



Australian Hotels Association
WESTERN AUSTRALIA

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Memorandum

To: AHA(WA) Members
Re: Christmas Functions and Etiquette
From: Ron Ballucci, Workplace Relations Manager
Date 9 October 2009

Dear AHA Members

As you would be aware, the festive season is fast approaching. In preparation for this year's festive celebrations, we have taken the opportunity to brief members about their obligations to staff in respect to their attendance at work functions and other similar matters.

Employers' Legal Responsibility

Under occupational health and safety legislation, employers have obligations to ensure the health, safety and welfare of all employees whilst they are at work. The Christmas party is considered a "work activity". Such duty of care is not confined strictly to the workplace – it can be an off site party and includes the trip home.

In order for employers to satisfy the requirements as outlined in the *Occupational Safety and Health Act 1984* and the *Equal Opportunity Act 1984* we suggest the following considerations be taken into account:-

Policies and Procedures

1. Ensure policies and procedures are current and establish clear guidelines covering sexual harassment, bullying, discrimination, drugs and alcohol;
2. Refresh all staff on these policies and procedures and as to their responsibilities and duty of care to others;
3. Make staff aware of what behaviour is acceptable and what behaviour constitutes unacceptable behaviour in the workplace including when attending functions, dress code etc;
4. Advise staff that displays of unacceptable behaviour may result in disciplinary action taken against them;
5. Inspect the venue for possible hazards like slips and trips and make potential risk areas out of bounds;

Alcohol

6. Encourage the responsible consumption of alcohol by providing food, low alcoholic and non-alcoholic beverages and water;
7. Ensure employees below the legal drinking age do not consume alcoholic beverages;
8. Set a reasonable limit on the supply of alcohol and ensure bar staff are well briefed on limiting alcohol to people who are displaying signs of intoxication;
9. Organise an activity to divert the focus directly off alcohol;
10. Take the appropriate measures should staff consume alcohol excessively or partake in inappropriate behaviours;

Supervision and model behaviours

11. Provide appropriate monitoring and supervision of the Christmas party by managers;
12. Ensure managers model appropriate behaviour themselves;

Function etiquette, transportation and gifts

13. Clearly define a start and finish time for functions;
14. Make travel arrangements for the safe transportation of staff ie. designated drivers, taxis (cab vouchers) etc;
15. Remind staff that such functions are a work event;
16. If staff participate in "secret santa" ensure staff are aware that gifts of an offensive or inappropriate nature are not acceptable.

By taking the above simple measures, such precautions may prevent an incident from occurring and therefore possible litigation arising out of this year's festivities.

Relevant Caselaw

For your information cases relevant to this issue include:-

Western Australia

- (i) A woman alleged her supervisor made unwelcome sexual advances towards her and when she lodged a formal complaint the company investigated her allegations and sacked her because it claimed her allegations were untrue. Following a conciliation process at the Commission between the two parties, a \$36,000 damages settlement was paid by the company;

- (ii) A female employee alleged sexual harassment and sex discrimination against her employer for the actions and behaviour of a fellow employee. She claimed her employer was aware of the staff member's history of inappropriate behaviour towards women and therefore failed in its duty of care even after she informed management and other staff what was occurring. Following a conciliation meeting at the EOC, the respondent made a payment of \$14,500 to the complainant who agreed to provide a written resignation. The respondent also assured the complainant that Equal Employment Opportunity and Grievance Handling training would occur for all staff in its Perth staff;
- (iii) A woman claimed she was twice coerced into sexual encounters with her female manager. After these encounters the manager allegedly became antagonistic towards her, criticised her in front of other staff, sent her numerous text messages and then put pressure on her to resign. After the woman resigned her manager allegedly contacted the woman's job referees and attempted to turn them against her. The woman also alleged victimisation in the area of employment. The outcome was a \$7,500 ex-gratia payment, an apology and an undertaking by the company that all the company's WA branch undergo equal opportunity training.

Other States

- (iv) In South Australia, a worker who was injured at a Christmas function at her workplace was granted compensation on the basis that she was in the course of her employment and her employer had requested her attendance;
- (v) In a New South Wales case it was ruled that socialising with clients was held to be in the course of employment and therefore the employee who was drunk and consequently injured himself after work drinks was granted compensation;
- (vi) Conversely, in Victoria, four workers were prosecuted after their Christmas party ended with one of the workers suffering severe burns resulting from the employees playing around with chemicals.

Skeleton staff

We also suggest to be mindful of possible safety risks/hazards over the Christmas/New Year period when business are operating on skeleton staff. A risk management plan might include hazard identification, assessment and control of hazards employees are exposed to; the provision of adequate information, instruction and training; and the means of communication in an emergency and a procedure for regular contact.

Liabilities

In order to avoid any liability arising from potential claims as a result of festive season celebrations, it is essential employers seriously and effectively deal with all complaints including of harassment, failing which employers may face claims for breach of contract or stress-related illness or expose themselves to liability for sex or race discrimination or constructive dismissal claims. Employers should implement and practise fair, effective and meticulous disciplinary and grievance procedures. Whilst the intervention of the Christmas break may complicate matters, it will not justify any failure to follow normal procedures. We suggest should you receive such a claim, contact the AHA as soon as possible for advice.

Temporary Staff

Employers obligations extend further to staff employed on a temporary basis. It is important that these staff be adequately trained in safety procedures. Implementing a plan now in preparation for the influx of new and young workers and the consequential OHS implications over the holiday period should be highly considered. Such plan should encourage staff to seek clarification and provide for extra supervision of staff over the festive period.

In summary, plan a function that reflects well on the business. Organise an appropriate location, limit the intake of alcohol and consider the interests of staff.

If you have any queries, please contact the Workplace Relations department on 08 9321 7701, or email iradmin@ahawa.asn.au.

Kind Regards



RON BALLUCCI
WORKPLACE RELATIONS MANAGER