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## Orla Bingham & Chris Weaver: Is office party misbehaviour the employers liability?

ORLA BINGHAM FRIDAY, DECEMBER 22, 2017

**The Christmas party season is both relished and dreaded by employees and employers alike. Whilst it is the time of year to ‘let your hair down’ and celebrate success and hard work with colleagues, Christmas parties have also become synonymous with misbehaviour, and often, employers simply do not know how to manage and avoid it.**

Employers can be “vicariously liable” for the actions of their employees even when those acts were done without the employer’s knowledge or approval. This can include liability for discrimination or harassment or for personal injury caused by fighting. The test is whether the employee’s actions can be said to have taken place “during the course of their employment”. It is well established that the office Christmas party (or any official social event organised through work) is an extension of the workplace, regardless of whether it takes place outside working hours or outside of the office building. It therefore follows that responsible employers should assume that they may be vicariously liable for employees’ misbehaviour at the Christmas party and should take steps to avoid such issues arising.

Sexual harassment at work has been much talked of in the media recently, and unfortunately is a common cause for concern at the Christmas party in particular. Excessive alcohol consumption may encourage an employee to make unwanted sexual advances or offensive sexual comments to another colleague. Similarly, an employee may blur the line between banter and offensive behaviour by making derogatory remarks, for example, which could well be construed as harassment.

An incident of harassment, whether at the Christmas party or in working hours, could result in a Tribunal claim against the employer as well as against the offending employee individually, and therefore should be treated seriously. Any complaints or grievances should be fully investigated and action should be taken to resolve the issue where appropriate. This is often likely to involve disciplinary action against the offending employee, which could result in a warning or dismissal, depending on the circumstances and severity of the behaviour in question.

Whilst a manager may intervene to avert any inappropriate behaviour which comes to light at the party, official disciplinary action in relation to the incident should never take place during the event or in the heat of the moment. The incident should be fully investigated and dealt with afterwards during work hours. There are also a number of practical steps employers can take to avoid things getting out of hand during the Christmas party in the first place.

Free bars or free flowing alcohol are common features of the Christmas party, but inevitably contribute to misbehaviour. A time or financial limit on free alcohol is the least oppressive way to manage this, and will hopefully encourage people to drink less or go home earlier, and may prevent unpleasant incidents.

Furthermore, case law suggests that dismissing an employee for bad behaviour as a result of copious alcohol provided by the employer is unlikely to be considered a reasonable action.

Furthermore, some employees are simply not aware that the Christmas party is considered 'work time'. A friendly but firm reminder of this and expected standards of behaviour in advance of the Christmas party is a good idea. This should make clear that the employer wants its staff to relax and enjoy the party, but with a reminder that any offensive behaviour will not be tolerated.

Furthermore, employers may avoid liability for discriminatory behaviour carried out by employees if they can show they took all reasonable steps to prevent the discriminatory behaviour occurring. The best way to do this is to have in place up to date anti-harassment and bullying policies, to ensure all employees receive regular training in relation to this, and to deal with any incidents in a fair and consistent manner under the policies. It is a good idea to ask employees to sign attendance lists for such training, or to sign the policies to confirm their understanding of them.

The Christmas party is undoubtedly a legal minefield for employers, and whilst no one wants to dampen the Christmas spirit, it is a good idea to be alert to issues which can and do arise, take preventative steps, and handle misbehaviour appropriately.

### **About [Orla Bingham](#)**

Orla is a solicitor at Payne Hicks Beach. Orla has experience in advising both employees and employers on a broad range of employment issues, including employment disputes relating to redundancy, unfair dismissal, wrongful dismissal, discrimination, restrictive covenants and pay. She also provides advice and assistance in Employment Tribunal proceedings.

### **About [Chris Weaver](#)**

Chris specialises in all aspects of contentious and non-contentious employment law and his practice involves advising both employers and employees.