



HR Briefing

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AN EMPLOYERS LIABILITY FOR THE BEHAVIOUR OF ITS EMPLOYEES BOTH WITHIN AND OUTSIDE OF THE WORKPLACE

In response to the current economic downturn, many employers are looking to cut costs, sometimes by reducing the amount spent on staff entertainment and/or cancelling the Christmas party this year. In this bulletin, we look at the true potential cost of those “work events”, which goes far beyond the initial outlay for food and drinks. It also draws attention to the fact that even though an employer may not have had any involvement in the organisation of an event, it may remain responsible for the behaviour of its employees.

Current law provides that an employer can be both directly and indirectly (vicariously) liable for damage to other employees or third parties, caused by the negligent acts of its employees carried out “in the course of their employment”. In particular, although many recreational events, such as drinks at the pub after work, may be outside the course of employment there is a danger that a court could decide that the event is closely connected with employment and hold the employer liable for the consequences of an employee’s actions.

Thus, employers can be held vicariously liable for discriminatory acts by their employees. This does not merely include lewd comments and unwanted sexual advances - the law also protects against unwanted conduct on the grounds of race, disability, sexual orientation, religion or belief, and age. The leading case is *Chief Constable of the Lincolnshire Police v Stubbs & Others [1999] IRLR 81* in which a police officer was found to be acting “within the course of employment” when he subjected a colleague to inappropriate sexual behaviour, even though the incidents occurred at social gatherings either immediately after work or at an organised leaving party. They were not chance meetings. Other cases when employers have been held to be vicariously liable include:

- When guests at a Bernard Manning function made racist comments to waitresses of Afro-Caribbean origin;
- An employer was held partly to blame for staff drunkenness and accordingly, the Tribunal held that the relevant employees had been unfairly dismissed, although their damages were reduced to reflect their contributory behaviour.
- An employee pulled a colleague’s dress down and made disparaging comments at a Christmas party. A claim of sexual harassment was upheld and the claimant was awarded £10,000 for injury to feelings.

It is important that employers are aware that they are obliged to protect employees from being sexually harassed by third parties, including clients,

Key Recommendations

- Employers may be vicariously liable in respect of incidents which occur at informal employee get-togethers
- Employers liability extends to third parties in some circumstances
- Employers can be held liable for the discriminatory acts of employees
- Employers should act now and take steps to reduce their liability

suppliers, and subcontractors and an employer should take action if an employee complains of harassment, even if this could be perceived as being “bad for business”.

With a view to protecting itself and its workforce, an employer may wish to consider taking the following steps:

1. Implement a policy on work-related social events

This should provide clear written guidance to the workforce about the acceptable standards of behaviour at an event, and the disciplinary sanctions that could result from breaches of the rules. Such guidance may also include issuing advice on not “drinking and driving”, and encourage staff to put plans in place beforehand for getting home.

2. Ensure harassment and bullying policies are up to date and that you have a clearly documented grievance procedure in place

This will help to reduce the risks of harassment occurring and provide the basis for a “reasonable steps” defence in the event a claim is brought. It is equally important that the policy is brought to the attention of the workforce and that they have been provided with adequate training in respect of their equal opportunities, rights and responsibilities. They should be left in no doubt as to what comments and behaviour are acceptable and what are not.

Employees should also be made aware of the methods of raising a grievance either informally or formally. If a complaint is made it should be dealt with promptly, and if applicable, in accordance with the statutory dispute resolution procedures. Employers should stamp out “horseplay” as quickly as possible, by reprimand, formal warning, (according to the procedures laid down in the employee’s contract of employment) and, in extreme cases, by dismissal.

3. Put in place procedures to manage absenteeism

Another possible course of action for the employer would be for it to make it clear to staff in advance that disciplinary action will be taken against any employee who fails to turn up, or turns up late, the day after a social event and there is reason to believe that the non-attendance/lateness is due to over-consumption of alcohol. Such action should be applied consistently to all offending employees.

Although these actions would not necessarily avoid the employer being vicariously liable for an incident that does occur, they would be evidence that the employer had taken reasonable care.

Ultimately it is the employers’ decision as to whether the Christmas party is cancelled but they should bear in mind the potential risks associated with employee organised events, which are not risk or cost free. In the circumstances, employers may feel that it is easier to “police” a more formally organised event. Furthermore, holding a Christmas party is often seen as an effective way of recognising the contribution of staff over the year, promoting employee engagement and improving performance.

If you have any queries on any of the above please contact **Alison Loveday** at alisonl@berg.co.uk to discuss further issues. Alternatively you contact **Alison** on **0161 833 9211**. If you do not wish to receive further mailings please email alisonl@berg.co.uk with the words “unsubscribe” in the heading.

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- It is important that employers implement policies in respect of employee organised social events

- Employees should be made aware of their rights to raise a grievance

- Where applicable, statutory dispute resolution procedures should be adhered to

- Employers may wish to review their absence management procedures



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