

Workplace Social Functions



A Newsletter from Sally Jetson & Associates – For Distribution

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Work Social Functions

Work related social events can be particularly enjoyable and are a way of developing better working relationships. Don't allow this possibility to be spoiled. By being aware of, and being prepared for the potential unintended consequences, many of the risks associated with the festive season can be reduced or removed.



Legal Aspects

End of year celebrations and other social functions which originate in the workplace, or are sponsored by the employer are sufficiently work related to come within the scope of a range of legislation including:

- ◆ **Occupational Safety & Health Legislation.**
- ◆ **Anti-discrimination legislation, including provisions dealing with sexual and racial harassment.**
- ◆ **Criminal code, including assault either of a physical or verbal nature.**
- ◆ **For government organisations, Code of Conduct may apply.**

Other examples include:

- attendance at conferences and training courses
- attendance at functions sponsored by clients, customers or contractors
- business travel and accommodation.

It may also include use of a work-related facility such as a phone, computer, fax, voicemail or SMS messaging that is used to offend or harass someone.



Anti-Discrimination Considerations

Under anti-discrimination law, the employer has a responsibility to take reasonable steps to provide a workplace free from harassment and discrimination.

This obligation can extend to the social environment of work, so minimising risk and keeping employees safe becomes an important consideration in planning work social events.

Functions and Overnight Stays

Where functions require overnight stays, ensure the accommodation arrangements are suitable for all those attending.

Case Study – Sexual Harassment & Victimisation

A seventeen year old male employee was subject to sexual innuendo and jokes by a more senior employee when he rejected an offer to 'bunk-in' with him when there weren't enough beds to go around.

The offended employee suffered from rumour and innuendo back at work and was dismissed by the senior manager shortly after he made a complaint.

The senior manager was a personal friend of the offending employee and dismissed the victim for what he claimed was 'poor performance'.

The employee indicated via an advocate he intended to take legal action against his former employer. An independent investigation established sexual harassment and victimisation. The complaint was settled out of court.



Have a Safe and Pleasant Time at Work Social Events

Employers and employees can take a few simple steps to ensure that celebrations are safe and enjoyable for everybody. These include:

1. Consider diversity and cross-cultural needs of your employees when planning events. Ensure that no groups are excluded or isolated from events.
2. Ensure that the organisation's policies sufficiently address expectations of behaviour, the legal and work-practice responsibilities of work social events.
3. Publicise a user-friendly materials for staff prior to the festive season.
4. Remind employees about the risks of excessive alcohol intake.
5. Set reasonable limits on consumption by sticking to start and finish times, and limiting the amount of alcohol available.
6. Provide plenty of soft drinks and iced water.
7. Serve food throughout the event. Consider food types that will reduce the amount of alcohol absorbed into the blood stream.
8. Ensure that employees have pre-arranged safe transport to get home. The employer or the social club may provide fares for taxis or a skippered mini-bus.
9. Provide responsible supervision to monitor excessive drinking. If the behaviour of intoxicated employees becomes unacceptable, ask them to stop drinking. It may be necessary for them to be asked to leave the premises. If so, ensure they get away safely.
10. Consider the employer's responsibilities for employees under the legal drinking age.
11. Be alert to harassment and other forms of abuse. Harassment and conflict can occur during or after end of year parties can be costly for employers.
12. Establish guidelines for the type of gifts to be exchanged, particularly if employees exchange mystery gifts at the end of year party.

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A reminder to prevent sexual harassment



An employee who was sexually harassed by a director of a company soon after a company Christmas party was awarded \$21,840 in damages. HREOC found both the director (as employee of the company) and the company liable for damages.

The employee was on a CES probationary appointment with the employer at the time of the harassment. It was her first "real job" and she occupied a junior role. The incident occurred soon after the Christmas party at the company premises, when she was alone with the director who was also her boss.

The director sexually propositioned the employee, but she rejected his propositions. The director then touched the employee on the breasts and other parts of her body. The employee told him to stop. The director said that it was all a mistake but said that he would have to give an unfavourable work report or dismiss her.

HREOC found the allegations particularly serious and the complaint was substantiated. The Commission also found that the employee had reasonable grounds for believing that a refusal, rejection or taking objection to her employer's conduct would disadvantage her in connection with her employment.

Dobrovosak v AR Jamieson Investments Pty Ltd & Anor 92-794.

Sally Jetson & Associates has provided training and consultation in WA for 16 years in areas including: EEO/Diversity, fair treatment; workplace behaviour; mediation, conciliation, conflict resolution and grievance management.

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Electronic Mail and Objectionable Images

This is a reminder about responsible use of electronic mail. Every year concerns arise about offensive Christmas e-cards or unwelcome contact over email.

Electronic mail is provided to assist in achieving work outcomes, and messages can be traced if necessary (even if they have been deleted).

The content of electronic communications is not the personal property of employees and can be monitored and accessed by the employer.

Objectionable Images

Consider what might happen if you send an explicit E-card or video clip that contains objectionable images.



In addition to breaching company email or harassment policies, the presence, display or circulation of objectionable material in the workplace may be a matter for consideration under **Section 101 of the Censorship Act (WA) 1996**.

The Act prohibits obtaining, possessing, transmitting, demonstrating, advertising or requesting transmission of objectionable material. Exceptions include bona fide literary, scientific and medical articles.

The types of materials prohibited include, but are not limited to depictions of:

- adult pornography
- child pornography
- bestiality
- other types of materials that a reasonable person would find objectionable.

Employees who engage in this conduct may be charged.

Penalties under the Censorship Act include up to \$15,000 fine or imprisonment for 18 months.

It Was Just A Joke!

Sometimes employees think that because there is a social atmosphere and party mood that the rules don't apply.

In some instances, what appears to be 'social' activity between employees (after hours or outside work) may be sufficiently work related to be covered by company policy.

Dismissal for Party Prank

A man flashed his penis at the company Christmas party 'as a joke', and a female colleague 'egged' him on. Both were dismissed from their jobs.

They failed to have their dismissals overturned by the IRC because both had been trained in the company's EEO policy.

In this case, the employees were involved in behaviour that breached the company policy on sexual harassment.

Their defence that 'it was a party environment and no one appeared to be offended' was rejected by the Industrial Relations Commission.

Both employees had been made aware that such behaviour was against company policy.

(Boyne Smelters Ltd, Qld R7701/R7793 1999)



Employers are responsible to take reasonable steps to ensure the workplace is free from harassment.

In addition there is an obligation to exercise a duty of care so the workplace is safe and free from the risk of physical and mental injury

Employees have a responsibility to take reasonable precautions for their own safety and the safety of others.

In doing so employees are obliged to avoid harmful behaviour including bullying, discrimination and harassment.

Everyone's efforts can make the social environment of work safe and enjoyable for all.