



# Ten top tips for bosses to avoid a Christmas calamity

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As the festive season approaches, some employers will be dreading the annual Christmas party, the decreased productivity from staff, the slipping standards of behaviour and the potential impact of inclement weather.

Here is our guide on the top ten issues employers should be considering to ensure a happy and stress-free holiday season.

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These tips can help avoid a Christmas hangover for employers. Picture: Thinkstock

## Christmas bonus

Employers who have traditionally paid a Christmas bonus may wish to stop that practice. There need be no “Mr Scrooge” allegations – many employers are facing challenging economic circumstances, and need to take steps to look after the bottom line and ensure the business is able to continue trading and employing its staff in the future.

Do consider though whether you have the right to withhold the bonus – if it has been paid every Christmas over a prolonged period of time, it could have become a contractual entitlement by “custom and practice”. This is particularly the case if the bonus is the same every year, has become an expectation, is paid without any real thought or consideration, and has become universally seen as a payment that staff automatically get every Christmas.

If the bonus is discretionary and being given to some staff but not others, bear in mind that an unreasonable exercise of discretion could be challenged and could even contribute to a claim of constructive dismissal. Make sure your decision is reasonable, can be justified, and is not tainted by discrimination. Consider your options and take advice as required.

## **“There are numerous problems that can arise from Christmas parties, and employers should be upfront and address these in advance”**

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### **Christmas gifts**

Be wary of giving and receiving gifts to and from suppliers and clients. The Bribery Act imposes obligations to ensure that commercial organisations are operating correctly and that proper commerce is not being tainted by improper bribes.

This may be the season of goodwill, but that does not mean that gifts to clients and suppliers are not subject to the same rules as at other times. You should have a bribery policy in place – make sure that staff are aware of it, that gifts are appropriate, and that where required they are logged and recorded.

### **Secret Santa**



Douglas Strang said bosses can feel overwhelmed by the potential festive pitfalls. Picture: Chris Watt

A common workplace activity at this time of year is the Secret Santa. Harmless fun or potentially problematic?

Steps should be taken to ensure that employees are not under any pressure to participate in this, or other festive celebrations. Employees who have other religious beliefs may find this awkward or embarrassing.

Equally, the giving of risqué, sexually suggestive gifts, particularly in front of a crowd of people, could be humiliating for the recipient and could amount to harassment. Remember that where one employee unlawfully harasses another, the employer is liable unless it took all reasonable steps to prevent such acts occurring. Make sure your equal opportunities policy is up to date, publicised and enforced, and that staff have had training on equality issues. It may be worth reminding staff that gifts should be appropriate.

### **Religious discrimination**

As above, care must be taken to ensure that those with other religious beliefs are not disadvantaged by being forced to celebrate what is ostensibly a Christian festival. There is no need to “ban Christmas”, but be sensitive. In particular, be supportive if staff do not wish to attend the Christmas party and do not suggest they are being “party poopers”.

Similar issues arise where staff may hold religious beliefs in relation to drinking alcohol. There should be no pressure to attend functions at pubs, and an unwillingness to engage in such events should in no way affect a person's career prospects. Be careful about thinking "this person is poor at engaging with colleagues" if what you really mean is "they refuse to spend the night drinking with their team". If any concerns are expressed by staff, make sure they are handled carefully and sensitively.

### **Slipping standards of behaviour**

The run-up to Christmas often sees staff taking a more relaxed attitude to the organisation's policies and procedures, for example having an alcoholic drink or two at lunchtime; poor timekeeping and extended lunches; use of internet to do Christmas shopping; or reduced productivity due to over indulgence.

If such actions are contrary to your rules and policies, then you are entitled to take action in the normal way. Be careful though if a precedent has been set in the past - if such conduct has been tolerated widely during previous festive seasons, then staff should be told that this tolerance is ending, before seeking to discipline staff for their actions. Equally, ensure there is consistency across the organisation - having one rule for some staff, and another for others, will not just cause resentment, but could leave any disciplinary decision open to challenge.

### **Alcohol at the works night out**

As mentioned above, there is a need for sensitivity where work events involve alcohol, given the religious beliefs of some staff.

Equally, employers should consider for all staff whether it is appropriate to encourage drinking to excess. Given the long-term health implications, should employers be facilitating drunkenness? In the short term, is the employee going to endanger their health and safety? How will they get home? Will they engage in unsafe behaviours?

