Tis the season to be jolly...?

The nights are drawing in, the temperature is dropping and Christmas is just around the corner bringing with it, and often dreaded by employers, the staff Christmas party!

Staff Christmas events should be a fun occasion at which staff are rewarded for their hard work during the year and enjoy themselves thereby boosting staff morale and employee relations. However, you will all have heard horror stories about parties which have been ruined by alcohol fuelled antics such as fighting and lecherous behaviour. These stories mean many employers opt not to organise a Christmas event, which is unfortunate given the positive benefits staff events can have.

This article looks at the issues/risks arising from staff events and offers guidance, which should enable practices to hold a successful event that doesn't leave them with a nasty employment law hangover.

Employers' obligations

There are various obligations that employers have to their staff and associated liabilities, which are relevant to staff events, in summary these are:-

- ▶ Statutory/implicit duties to take reasonable care of the health and safety of employees, including protecting employees from unacceptable behaviour such as bullying and harassment;
- ▶ vicarious liability for the acts of staff in the course of employment whether or not the employer knew about it or approved. Conduct in the course of employment would include acts committed immediately before, at or after staff events, even when the event is held outside working hours and away from the employer's premises. Employers can avoid vicarious liability by showing they have taken *reasonable steps* to

prevent discrimination arising, for example by having anti-discrimination policies in place, training staff and taking action when discrimination arises;

- ▶ It is an offence for an employer to knowingly permit the use, production or supply of any controlled drug taking on their premises; and
- ▶ It is an offence for employers to allow staff under 18 to drink alcohol.

Against this backdrop what steps can an employer take to ensure a successful Christmas **PARTY**?

P is for planning the event

Forward planning will assist employers in minimising the risk of issues arising at the Christmas party.

When sending out invitations employers should ensure all staff are included. For example, staff on maternity or shared parental leave should not be forgotten and it might be appropriate to invite staff who are on sick leave depending on the nature of their ill-health.

Whilst it is good practice and minimises the risk of complaints about discrimination to invite all staff to the party, employers should not insist that staff attend. Some staff may not wish to or may be unable to attend a Christmas party. For example, non-Christian staff may feel uncomfortable about attending or have other commitments, for example, Jewish Hanukkah takes place from 7 to 14 December 2015. Also, staff with family/caring commitments may be unable to attend an event outside usual business hours.

When organising the event consideration should be given to the location and ensuring

it is accessible to and suitable for all staff, including in particular those with disabilities.

Whilst employers are no longer liable for harassment of their staff by third parties it would nonetheless be prudent to consider the suitability of any entertainer booked for the event, to avoid upset/offence being caused and which could lead to complaints afterwards. A comedian of the Frankie Boyle school will not be everyone's cup of tea!

A is for alcohol

Parties without festive fizz may be rather flat affairs, however, drink unfortunately tends to be the cause of the party horror stories we read about and which can lead to a variety of post-party hangovers.

Providing a free bar is a generous gesture but an easy way for things to get out of hand. In this regard a lesson can be learnt from the ET unfair dismissal case brought by 3 employees (ironically) of a brewing company who got drunk at a staff event and had a fight. The 3 employees were successful in their claims for unfair dismissal on account of, amongst other things, the fact that their employer had provided a free bar and

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therefore condoned their drunken behaviour.

As a result it would be wise to take some simple steps to guard against staff over-indulging on the booze and ending up twerking and making a fool of themselves on the dance-floor or worse. For example, limiting the amount of free alcohol available

It would be wise to ensure a senior member of the practice is tasked with ensuring that any employee who has drunk too much is asked to stop drinking and/or assisted home; thereby nipping potential issues in the bud.

Given the risk of an employer being liable for an employee's drunk-driving after a

working day it will be important to ensure that employees are fit and capable to work. This is particularly important for dentists and dental nurses. The usual rules should apply to protect patients where there are concerns about an individual's ability to work safely.

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and ensuring that food (which caters for the dietary requirements of your staff) is available will reduce the risk of staff becoming inebriated. Also, some form of entertainment, such as music/a disco might prevent employees from knocking back drinks at the bar all evening.

