

Spearing | Waite

Employment Law

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Newsletter

News update for
HR Specialists



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The Works Party

The courts have gone to great lengths to ensure that employees suffering injuries at work are compensated by taking the benefit of the employer's insurance. Corporate functions, such as Christmas parties are increasingly defined as part of our working lives

Employers' potential liability for injuries caused at work may be categorised as:

1. Health and safety legislation
2. Sexual harassment
3. Civil torts under common law, including vicarious liability for other employees' actions
4. Criminal offences

Health & Safety

Statutory duties under Health & Safety at Work and related legislation are not really designed to cover recreation or entertainment provided by employers. However, if the event is closely related to work, for example, a party, or sporting match to entertain clients, in which employees are obliged to participate, the statutory duties will probably apply. There is also a risk that there will have been a failure of supervision, if the employer, for example, provides a Christmas lunch, with alcohol and then does not take steps



to prevent employees using or having access to dangerous machinery following the lunch.

Sexual Harassment

Employees who are the victims of sexual harassment can apply to an Employment Tribunal for an award of damages against their employer. There is obviously a risk of such behaviour occurring where there is an office party or alcohol is provided. The claimant will assert that the employer is responsible for the colleague's actions and should bear the lion's share, if not all, the liability. The award is uncapped and the employee does not need any particular length of service to make a claim.

Civil Action

A direct action under common law is likely to be based on negligence. The injured party would have to show that the employer owed him a duty of care, that the employer was in breach of that duty and that the breach caused the injury. The duty of care imposed upon the employer depends upon the circumstances: the employer has to take reasonable care to prevent foreseeable injury or loss. Large office parties should be supervised and adequate security measures adopted.

This duty of care does not only extend to employees of the company. The duty of negligence is a general duty which will apply, for

instance, to spouses of employees attending a company function or to customers.

Criminal

The worst possible situation is where there is an avoidable death at an office function. Convictions for corporate manslaughter will always be rare, since the Crown must satisfy the criminal standard of proof, rather than the lesser, civil standard. Also, the Crown must establish the necessary degree of criminality against at least one of the controlling minds of the company before a conviction can result.

Prevention

Functions which take place in paid working hours will almost certainly be part of the employment. Those which take place on the employer's premises, although after paid working hours, are also likely to form part of employment. Some courts have drawn a distinction between hourly paid staff and salaried staff in relation to the employer's liability for negligent acts committed outside working hours. Hourly paid staff who attend an office function in unpaid time will not necessarily be acting in the course of their employment, whereas salaried counterparts at the same function will almost certainly be.

Obviously, the most effective way for an employer to avoid liability is to prevent the accident in the first place. It may be sensible to circulate a memo to staff before a party, setting out the standards of conduct expected of employees, and warning of the consequences of transgression. An employer could fairly dismiss an employee who committed a serious act of violence or sexual harassment at an office function. This would be the case even where the function is held away from the employer's premises, for example, at a local restaurant.

Employers would be advised to be particularly vigilant if an employee is known to have a tendency to be violent after drinking, or be prone to harass colleagues sexually. Should an incident occur, the employer would have a greater chance of showing that they had a statutory defence, in that they did all they could to minimise the risk.

Senior officers of the company should not assume that the actions of the employees at office parties organised and paid for by the company are the employees' business. Individuals holding

influential positions should check that the event is properly supervised or that the shop floor is locked while the office revelry goes on in another part of the premises.

So, have a fun filled works party!

On Call Work

It would seem, according to a recent case, that an employee's time spent on call count for the purposes of the Working Time Regulations 1998, ("WTR") and the National Minimum Wage, ("NMW.")

The lady was a care worker in a residential home. She worked 8 hours per week but was required to be on call 11 hours per night, 7 nights per week. She was provided with a flat, on the site, at a reduced rent. The EAT decided that she could treat the hours she worked 'on call' as working time, even though she was only called out about twice a month. This meant that she had a working week of 85 hours, (the 11 hours per night plus the 8 she worked.) That was a breach of the WTR which set a maximum of 48 on the average weekly working hours. It was held that the NMW was payable for all those 'on call' hours, except those when she was actually asleep.

As ever, we wish a very Merry Christmas to all of our readers, and a peaceful and prosperous New Year.

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