Equally, if an employee commits acts of misconduct (aggressive conduct for example), and the employer has been encouraging them to drink vast quantities of free alcohol all evening, can the employee really be blamed?

Some options to consider:

- Limit the availability of free alcohol.
- Encourage staff in advance to know their limits, and explain that they will be held liable for their conduct while under the influence.
- Ask staff to consider in advance how they will get home. Consider ending the function before the last bus or train, and make sure you don't have staff walking home alone.
- How will you respond if staff are late for work the following day or are absent due to illness? Make this clear in advance.
- Will it impact on productivity if staff are hungover the next day? Do some key staff need to avoid alcohol? What about staff who will be driving or operating machinery?
- If customers or clients are attending the function, you will want to be particularly careful to ensure there is no unacceptable behaviour. Conversely, staff may need guidance on how to deal with badly behaved clients!

There are numerous problems that can arise from Christmas parties, and employers should be upfront and address these in advance.

## Harassment

Probably every HR adviser and employment lawyer has dealt with cases of inappropriate sexual conduct at a Christmas party – it is sadly a mainstay of the holiday season.

The Christmas party will inevitably be part of the “extended working environment” and if there is conduct that amounts to discrimination or harassment it will be actionable in the same way as if it took place in the office. Even where the official function ends, and some staff move on to a local nightspot, there may still be liability for any wrongful acts.

An employer may seek to defend such claims based on the defence that it took all reasonably practicable steps to prevent this happening, but did it really? An employer should think about this issue in advance and take steps to prevent any problems:

- Stress to staff in advance that the equal opportunities policy still applies and any inappropriate behaviour will be dealt with and may amount to gross misconduct – not a very festive message to convey to staff but better to be safe than sorry.
- Stress that this applies not just to sexual misconduct but other words or actions that relate to the other protected characteristics. The potential problems with “banter” cannot be underestimated.
- Consider having a number of managers who will remain sober and be on the lookout for conduct which is coming close to crossing the line of acceptable behaviour.
- Be on the lookout for employees who have had too much to drink, and stop them drinking, take them to a breakout area, or suggest they leave if they can be trusted to get home safely.
- Managers and directors should set a good example to the workforce as a whole.

## Holiday pay

Holidays at this time of year are standard in most organisations. Be aware of the implications of the ongoing litigation relating to the calculation of holiday pay. The current authorities state that for at least four weeks per year, holiday pay must represent an individual’s “normal remuneration”. That means including average overtime (certainly if mandatory, and probably if voluntary), commission payments, sales bonuses, and many other allowances or payments if these are regularly payable.

Employers need to audit their holiday pay arrangements, consider the risks, and address how holiday pay will be calculated. Will it be different for the first four weeks compared to the balance? How do you determine which holidays are the relevant four weeks? You could ultimately have different calculations for the first four weeks, the next 1.6, and then any balance on top of that. It’s a complex area and specialist advice should be taken.

## Holiday bookings

While some employers will shut down between Christmas and New Year, others need to stay operational – for some it may be one of their busiest periods. Many employees will want an extended break with their families, and you may well have excessive requests to take holidays at this time.

Be clear about what the policy is and what the contract says. How are holidays agreed? Is it first come first served, or is there a rota arrangement? Managing expectations in advance will help to avoid disappointment and resentment.

## Winter weather

While some of us may be dreaming of a white Christmas, adverse weather can occasionally make it difficult for staff to attend work, given the impact on public transport and driving conditions.

In general terms, you need not pay an employee who does not attend work, even if that is due to bad weather. Consider, though, the impact on morale if you take this approach. Might it even encourage employees to endanger their health and safety by trying to attend work when the roads are unsafe?

Equally, you do not want to be taken advantage of every time the weather deteriorates. It is important to have a clear policy, but this can build in an element of flexibility and discretion. Solutions may include allowing employees to take a holiday, allowing them to work from home, or simply making payment for the first day or two of absence assuming you are satisfied it is not reasonably practicable for the employee to safely attend work. If you don't set out the rules in advance, however, you increase the risk of disputes and discontent.

## Summary

It can seem that Christmas is a time where "anything goes" and an employer may feel overwhelmed by all the potential issues. Employers, though, still have a business to run, and are entitled to expect that staff continue to discharge their duties in a professional manner. Thinking about the potential issues in advance, and communicating openly with staff, should ensure that the risks are both minimised and manageable.

Have a great Christmas and a Happy New Year!

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