

## Christmas Legal Update

### Christmas time...mistletoe and wine...and an unwelcome greeting from the Employment Tribunal

The Christmas period should be a time for fun and celebration, but the festivities can have costly consequences for employers. Office parties, late lunches and shutdowns can be breeding grounds for grievances, employment claims and hangovers for the HR professional! We give our top tips on how to deal with some potential Christmas pitfalls.



#### The office party

It is easy to imagine staff getting carried away in the midst of excessive alcohol consumption, resulting in inappropriate banter and behaviour that could give rise to discrimination claims such as harassment. Employers can be held liable for the discriminatory acts of their employees at work

functions even if they are held off company premises and outside of office hours.

Employers should take reasonable steps to prevent unacceptable behaviour. This could include issuing clear guidelines to staff outlining expectations of behaviour before the event. Perhaps these could be incorporated into an equal opportunities or harassment policy. The provision of equal opportunities training could also help to provide an employer with a defence to a discrimination claim.

#### The morning after the night before...

It is far from unknown for employees to take a day's sick leave to recover from a hangover. Employers should make it clear that all employees are expected at work the next day, and that disciplinary action could be taken if they fail to turn up for work and there is reason to believe that it is due to excessive alcohol consumption the night before. Be careful to distinguish between the after effects of over-indulgence and genuine illness though! Minimise the risk of absenteeism by holding parties on a Friday, having a late start the day after or closing the bar!



#### Long lunches

Some employers turn a blind eye to long (and possibly boozy) lunches during the festive season, but it may still be appropriate to take disciplinary action if advantages are taken by staff. However, employers need to ensure that staff are treated consistently, and some inappropriate behaviour should not be used as an excuse for dismissal when such behaviour would usually be overlooked. If it is alleged that an employee was drunk at a business function, employers should be careful to fully investigate the matter.



### The holiday shutdown

Some firms have a period over Christmas during which the whole business closes and for employees to be required to use some of their annual leave entitlement to cover this period. If this is the case, it should be made clear in employment contracts or in the staff handbook what days the business will be closed, that employees' holiday entitlement is inclusive of and not in addition to this period, and that employees are required to save holiday to cover those days.

Happy Christmas to you and your staff, we hope that our concerns will not amount to anything – especially if you communicate well with staff and manage them effectively.

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### “You can't throw sweets at pantos” – HSE Myth of the Month

It may well only be a myth that sweet throwing at pantos is a breach of health and safety law but the reality is that health and safety does need to be considered in the workplace over the festive period. Concentration levels will inevitably fall as employees' minds turn to parties and presents. You might wish to consider some of the following issues:



- Do you have measures in place to ensure that those wild Christmas parties will not detrimentally affect employees' health and safety at work?
- Have you thought about how employees will get home from the office Christmas party?
- What about if you employ drivers or if employees are driving on company business; do you have a clear policy as regards drinking and driving (including the morning after)? What about employee tiredness behind the wheel?
- Do your employees operate machinery? Are you ensuring that your risk assessments are updated and if necessary employees are being properly supervised so that if there is a problem it is picked up sooner rather than later?
- Have you taken account of winter weather conditions? Are you minimising the risk of slips and falls at your premises due to ice, snow or even (more likely!) heavy rain?
- What about company vehicles? Have they been maintained sufficiently to account for the harsher weather conditions?

During the Christmas period you should also think about:

- Reviewing and updating risk assessments already in place
- Ensuring that you have risk assessments to cover the elements outlined above and any other seasonal issues that apply to your particular business
- Update training on issues such as your driver policy, operating of machinery and general health and safety awareness
- Increase supervision of employees
- Walk around checks by Senior Management/Directors
- Updating your accident management procedure

Health and safety does not mean that the Christmas period can't be enjoyable for all concerned; it's about making sure that employees go home at the end of their working day to enjoy Christmas with their loved ones (and throw sweets at pantos!). The steps to be considered are generally speaking common sense but the cost of failing to ensure the health and safety of employees could be disastrous for a business.

That said, all in the Corporate Criminal Defence Team wish you a very Happy Christmas!

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### **With Christmas fast approaching and your staff taking annual leave, will you be employing workers to cover the festive period?**

As an employer you have an obligation to check that all staff, whether permanent or Christmas temps, have permission to work for you.

#### **All I want for Christmas is more staff**

If you are taking on new staff then the following summary of who can work without permission in the UK may be useful.



- British citizens and citizens of the Channel Islands, the Isle of Man and Ireland.
- Commonwealth citizens with the right of abode in the UK.
- EEA nationals, however, A8 and A2 nationals may need to register with the UK Border Agency (see below).
- Individuals who are not EEA or Swiss nationals but are family members of nationals from EEA countries and Switzerland lawfully residing in the UK (however, they may require a residence card, registration certificate or family member residence stamp).
- Dependants of migrants who have entered the UK under one of the tiers of the Points Based System ("PBS").

#### **'A8 nationals'**

These are nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. A8 nationals are required to register under the Workers Registration Scheme within one month of commencing employment unless exempt. (For a full list of exemptions, please visit the UK Border Agency's website: [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk).)

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#### **'A2 nationals'**

These are nationals of Bulgaria and Romania. They are only able to work in the UK if they either a) hold valid Accession Worker Authorisation, such as an Accession Worker Card or Registration Certificate and/or work permit or b) are exempt from registering. (For a full list of exemptions, please visit the UK Border Agency's website).

#### **Non EEA nationals**

If you want to employ workers from outside the EEA, they will probably need to apply under the PBS. Such workers will only be eligible to work for you if you are a 'registered sponsor' or if they are highly skilled workers holding a valid visa.

#### **I'm dreaming of a white Christmas ... without the risk of being fined**

There are two lists of prescribed documents known as List A and List B documents which must be checked. These lists can be found on the UK Border Agency's website.

Irrespective of the worker's nationality, as an employer you must check the prescribed documentation in List A and/or List B before all prospective employees commence employment. There are three steps to follow:

1. Check either one of the original documents included in List A or two of the original documents specified in the combinations in List B. If the worker produces a List B document, carry out repeat checks at least once every 12 months if you continue to employ them after the holiday period.
2. Take reasonable steps to check that the document is valid. If you are uncertain, contact the UK Border Agency's helpline on 0300 123 4699.
3. Copy the relevant page or pages of the document in a form that cannot be altered (e.g. photocopy or scan) and retain them for two years after the worker leaves your employment.

#### **The UK Border Force is coming to town**

Failure to identify your worker's right to work in the UK may result in you being subject to a fine, imprisonment, or if you are a sponsor, your licence being withdrawn or downgraded.

You may be familiar with the recent highly publicised case involving Baroness Scotland; even public figures get it wrong and the Baroness was fined £5000 for not carrying out the above checks. That would certainly put a dampener on the Christmas spirit, so don't get caught otherwise it might not just be Santa Claus coming to town!

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*The content of this article is for general information only. As always, specific professional advice should be taken on each individual matter.*

