



**Effective Workplace Solutions**

## **CLIENT ALERT**

### **SOME TIPS FOR AVOIDING THE NIGHTMARE BEFORE CHRISTMAS**

**DECEMBER 2015**

**To All of My Valued Clients,**

The 'silly season' around Christmas and New Year is often well named.... which brings me to be writing this client alert. In the pages that follow I try to assist employers navigate the joys of staff Christmas parties.

As the Christmas season takes hold, it is also a time to think of those less fortunate. Our chosen charity for this time of the year is the 'Adopt-a-Family' appeal. We enjoy preparing a hamper for families in need, in the hope they might enjoy a brighter Christmas.

I would also like to take the opportunity to wish all of my clients a happy and safe festive season. I look forward to working with you all in the New Year.

**Greg Arnold**  
**Principal Consultant**

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# STAFF CHRISTMAS PARTIES – AVOIDING THE NIGHTMARE BEFORE CHRISTMAS

Imagine you are attending your work's Christmas function where one of the staff is drinking heavily, including serving himself a succession of beers from the esky in the corner. He then manages to get himself into unfortunate situations by being rather verbose (as drunks at staff functions often do), telling a director of the Company to "f##k off" and then later remarking to others around him that *"All those Board members and managers are f##ked, they can all get f##ked."*

Later in the evening that staff member says to a junior female employee *"No seriously. Who the f##k are you? What do you even do here?"* Later in the evening he kisses another female colleague on the lips without her consent and said *"I'm going to go home and dream about you tonight"*; and telling yet another female colleague that *"My mission tonight is to find out what colour your knickers are"*.

After such a display of inappropriate conduct Employers would assume that they would be entitled to dismiss an employee behaving in this manner for misconduct. However, a 2015 decision of the Fair Work Commission (*Keenan v Leighton Boral Amey Joint Venture*) has decided otherwise; holding the employer liable for providing free and unsupervised alcohol to its employees. The Commission also did not view the employee's misconduct outside of the event's official hours and premises as being valid grounds for dismissal. This whole episode, including the unfair dismissal proceedings has left an unsavoury taste in the employers mouth, and quite rightly so. To a certain degree the FWC's decision seems contradictory to previous decisions, particularly in respect to out of hours conduct and the relationship to the workplace.

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Vice President Hatcher held that Mr Keenan had, in fact, been unfairly dismissed for various reasons, including that Leighton did not appear to have taken any steps to ensure the responsible service of alcohol during the Christmas function, other than entering into a venue hire agreement with the hotel where the hotel agreed to take this responsibility upon itself and that no one cautioned the employee over the amount of alcohol he was consuming and did not prevent him from serving himself a substantial number of beers.

With this in mind, here are some tips to try and avoid the "nightmare before Christmas":

- ensure responsible service and consumption of alcohol together with the supply of appropriate quantities of food and non-alcoholic beverages;

- where possible, monitor all staff regarding their drinking, and managers should exercise leadership in that respect
- having a code of conduct and drug and alcohol policy in place prior to Christmas functions and reminding employees of those policies before the function;
- training and advising employees and managers in relation to the expectation and standard of conduct required at work functions;
- making appropriate transport arrangements if alcoholic beverages are served;
- having appropriate monitoring and supervision at the party;
- having a complaints process;
- take appropriate and timely action if issues arise.

These steps are designed to ensure compliance with WHS obligations, and mitigate against workers compensation claims, breaches of WHS obligations, and other harassment claims.

### **Clear policies**

It is also important to have clear policies and procedures governing the conduct, behaviour and expectations of employees at Christmas functions (and indeed all staff social functions), to enable the employer to take disciplinary action against non-complying employees in appropriate cases.

### **Prepare**

It is important for employers to prepare for Christmas functions because it is easier to take appropriate steps before the function to avoid Christmas party fiascos than having to deal with any aftermath.

***Note:** These steps and policies and procedures can be applied to all staff and corporate functions, not just Christmas parties, and it is highly recommended that a broad policy relating conduct at staff and corporate functions that applies equally to management and staff be included in your Staff Manual.*

**For further information about this issue, introducing appropriate policies or Staff Manual, or you need advice on the fall-out from a staff party, please do not hesitate to contact Effective Workplace Solutions on (02) 6676 3445 or email us.**

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