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3HR Legal Weekly

HR

The Workplace at Christmas –Legal Considerations

The festive period can bring challenges for HR Departments. Here are the answers to some queries we have had recently.

Q. Do we have to deal with annual leave requests differently over the Christmas and New Year season?

A. You should follow your Company's normal policy for booking time off, but could consider allowing more people than usual to take leave at the same time, as long as doing so does not interfere with your business's needs. If Christmas is a particularly busy time for your Company, you may need to restrict the number of people taking leave. In order to keep this fair, ensure you keep good records. Employees will not be happy if the same colleagues are granted the most popular holidays each year.

If a situation arises where an employee insists on taking leave without approval, the employer should address the situation with caution to ensure that the penalty is not disproportionate.

In the case of *Stott v Next Retail Ltd.* an employee did not turn up for work on Christmas Eve without permission and was subsequently dismissed. The employer was found by the Employment Tribunal to have dismissed Stott unfairly.

Q. Do we need to do anything in particular from a health and safety point of view in preparation for our Christmas party?

A. As the event is associated with work, it is the employer's duty to ensure their employees' health, safety and welfare. Carrying out a risk assessment beforehand will reduce the risk of accidents and provide protection if anything untoward should happen. Consider designating a manager to stay sober and watch out for unacceptable or dangerous behaviour. Think about travel arrangements to and from the venue. You could hire minibuses to take staff home, or provide phone numbers for registered taxi companies and encourage employees to use them.

Q. Could it be considered discrimination towards employees who are of different religions if we hold a "Christmas" Party?

A. It is unlikely that holding a Christmas party would be seen as religious discrimination because generally these parties are more about rewarding staff for their work in the previous year and boosting morale than celebrating religion.

Employers should keep a policy on religious observance during working hours and be supportive towards employees whose religious festivals fall at different times of the year.

Q. What do we do if a member of staff is sick and/or absent after our Christmas party?

A. You should apply your normal sickness policy and procedures. It is a good idea to remind staff in advance that the Christmas party is a work-related event and therefore normal disciplinary rules apply. You could highlight that if you have reason to believe absences are due to over-indulgence at the party, they should expect to face disciplinary action. To help avoid this situation occurring, you could plan your event for a Friday or other evening when employees already have a day off the next day. Also be sure to provide plenty of non-alcoholic drinks and food.

Q. As an employer, am I responsible for anything that happens at our Christmas party?

A. It is best to assume that you would be liable. The term 'in the course of employment' is referred to in law and in the case of the *Chief Constable of the Lincolnshire Police v Stubbs and other*, a police officer said that he was sexually harassed outside of working hours in a pub by work colleagues. The Employment Appeal Tribunal found that social events away from work where they take place either immediately after work or for an organised leaving party came under the remit of 'course of employment'.

Q. Can we offer a free bar or unlimited free alcohol at our Christmas party?

A. Employees who are drinkers will certainly appreciate a free bar, but employers need to be aware of the potential dangers of providing unlimited free alcohol.

In *Williams and others v Whitbread Beer Co*, three employees at a seminar who were dismissed because they drank at the free bar provided by the company and ended up drunken, abusive and violent were found to have been unfairly dismissed.

The unlimited free bar provided by the employer was an important factor in determining whether or not the dismissal was fair.

Q. Can we sell tickets for a raffle and give out prizes at our Christmas party? We are also thinking of doing "Secret Santa" gifts this year, what kind of gifts are appropriate?

A. It should be fine to sell raffle tickets but be careful not to put pressure on staff to take part –gambling is forbidden by some religions. Put some thought into the prizes to make sure they are appropriate for all –for example, some employees may be unable to accept alcoholic products. It would be wise to give staff guidance on Secret Santa gifts to avoid– for example, nothing that could be construed as making fun of someone's sexual orientation, race, religion, gender or age. Gifts that are sexually themed must also be avoided –what seems like just a bit of fun by the giver could be interpreted by the recipient as harassment.



If you have any more queries related to the festive season, please contact your usual 3HR Consultant.

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