Christmas party, employers should think carefully about how staff will get home after the party and what (if any) arrangements it needs to make, for example providing transport for staff or information about reputable taxi firms and public transport.

If the day after the Christmas party is a

R is for reminding staff about the appropriate standards of behaviour

Practices would be wise to issue clear guidance to staff before the party about what will constitute unacceptable behaviour at and after the Christmas party (i.e. getting drunk, verbally insulting colleagues, fighting, damaging property and harassing or intimidating colleagues) and the possible consequences of misbehaving/discriminating (i.e. disciplinary action).

Staff should be reminded that whilst the party is intended to be fun and informal it is a work-related event and the normal standards of professional conduct will be expected. This is especially important for functions held off-site and in public.

Whilst this guidance could be viewed as a dampener on spirits, it could be of significant assistance to an employer seeking to utilise

policies, ensure that any guidance for staff issued in advance of the party includes a statement about the (appropriate) use of social media during and after the Christmas party, so as to avoid issues for them and the practice arising.

Y is for you said what ...?

Alcohol lowers inhibitions and may embolden staff to say (and do) things they would not otherwise have said (or done), which can create a variety of issues for employers at and after the party.

Not surprisingly in a recent case involving a senior manager sacked for insulting colleagues at a Christmas party and telling his boss to “*stick his ***** job up his *****”, the employee’s claim for unfair dismissal was unsuccessful. However, inappropriate comments are not always as clear cut as this and senior managers should also be careful to avoid making statements that could be regarded as an agreement or promise to staff.

In a recent case, an employee raised proceedings claiming that his manager had promised an increase in salary during a chat at the Christmas party. When the increased salary did not appear the employee resigned claiming constructive

especially for smaller organisations in which gossip can be rife, that discussions about a colleague’s conduct at a staff event could create issues and should therefore be addressed by employers. In that case an employee was successful in sex and pregnancy discrimination claims arising from gossip following a Christmas party about the employee’s subsequent pregnancy as she had been seen leaving the party with a colleague who was not the colleague with whom she had been in a relationship at the time.

Conclusion

The guidance above should assist in addressing the key risk areas for employers holding a festive event and ensure the event runs smoothly and successfully.

However, if you are unlucky enough to have an issue at your Christmas party it will be important not to have a knee-jerk reaction but rather to tackle the possible disciplinary or discrimination issues after the event in the cold (and sober) light of day; to avoid exacerbating any issues or negatively affecting the investigation process. It will also be important to ensure that any issues are dealt with swiftly (while memories are clearer), in line with your relevant

the reasonable steps defence to a post party claim of harassment made by one employee against another for which the practice could be vicariously liable; as it would demonstrate that action had been taken before the party to prevent discriminatory behaviour occurring.

T is for tweeting (and other social media)

The rise of social media usage creates potential risks for employers in the context of work events and makes the infamous photocopying antics of old pale into insignificance.

The prolific use of social media means there is potential for pictures of your event and your staff looking the worst for wear or in compromising situations being posted on line and/or misplaced comments about the practice and its staff being posted publicly.

Postings on social media sites could give rise to data protection issues from staff unhappy about their data being posted on line and could also cause reputational damage that could have a significant impact on the Practice.

It is therefore recommended that dental practices which don’t have social media

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dismissal on the basis that the manager had broken the promise. In that case the ET found that the promise was not certain enough to amount to a binding contract and this was upheld at the EAT which focused on the context, namely a conversation at a party. Depending on what is said though the courts could take a different view to that taken in the recent case on intent and the binding nature of any oral promise creating potentially significant exposure for a practice.

Practice owners/senior managers should avoid entering into conversations about individual employment issues such as performance or conduct matters or individual employee’s pay and benefits to avoid problems arising.

A recent ET case serves as a reminder,

procedures and that the employee involved (there will usually be two or more) are treated consistently. If in doubt on the best way forward or if the issues are serious and/or delicate take legal advice.

Try not to let the horror stories or possible risks/issues put you off arranging a Christmas event for your hard-working staff, with the right planning and precautions (as set out above) it should be a jolly and morale boosting affair – enjoy!

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