

## NEWS&VIEWS NOVEMBER 2023

### **Naughty or nice? How to help your organisation survive its end-of-year work party**

#### **There are plenty of lessons to be learned from end-of-year work parties that haven't gone as planned**

Mixing alcohol with workplace celebrations can often lead to incidents of employee misconduct. As an employer, you need to understand the risks, how to minimise them, and what to do if there's an issue.

Legal cases that focus on these problems are helpful guides to avoid potential pitfalls.

#### **Service of alcohol**

One case focused on the dismissal of an employee for misconduct. He had consumed an excessive amount of alcohol at his end-of-year work party and after-party. It was alleged that he had:

- Behaved aggressively
- Abused several co-workers and managers
- Sexually harassed some female staff members

The employer terminated his employment for serious and wilful misconduct. However, the Fair Work Commission (FWC) found his termination was harsh. It ordered his reinstatement.

At first blush, this decision may be hard to comprehend. However, one of the key findings was that the employer had served unlimited alcohol to guests. The FWC said this was contrary to the employer's expectation of staff behaviour.

The FWC found that the employer ought to have known that bad behaviour would follow excess alcohol consumption. So the dismissal was found to be harsh.

**Lesson: Ensure responsible service of alcohol to staff. Direct all staff to leave the venue at the end of the function and make sure they can get home safely. In advance of the event, send an email to all employees outlining behaviour expectations and inform them when the function ends.**

phone: 08 8227 2829  
mobile: 0410 318 220

email: [jodie@bradbrooklawyers.com.au](mailto:jodie@bradbrooklawyers.com.au)  
web: [bradbrooklawyers.com.au](http://bradbrooklawyers.com.au)

85 Angas Street,  
Adelaide SA 5000

*Workplace Relations, Employment & Safety*

## Inappropriate behaviour

Another case involved an employee who was working at a client's worksite. She drank excessively at an after-hours function hosted by the client and then vomited on the floor. She was assisted from the venue. There was also an allegation that she'd made inappropriate comments to both the client's and the venue's staff.

After an investigation, her employer terminated her employment for serious and wilful misconduct based on her drunken behaviour and the allegations of inappropriate comments.

On appeal, the FWC said that even though the woman's intoxication was inappropriate, it was a one-off event and hadn't harmed the employer's business or reputation. It said the allegations about inappropriate comments weren't substantiated, so the employer shouldn't have relied on them as a reason to terminate.

The appeal was dismissed and the employee won the right to reinstatement.

**Lesson: If there's an incident, seek legal assistance as soon as possible, particularly if you're considering termination of employment.**

## Sexual harassment

A category of inappropriate behaviour that needs special mention is sexual harassment. Without proper care, work functions can fuel sexual harassment. And with recent changes to sexual harassment laws, it's more important than ever for employers to understand and act according to their obligations.

Recent amendments to the *Sex Discrimination Act 1984 (Cth)* now impose a positive obligation on employers and persons conducting a business or undertaking (PCBUs) to take reasonable steps to eliminate sexual harassment.

It's not enough to hope it's not happening or to try and ignore it. You must take steps to **eliminate** it. Failure to do so may result in significant penalties. For example, in one 2023 case, an employee who had endured years of unwanted sexual advances and victimisation from her employer was awarded \$268,000 in damages.

## Disciplinary action

One of the biggest lessons for employers is that incidents at work functions can't always be categorised as serious misconduct justifying summary dismissal.

If the employee has committed an act of misconduct, some other sanction may be more appropriate. Acts of misconduct aren't as serious, so disciplinary action should be less severe. For example, a written warning.

The distinction between these concepts isn't always obvious and depends on the circumstances.

phone: 08 8227 2829  
mobile: 0410 318 220

email: [jodie@bradbrooklawyers.com.au](mailto:jodie@bradbrooklawyers.com.au)  
web: [bradbrooklawyers.com.au](http://bradbrooklawyers.com.au)

85 Angas Street,  
Adelaide SA 5000

*Workplace Relations, Employment & Safety*

However, in either scenario, you must conduct a thorough investigation, which usually includes the following:

- Suspending the employee with pay
- Collecting evidence
- Interviewing witnesses
- Interviewing the employee
- Allowing the employee to answer your concerns
- Keeping an open mind.

You need to investigate everything because there's no such thing as an informal complaint. Any issue has the potential for serious legal consequences.

Once you've finished investigating, you need to consider all the evidence and decide whether disciplinary action is appropriate. For example, does the conduct justify termination of employment? Should there be other disciplinary action instead?

