



## Office Christmas parties – Employer traps

Christmas brings with it a flurry of social activity. People regard Christmas as a good time to gather together and celebrate the year just gone. The office or work party is very much a tradition of Christmas. So too is the tradition of drinking too much alcohol and behaving badly.

What are some employer traps during the festive season?

The law concerning Workers Compensation recognises that the office Christmas party is a continuation of a worker's course of employment. This follows a 1992 decision of the High Court of Australia that held that a worker will be in the course of their employment even if they are on an interlude or an interval from performing actual work duties if the employer expressly or impliedly induces or encourages that employee to spend that interval or interlude at a particular place or in a particular way.

The facts of the High Court decision in question were that a worker was in a remote location in Western Australia working on a mining project. During a day away from working activities his employer organised for him and other work mates to travel to the Wittenoom Gorge for a sight-seeing trip. The employer organised the trip and paid for transport and meals. The worker was injured and was ultimately found to be found entitled to compensation even though he was not in fact performing any work activities at the time he was injured.

This principle has since consistently been applied, sometimes reluctantly by Courts, and has led inevitably to an acceptance that the office Christmas party is an event that is in the course of a worker's employment – usually.

Attendance at the social function by workers must be induced or encouraged by the employer. A decision of the now abolished Compensation Court of NSW provides an illustration of where a social function, and by extension a Christmas party, will not be in the course of employment. In that case the employer had paid for the function and had permitted the fact of the function to be advertised on its office notice board. A worker was injured during the function and claimed compensation. The Judge ruled that the mere payment for the function and advertisement of it was not properly seen as inducing or encouraging workers to attend.

If however workers are encouraged or induced to attend the office Christmas party then real care needs to be taken with the service of alcohol. The cases seem to suggest that if alcohol is served and excessive alcohol is either implicitly or expressly encouraged by the employer then it is pretty much anything goes. A decision that illustrates this point is one where a worker was injured while crash tackling his co-workers, or on another version, being crash tackled by another co-worker at the work Christmas party.

The evidence disclosed that the injured worker was behaving obnoxiously, that he was irritable, and that he was very drunk. The evidence disclosed that he had been in a dispute with his employer and that his employer had called him a “whinging cat”. The Workers Compensation Commission however held that the worker was injured in the course of his employment despite the fact that he was involved in very vigorous activity that on a common-sense view was not related to his employment. This was because his employer had fuelled the bad behaviour by providing an unlimited supply of free alcohol. The Workers

Compensation Commission held that the employer impliedly encouraged the excessive consumption of alcohol and took no effective steps to stop the worker from getting drunk when it was in a position to do so.

Stay tuned – next week I will look at employee traps during the festive season.