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Employment

I'm Dreaming of a Trouble-Free Office Christmas Party

It is Christmas party time again. Although lavish end of year events have all but disappeared as the recession bites, few employers will want to 'cancel Christmas' completely and do away with their morale-boosting office Christmas party. However, 'alarm bells' could replace 'jingle bells' for employers if they fail to be aware of the potential risks, such as sexual harassment, alcohol-fuelled brawls, religious discrimination and post-party absenteeism.

Faced with these risks, how can you ensure your party is a success, without becoming a party pooper? As the festive season approaches, Pinsent Masons has produced a practical office Christmas party guide to ensure a trouble-free (and employment tribunal claim-free) office party.

1. The Invitation

Do not insist that all staff attend the office Christmas party. Christmas is a Christian holiday, so do not pressure someone to attend if they do not want to on religious grounds. Whilst renaming the party the 'Winter Festival' might be seen by some as a step too far, employers must consider that some employees may not wish to attend. If the event is out of hours, remember also that some people have family responsibilities that may prevent them coming.

2. Decorating the office

It is a common misconception that Christmas decorations breach health and safety rules and are outlawed by the religious discrimination provisions of the Equality Act 2010. As long as a proper risk assessment is carried out, looking at where and how decorations are sited, particularly if they could pose potential fire hazards, you will not normally fall foul of health and safety rules. However, your insurance may not cover damage caused by untested electrical equipment, so switch off those tree lights before going home. The Equality Act 2010 does not outlaw traditional customs. As most Christmas decorations such as tinsel, lights and trees are secular and not inherently religious, it could be difficult to argue that they cause offence to non-Christians.

3. Secret Santa

If you are running a Secret Santa, make sure staff are told that gifts should be inoffensive. Some gifts, for example, lingerie that is hilarious to the giver and on-lookers but not to the recipient, have sparked complaints in the past.

4. Party policies

The office Christmas party is, in reality, a work-related activity so make sure you set the boundaries of acceptable behaviour while acknowledging that employees will, of course, want to let their hair down.

Provide clear written guidance to all employees about acceptable standards of behaviour at work-related social events, equal opportunities and harassment - and on the disciplinary sanctions that could result from breaches of the rules. Make it clear that fighting, excessive alcohol consumption, use of illegal drugs, inappropriate behaviour, sexist or racist remarks, and comments about sexual orientation, disability, age or religion will not be tolerated. While party policies may seem scrooge-like, they are a valuable precaution for employers and demonstrate that reasonable action has been taken to protect employees.

5. Misguided by mistletoe

Despite its festive atmosphere, an office Christmas party is legally an extension of the office environment, even if it is held off site and outside working hours. Employers are therefore likely to be vicariously liable for acts of harassment, discrimination, assault or other unwanted conduct carried out by their employees.

If any such allegations are made during or after the event, the key thing for employers to remember is to follow their usual disciplinary process and ensure that any complaint is investigated thoroughly before action is taken.

Do not be tempted to discipline any employees at the party itself. Send the employee(s) home, if appropriate, and deal with the incident when you are back at the office – and sober.

6. Limit the spirit

While you will want to provide a number of celebratory free drinks for employees to reward them for their hard work over the year, remember that a free bar throughout the evening will encourage excessive alcohol intake. You may, therefore, want to consider restricting the offer of free alcohol available and should be prepared to ask individuals to take it easy if they appear worse for wear. Making plenty of food available early on and serving a meal may assist. Putting on entertainment, such as a disco, also prevents employees from simply propping up the bar.

In one case, however, three employees got drunk and had a fight after seven hours of drinking at a free bar supplied by their employer. They successfully argued that their resulting dismissals were unfair. A relevant factor was that the employer had provided a free bar – and therefore condoned their behaviour.

Finally, be respectful of employees who, for whatever reason, do not drink. Ensure a plentiful supply of alcohol-free alternatives – and lots of water. Keep an eye out too for the office junior. Employers cannot allow under-18s to drink.

7. Catering

Remember that employees of certain religious beliefs may be vegetarian or unable to eat certain foods. Do not leave it to chance – ask beforehand about any special dietary requirements, so that these can be accommodated.

8. Criminal offences and drugs

Under the Misuse of Drugs Act 1971, it is an offence for an employer to knowingly permit or even to ignore the use, production or supply of any controlled drugs, from cannabis to cocaine, taking place on their premises. In addition, employees who are convicted of criminal offences involving drugs, sexual misconduct or drink driving may also damage their employer's reputation or undermine trust and confidence. In such cases, you may well be justified in taking disciplinary action against the employee, which might result in a dismissal for gross misconduct.

9. Promises, promises

Alcohol can loosen many a tongue so managers should avoid conversations about performance, promotion, salary or career prospects. In one case an employee claimed his boss had promised him a higher salary "in due course" during a chat at the Christmas party. His pay remained static so he resigned and claimed constructive dismissal. The employer won the case but only because the nature of the promise was vague and uncertain. It was a lucky escape: a promise made at a Christmas party is still a promise – even if the employer cannot remember the conversation!

10. Getting home

Consider how your employees will get home after the party. Issue advice in advance about not drinking and driving, as an employer might still be responsible for their employee driving home from an office party. Think also about providing transport home, such as laying on coaches to leave at set times during and at the end of the event or ending the event before public transport stops. At the very least, encourage employees to think about how they will get home, provide phone numbers for local registered cab companies and, importantly, suggest employees check the time of their last train home!

11. The morning after the night before

Be clear about your expectations regarding absence the next day (but don't expect miracles from those who do turn up for work!). Ensure that all staff know the extent to which you will be lenient about coming to work late and that, if your expectations are breached, disciplinary action may be taken. But take care – a past history of festive tolerance, especially where liquid lunches are concerned, could be used as evidence that disciplinary action against an individual is unfair.

Enjoy the festive season with the peace of mind that you have taken the necessary office party precautions!

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Should you have any questions please contact **Chris Booth** (chris.booth@pinsentmasons.com) or your usual Pinsent Masons adviser who will be able to assist you further.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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