**Lesson: For any incident or complaint, a thorough investigation is critical. You should seek legal advice to help you conduct a proper investigation. Then, decide whether the behaviour amounts to *misconduct* or *serious misconduct*. Misconduct may require a disciplinary outcome, while serious misconduct may entitle you to terminate employment instantly.**

## Consider your organisation's conduct

As case law demonstrates, employees can't be entirely responsible for their actions if their employer is complicit in the conduct.

For example:

- Serving unlimited drinks does nothing to encourage employees to go easy on alcohol consumption
- Failing to remind employees of their obligations in advance of the function is a missed opportunity to define boundaries and expectations
- Not conducting a proper investigation into an incident is a failure to appreciate the gravity of the issue and possibly also a failure to treat all parties fairly

When investigating a grievance or incident and when considering termination, be sure to follow your workplace procedures. Review relevant policies and use them as a checklist to ensure you've done everything you're obliged to do. You can also use the following investigation checklist as a guide.

Investigate the allegations **as soon as possible** after the incident.

**Lesson: Treat all incidents seriously and investigate thoroughly. Follow workplace policies and procedures and seek legal help.**

phone: 08 8227 2829  
mobile: 0410 318 220

email: [jodie@bradbrooklawyers.com.au](mailto:jodie@bradbrooklawyers.com.au)  
web: [bradbrooklawyers.com.au](http://bradbrooklawyers.com.au)

85 Angas Street,  
Adelaide SA 5000

*Workplace Relations, Employment & Safety*

## Checklist: What to do before and during the end-of-year work party

### Before the event

At least a few weeks before the event, meet with your management team (which may include external human resource consultants or lawyers) to:

- Identify any sexual harassment risks at the party or in connection with it.
- Decide how to manage those risks.
- Check that adequate sexual harassment policies and procedures are in place.
- Check whether all workers have been adequately trained in the relevant policies and procedures.
- Discuss whether further sexual harassment training is needed before the party.
- Implement any further training and keep a record of attendees and topics covered.

At least three to seven days before the event, remind all workers (via email, notice or letter) of the following:

- The function is a work function, meaning that workers will be **at work** while attending the event.
- The start and end times of the event.
- Usual work policies, procedures and expectations of appropriate behaviour apply.
- Intoxication isn't an excuse for misconduct.
- For Kris Kringle or Secret Santa gift exchanges, there will be zero tolerance for inappropriate gifts or gifts of a sexual nature.
- At the end of the event, all workers must leave the venue.
- Any arrangements you've made for transport to and from the venue.
- Driving to work on the day of the function is discouraged. Consider providing taxi vouchers or reimbursement for Uber fares as an incentive for workers not to drive.
- Your organisation doesn't sanction any after-party.

phone: 08 8227 2829  
mobile: 0410 318 220

email: [jodie@bradbroomlawyers.com.au](mailto:jodie@bradbroomlawyers.com.au)  
web: [bradbroomlawyers.com.au](http://bradbroomlawyers.com.au)

85 Angas Street,  
Adelaide SA 5000

*Workplace Relations, Employment & Safety*

## Venue suitability

- Ensure the venue is safe and does not pose any risks to workers who may be affected by alcohol.
- Ensure that workers can get home via uber, taxi or other transport arranged by you.
- Check the venue's responsible service of alcohol policy and how it implements that policy.
- Ensure you know the names of the venue staff who are your main contacts on the day of the event.
- Check that the venue has a Covid-19 safe plan.

## During the event

During the function, you should ensure the following:

- There are plenty of non-alcoholic drinks and food.
- There is a designated responsible person to supervise alcohol consumption and any safety issues. Ensure you have a plan about what to do if things go wrong.
- The bar tab is finalised when the function ends.
- Workers are told the function has ended.
- Any intoxicated workers are escorted into safe transport by supervising staff.
- Don't stay on and 'party' with the staff once the event has finished.

## Post-event

- Manage and investigate any complaints about conduct according to your policy.  
[Use our checklist as a guide.](#)
- Monitor social media to ensure workers are not making inappropriate and adverse comments.

## In a nutshell

End-of-year work parties can be fun celebrations without scandal or incident. Still, risk management and good communication can help things run smoothly. Thorough planning, good communication, practical action, and seeking legal advice as soon as possible are essential tools in your manager's kit. They'll help you sleigh through this Christmas season.

[Contact us for legal advice about your end-of-year work party plans.](#)

phone: 08 8227 2829  
mobile: 0410 318 220

email: [jodie@bradbrooklawyers.com.au](mailto:jodie@bradbrooklawyers.com.au)  
web: [bradbrooklawyers.com.au](http://bradbrooklawyers.com.au)

85 Angas Street,  
Adelaide SA 5000

*Workplace Relations, Employment & Safety*