



Employer's Duty of Care at the Work Christmas Party!

End of year work functions can provide employers and employees with the opportunity to reflect on the year that was and are a great way for employers to acknowledge and reward staff for their efforts and enthusiasm.

However, the "Work Christmas Party" can often be the cause of headaches for employers as employees can be prone to engaging in inappropriate conduct which may necessitate taking disciplinary action and/or give rise to an assortment of legal claims.

Employers need to remember however that these functions are work events (even if held away from the workplace) meaning they owe a duty of care to their employees during these events.

What Does the Duty of Care Require?

This duty requires employers to take all reasonable steps to ensure the health and safety of employees during these functions which may include:

- familiarising themselves with the current COVID-19 regulations for functions including the maximum number of attendees permitted at gatherings in outdoor public spaces and group bookings at restaurants and the "non-mingling" rule.
- limiting employees' consumption of alcohol if it's available, including by limiting alcohol options to beer and wine and/or implementing a 'last drinks' cut-off time;
- ensuring that sufficient food is available to mitigate the effects of the alcohol;
- monitoring employee behaviour for any inappropriate conduct (e.g. sexual harassment, discrimination, bullying or violence) and immediately intervening if any such behaviour occurs or has the potential to occur;
- monitoring employee activities to ensure illicit drugs are not consumed during the event;
- being aware of any potential safety risks associated with the venue or activities;
- ensuring that any intoxicated employees do not drive home following the function and that such employees have access to public transport or other appropriate means of getting home;
- adopting a protocol that requires a senior manager remains present and sober at all times during the function in order to monitor the function and deal with any issues if they arise.

Prevention is the Best Remedy

To minimise the potential for issues or incidents to arise, employers should be proactive in the lead-up to the function including by:



- reminding employees that the function is work-related and that employees are expected to uphold the same standards of behaviour that apply during ordinary working hours;
- ensuring Codes of Conduct and other policies are in place relating to acceptable conduct at work and work-related functions, and referring employees to these policies in advance of the function;
- reminding employees of their obligations regarding the responsible consumption of alcohol and to not drive home whilst over the legal driving limit (or such lower limit as may be contained in any applicable company policy such as a drugs & alcohol policy);
- making clear to employees that although the function is intended to be fun and enjoyable, any employees found engaging in inappropriate or dangerous behaviour during the function may be subject to disciplinary action up to and including dismissal.

Failing to take these steps may undermine any serious disciplinary action taken by the employer and may give rise to further liability (such as an unfair dismissal claim or work health and safety complaint/investigation).

What to do if an Incident Occurs?

If an incident does arise during an end-of-year work function, employers should:

- conduct a thorough investigation into the incident including by interviewing all relevant parties and witnesses;
- ensure all employees involved in the incident are afforded fair and equal treatment;
- maintain procedural fairness throughout the investigation and any disciplinary proceeding;
- seek legal advice if dismissal is being considered

Work Christmas parties can be fun events but given the scope and potential seriousness of claims arising from inappropriate conduct it's essential that employers take pro-active steps to endeavour to prevent the inappropriate conduct before it arises.

If you want more information about your obligations as an employer when holding work functions or need advice about an incident that occurs at a work event, please contact [Ken Gray](mailto:Ken.Gray@batemanbattersby.com.au) on 02 4731 5899 or email litigation@batemanbattersby.com.au.