

Look beyond preventative steps for party problems

Will your organisation's rumour mill be in overdrive after the end-of-year celebration? Will there be photos on Facebook? HR's actions after a party are vital to minimising legal risks, says employment lawyer Lisa Berton.

There are often more legal implications in the aftermath of a party than on the night itself, she says.

"Employers are paying a lot of attention to staff behaviour on the night of the Christmas party, but it's almost impossible to prevent every incident when people let their hair down. When it comes to staff, alcohol and the festive season, some incidents aren't even conceivable until they happen."

Berton, a partner at Kemp Strang, says that while preventative measures are "definitely important", organisations should also be thinking about what will happen in the days after the party.

Controlling the effects of a rumour mill is one of the big challenges HR professionals face, she notes.

"Maintaining confidentiality for an employee who feels it necessary to make a claim, and for all involved in accusations or disputes, is critical. Employers can get themselves into even more trouble if they fail to deal with employee issues that arise after the party's over.

"All employees should feel safe and able to speak to a manager without worrying about office gossip around the incident in question."

'Morning after' scenarios

Three of the most common scenarios employers are likely to face after a party include the following, Berton says.

Scenario one: *A junior colleague posts a photo on Facebook with a manager and his female junior staff member dancing very closely at the office party. The next day, the HR manager overhears a conversation between two other colleagues who've seen the picture online.*

According to Berton: "Employers can't interfere in the private lives of employees unless it impacts on the work environment, so simply posting a picture or status update about a work colleague is not, in itself, sufficient to discipline an employee.

"However, when that photo or status update comes to the attention of the employer, and could impact on the reputation of the organisation or those who the post is about, the employer is entitled to speak to the employee and ask for the post to be removed.

"In this case, where the photo denigrates a boss or co-worker, the photo should be taken down. Situations like this reinforce the importance of a social media policy that outlines acceptable online conduct for employees and allows disciplinary action for breach of that policy.

"Recent court cases have dealt with threatening or other derogatory posts which have been sufficient to justify the dismissal of employees and, if left unaddressed by the employer, can open them up to their own breaches of occupational and workplace health and safety laws - especially if a co-worker feels bullied or harassed by the post, not to mention claims by the employee for compensation."

Scenario two: *A heated argument gets out of hand during the party, ending in a brawl that requires other staff members to break it up.*

"Employees in this situation face possible criminal charges given their physical violence," Berton says.

"Threats or actual violence should not be tolerated by employers, and this should be addressed in employment policies. Employment contracts should provide for summary dismissal where employees are charged or convicted of a criminal offence that brings the employer into disrepute or otherwise

prevents an employee from working for the employer.

"Even where neither participant in the brawl wants to press charges, the fact it occurred and other staff intervened has a great impact on trust and staff morale. Although using your judgement in the individual circumstances is important, due to the serious nature of physical violence and the associated breach of occupational and workplace health and safety laws the matter should be investigated with summary dismissal a high possibility."

Scenario three: *The morning after the Christmas party, an employee complains to the HR manager about a senior manager acting inappropriately during the party. She says they'd both had a few drinks, but on the dance floor he started putting his hands all over her. She pushed him away and went to the bathroom. Later in the night, she saw him with a group of colleagues from his department looking and sniggering at her.*

"Scenarios like this one are, unfortunately, very common during or after end-of-year work functions, and there are numerous legal implications for all involved," Berton says.

"From the employer's perspective, the process for how this situation is dealt with is paramount. A sexual harassment claim would be the first foreseeable risk, but if the behaviour of the senior manager in question continues at work the next day and following, discrimination and adverse action claims may be made, particularly if the employee is subjected to further detriment for making a complaint. This can sometimes occur when a senior manager is in the firing line.

"The preventative measures for this kind of scenario also come down to having the correct, and up-to-date, policies in place. These will provide a beacon of light for employers and employees - the yardstick for identifying wrong behaviour and the process to rectify situations like this.

"Training employees in anti-discrimination and harassment laws, about what is and isn't appropriate conduct, prior to an end-of-year or other major function is also good practice."