

VECCI WORKPLACE RELATIONS SERVICES

WORKPLACE FUNCTIONS

Introduction

Workplace functions are a great way for organisations to recognise the hard work of all staff, celebrate their achievements and give colleagues the opportunity to get to know each other in a social setting. The combination of various factors, including the glee of celebration, the relaxed party atmosphere and the consumption of alcohol, can lead to questionable behaviour and impaired judgment. Employers must therefore be aware of their legal obligations and take precautions to minimise risks arising out of incidents that occur at such functions.

Potential areas of concern for employers

In most circumstances, a workplace function that is organised and funded by the organisation (even if hosted away from the employer's premises) will be considered a work activity, and as such, most aspects of the employment relationship will remain relevant – occupational health and safety, workers compensation, discrimination and harassment, disciplinary procedures and the rights and obligations arising under the employment contract.

Areas where particular caution should be exercised in respect of these legal obligations include:

- **Occupational health and safety:** The safety of employees and possibility of worker's compensation claims for injuries sustained at the function.
- **Discrimination:** All forms of discrimination, bullying and harassment; and particularly sexual harassment.
- **Company code of conduct:** The proper behaviour of employees and maintaining the 'good will' and reputation of the business.

- **Confidentiality:** The disclosing of confidential information to other employees or guests at the function.
- **Public safety and traffic laws:** Safety of pedestrians/bystanders and of the public at large as a result of rowdy behaviour and/or drink-driving.

When is the employer liable?

In most legal contexts, an employer function/staff party will be considered as part of the 'workplace' and having connection with the employment of employees. As such, all the duties and obligations of the employer that apply in the office, shopfront or yard will continue to apply for the duration of the function or party.

In practical terms, this could mean the organisation (or even individual employees of the employer) could be held liable for occupational health and safety breaches for failing to provide a working environment that is safe and without risks to health.

Injuries or illnesses arising out of or in the course of the function may be compensable under statutory workers compensation schemes and inappropriate conduct or comments could lead to harassment or discrimination claims.

Additionally, employees must also be aware that they may be disciplined for their actions at the party, as the terms and conditions of their contract and any applicable company policies apply for the duration of the function.

The employer's liability may be limited in some circumstances where the employee has engaged in serious misconduct or for instances that occur after the completion of the organised function. However, such exceptions are assessed on a case-by-case basis. In all circumstances it is clear the employer must be able to demonstrate all reasonable and proportionate steps were taken to educate staff on appropriate standards of behaviour, to provide a safe environment, and eliminate discrimination and sexual harassment.

Steps for a successful work party

Every party or function may be different, but there are various practical measures an employer can put in place to ensure staff enjoy the evening, whilst at the same time minimising legal risks. Employers should consider the following:

- **Policy and procedure review:** Prior to the function, employers should review all relevant policies and procedures to ensure that they are up to date and contain the standards of behaviour, responsibilities and expectations of all employees.

Policies to be reviewed include: harassment or discrimination policy; fitness for work/alcohol and drug use policy; acceptable workplace behaviour policy and/or the staff code of conduct and the disciplinary procedures policy.

VECCI's experienced Workplace Relations Consultants can assist with reviewing your policies to ensure they contain all legislative requirements and are consistent with relevant case law.

