

9 December 2016

3HR Legal Weekly

HR

The Workplace at Christmas –Your Questions Answered

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

Q. We need some of our employees to work on Christmas Day this year. How can we go about this legally? Do we need to pay them more than their usual wage?

A. Employees don't automatically have the right to a day off or extra pay on Christmas day. The key is to check their employment contracts to see what provisions are there. If an employee's contract states they need to be available for work on bank holidays, they cannot refuse to work, even for religious reasons. However, employers should be aware that a refusal to grant Christian employees time off for any of the bank holidays with religious significance could amount to indirect religious discrimination if it places them at a particular disadvantage when compared with employees of other faiths, or non-religious employees.

Employers should also be aware that if they have paid employees extra for working on bank holidays in the past, or always allowed employees to finish early on certain days for example, this may have become "custom and practice".



Q. We suspect that our employees are using their work time and computers to do their Christmas shopping online. Can we monitor them to check their productivity?

A. Again, the key to the answer to this question will be in the employees' contracts or your staff handbook. We would recommend having a clear policy which lets staff know where they stand, as under data protection rules, you must tell your employees in advance if you are going to monitor their use of the internet or the email system. An employer is only allowed to use covert monitoring in very rare circumstances, for example where a crime needs to be investigated.

If your policy does not allow any personal use of the internet and email system and your employees are using them for Christmas shopping, you would be within your rights to follow the disciplinary procedure. However, we would advise being understanding to avoid alienating your employees. You might like to consider a compromise, for example allowing employees access during lunch breaks.

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. Should we give our non-Christian employees additional annual leave to enable them to celebrate their religious festivals?

A. While some of the bank holidays in the UK fall on Christian festivals (Christmas and Easter) they are statutory holidays decided by the government. Many employees, including Christians, will be required, or may decide to, work on these days.

There is no legal obligation to give employees of faiths other than Christianity any extra annual leave to allow them to celebrate their religious festivals. Indeed, giving extra holiday to employees of certain faiths could amount to direct discrimination against other employees.

While there is no right to additional annual leave, caution is advised when approving holiday requests. Employers should act in a flexible and non-discriminatory manner when employees are seeking time off to celebrate their own religious festivals in order to avoid the risk of indirect discrimination claims on the grounds of religion or belief.

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

Mel Northfield
Director—HR Services
mel.northfield@3hracs.com



This newsletter is designed to provide general information only. It does not constitute legal or other professional advice and thus should not be relied on. Definitive advice can only be given with full knowledge of all relevant facts. If you would like to discuss any aspect further, please contact us.

3HR Corporate Solicitors Limited is a Solicitors Practice, authorised and regulated by the Solicitors Regulation Authority, No: 597935.
3HR Benefits Consultancy Limited is authorised and regulated by the Financial Conduct Authority. Firm Reference Number: 556015

The registered office of both 3HR Corporate Solicitors Ltd and 3HR Benefits Consultancy Ltd is New Broad Street House, 35 New Broad Street, London EC2M 1NH. Mainline Tel: 0207 194 8140 Web: www.3hracs.com