The absence of a workplace social media policy will not save you; the Courts view online posts as a public comment, which doesn't require a specific policy to be taken into account;
- Even if a co-worker posts the content, there have been cases where an employee is held responsible even though they were not the original author.

We hope that this checklist helps to ensure that you have a safe and happy festive season.

If any troubles arise with your employer during the festive season, we recommend that you contact your Organiser or HACSU Assist on 1300 651 931 or assist@hacsu.asn.au who may be able to assist directly or provide you with a priority referral to Slater and Gordon for further action.

About the Author: Mick Sayers is a Principal Lawyer of our Industrial and Employment Law team. Mick's day to day practice involves assisting individuals with employment law related matters, as well as advising and acting on behalf of unions involved with industrial law disputes. Mick has been a member of the Slater and Gordon team for 23 years. Mick is passionate about rock and roll music, test match cricket and and supports Essendon during the AFL footy season.

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