Work events involving alcohol: the risks and how to minimise them

By Sarah Clarke

3PB Barristers

1. Most people will no doubt have a story (or several!) about occasions on which they have seen their work colleagues acting in an inappropriate or boisterous manner following one too many tipples at a work event (or indeed may themselves have woken up with a sore head and some embarrassing recollections from the night before as to their own behaviour). As the longer nights draw in and we head closer to the festive season, no doubt many companies will be thinking about planning their Christmas parties. And with the lack of social events over the last couple of years as a result of the pandemic, many people are keen to get back to face-to-face events, which no doubt will involve alcohol.

2. Employers will now be well aware of the risks which can arise when mixing work and pleasure. Even events which take place off the work premises and out of working hours can lead to tricky legal issues, as dependent on the type of event and how closely connected it is to the employment, employers may be found to be vicariously liable for the acts of their employees. Day outings to the races with clients; boozy Christmas lunches paid for by the boss; and after work drinks on a Friday at the local office watering-hole can all lead to headaches for employers which do not arise simply from a bad hangover. The most common types of issues faced are when employees may become abusive, aggressive or even violent towards their colleagues (or members of the public), or issues relating to sexual misconduct or harassment**.**

3. The question in these cases is whether or not the conduct could be said to have occurred "in the course of employment" and acts which are done without the authorisation of the employer can fall under this heading**.** As was made clear by the Court of Appeal in *Jones v Tower Boot Co Ltd [1997] IRLR 168,* tribunals are to apply a broad interpretation to the phrase 'in the course of employment', and it is to be interpreted more widely in discrimination claims than in civil claims in the county court, on the basis that there are sound policy reasons for trying to deter and prevent discrimination taking place through a widening of the net of responsibility beyond the guilty employees themselves. In that case,

an employee was subjected to extreme acts of racial discrimination, which included being called “chimp”, “monkey” and “baboon”, as well as acts of physical violence, such as burning his arm with a hot screw-driver, throwing metal bolts at his head and whipping his legs with a piece of welt. The EAT held that the correct test was to consider whether or not the wrongful acts were so connected with that which a person was employed to do that they could be considered to be a mode of doing such acts. They found that deliberate violent acts could not be considered to be an improper mode of performing authorised tasks, such that the employer could not be liable. However, the Court of Appeal disagreed, holding that a purposive construction of the relevant statute required a broad interpretation, and a construction in line with the common law definition would mean that the more heinous the act of discrimination, the less likely it would be that the employer would be liable. This however would cut across the whole legislative scheme.

4. Thus it is clear that even heinous acts which might constitute criminal acts might nonetheless be attributed to the employer. For example, in *Bellman v Northampton Recruitment Ltd [2018] EWCA Civ 2214,* the Court of Appeal held that a company could be held vicariously liable in circumstances where the managing director of the company violently assaulted an employee during a drinking session at a hotel which followed on from a work Christmas party.

5. Employers therefore need to proceed with caution when they are organising work events involving alcohol as they are responsible to ensure the safety and well-being of their employees and they could find themselves liable for acts of sexual harassment or aggressive/violent behaviour which could lead to a grievance or even a resignation. Turning a blind eye to rogue behaviour at a Christmas party could thus land an employer in hot water. So what is an employer to do? Simply placing a ban on workplace events is likely to be met with criticism from staff, and indeed is likely to be seen as a negative move insofar as seeking to improve and encourage social cohesion in the workplace. In this day and age when there is a strong emphasis of well-being within the workplace, organising fun work events is generally to be lauded as a positive move, and indeed could help with team building and cementing work relationships.

6. One option that is currently being trialled by some large organisations is the appointment of “responsible individuals” at work events that are charged with remaining sober (or having only a limited amount of alcohol) to oversee the well-being of attendees. This follows some of the aforementioned risks materialising at work events. For example, in March 2022, Lloyds of London member Atrium Underwriters received a £1m fine after a “boys’ nights out”, in which senior staff participated in lewd behaviour. In another instance

of an alcohol fuelled event, an auditor at PwC has launched a High Court claim after he suffered a head injury after taking part in a pub golf drinking game, during which staff were encouraged to down drinks in as few mouthfuls as possible.

7. In August 2022, professional services giant PwC explained that it was encouraging event organisers to appoint designated "responsible individuals" at work social events to try to combat any untoward incidents from taking place. These individuals would be there to keep a watching eye and nip any inappropriate behaviour in the bud before it gets out of hand. They could also act as points of contact so that staff members could raise any concerns they had. If an employee was seen to be acting inappropriately, one option would be to ask them to leave the event, with the potential of facing some form of disciplinary action. If an employer was to put such steps in place, this would no doubt go a long way to assisting them in defending any future claim which might be brought, on the basis that they had "taken all reasonable steps" to prevent the particular conduct from taking place (section 109(4) Equality Act 2020).

8. Other measures which employers might want to consider is ensuring that all of their workplace policies on matters such as Harassment, Bullying and Discrimination are up to date, and putting in place a mechanism to bring such policies to the attention of their staff. Simply uploading a ream of policies to a work intranet and not explicitly bringing this to the attention of employees is of limited benefit. A better option would be to communicate with employees when policies are updated and ask them to sign a document which confirms that the updated policy has been brought to their attention. They could also consider communicating with staff prior to workplace events, reminding them of the policies in place, and warning them that excessive consumption of alcohol and inappropriate behaviour will not be tolerated. Whilst an employer will be unlikely to be able to put a complete stop on any inappropriate behaviour ever taking place at social events, they can certainly put in place preventative measures to try to minimise any risks, which will stand them in good stead if they ever are faced with legal action arising out of a work event.

This document is not intended to constitute and should not be used as a substitute for legal advice on any specific matter. No liability for the accuracy of the content of this document, or the consequences of relying on it, is assumed by the author. If you seek further information, please contact the 3PB clerking team.

6 September 2022

Sarah Clarke

Barrister
3PB

01179 281520
Sarah.clarke@3pb.co.uk

3pb.co.uk