- **Policy and procedure education:** Promotion, education and reinforcement of policies should occur regularly across all levels of the organisation. It is vital to ensure all employees are aware of the content of company policies, and leading into a company function is a good time to remind employees of their obligations under the company's policies.
- **Venue inspection:** If the function is to be held at premises other than the employers, we recommend the venue is inspected (as close to the time of the function as possible) for any risks, which may include loose cables, overhanging objects and slippery areas. Any hazards can then be relayed to the venue management to be rectified prior to the function being held. The emergency exits of the venue should also be noted and employees made aware of their location during the function.
- **Food and beverages:** The employer should ensure that a wide range of non-alcoholic and low-alcohol beverages are available for guests at the function, in addition to any alcohol provided. An adequate amount of food should also be served, particularly if alcohol will be readily available.
- **Function times:** The start and finish time of the function must be clearly communicated to staff in the invitations to the event and any further correspondence. If the venue has been hired out for a specific time and it subsequently opens to the general public, venue management should also be advised of the finishing time of the party. These measures will assist to mitigate risk of employer liability for 'after party' events.
- **Transport:** Employers may consider whether to provide transportation after the evening for their employees, for example by utilising mini-buses or cabcharge vouchers. Alternatively, details of local taxi providers should be provided to all staff as an additional 'risk minimisation' measure.

At the function:

- **Alcohol consumption:** The supply of alcohol must be carried out in accordance with responsible service of alcohol ('RSA') standards. Ensure that management staff are able to instruct bar or venue staff to refuse service to employees when necessary.
- **Hazards:** Any hazards which eventuate throughout the function should not be ignored. This includes occupational health and safety hazards, employee intoxication hazards, and hazards relating to potential harassment or discrimination. Managers should be instructed to be proactive and act on these issues in a timely manner.

Follow up any issues:

If any allegations or evidence of employee misconduct emerge from the function, these must be investigated thoroughly and in the same manner as any other complaint that would arise in the ordinary course of business. Such matters should also be handled in a timely and efficient manner.

Frequently Asked Questions

Q - Is the employer liable for the actions of employees at an 'after party' event?

Employers may be vicariously liable for the actions of their employees if such actions are in the 'course of' or within the 'scope' of employment. This will differ on a case by case basis, depending on the factual circumstances of each situation. As discussed above, advising staff of the clear finishing time of the organised function and avoiding sanctioning or funding any post-function activities will assist in reducing such liability.

Q - Does the employer have to provide transport after the function?

Employers have a duty of care to provide a safe workplace environment to all employees. Legislation concerning liability for injuries sustained whilst travelling to or from the workplace (or a workplace function) differs from state to state, but the possibility of providing transport to employees after the event should be considered as part of the planning phase, but is not obligatory.

VECCI Workplace Relations Consulting

The VECCI Workplace Relations Consulting team deals with the range of employment matters, and offers professional, detailed advice and assistance, charged at an extremely competitive rate. The VECCI Workplace Relations Consulting team – comprised of Industrial Relations, Occupational Health and Safety and Equality/Equal Opportunity professionals – offers a complete service for your business and works together to provide integrated solutions to your workplace problems.

Upcoming end of year work functions signal the perfect time to review and update your workplace policies. You can choose the level of advice that suits your business, and we can either do a site visit to discuss a 'compliance check' of your policies against current requirements/case law, or an extensive re-write of your Policies and Procedures containing expected standards of work and/or a Policy Handbook of relevant policies such as 'Conduct in the Workplace', 'Leave and Absences', 'Redundancy, Resignation and Termination' etc.

For further assistance in customising and implementing employment practices in your workplace, please contact VECCI's Workplace Relations Helpline on 03 8662 5222.

Disclaimer

The information contained in this document has been prepared by VECCI in this format for the convenience and benefit of its members and is provided as a source of information only. VECCI does not accept responsibility for the accuracy of the information or its relevance or applicability in particular circumstances. The information does not constitute, and should not be relied on, as legal or other professional advice about the content and does not reflect the opinion of VECCI, its employees or agents. VECCI and its employees, officers, authors or agents expressly disclaim all and any liability to any person, whether a member of VECCI or not, in respect of any action or decision to act or not act which is taken in reliance, whether partially or wholly, on the information in this communication. Without limiting the generality of this disclaimer, no responsibility or liability is accepted for any losses incurred in contract, tort, negligence, or any other cause of action, or for any consequential or other forms of loss. If you are uncertain about the application of this information in your own circumstances you should obtain specific advice.