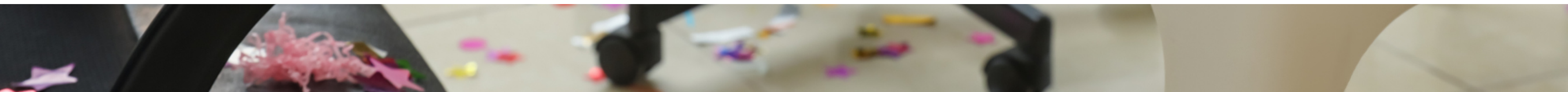




Christmas Parties: managing workplace behaviour

UK & France

ELLINT
NEXT



The Christmas season is almost here and people will be preparing to celebrate another year with friends and colleagues.

Employers often face questions about how to manage workplace behaviour at this time of year, with particular focus on work parties and social events. In the United Kingdom, many of these questions relate to the extent to which an employer can be held “vicariously” liable for the actions of its employees.

UK

In English law, employers have a **duty to take reasonable steps to safeguard the health, safety and welfare of employees at work**. This duty extends to work events which are away from the usual place of work and outside normal working hours. The Courts have also increasingly been willing to find that employers are vicariously liable for employees' conduct where, even though the conduct occurs outside of work and working hours, it is nevertheless deemed to be "in the course of employment".

For example:

- In ***Chief Constable of the Lincolnshire Police v Stubbs***, the Employment Appeal Tribunal (EAT) found that the employer was vicariously liable for sexual harassment that was committed by an employee in a bar away from work and after working hours at a colleague's leaving party. The EAT held that the social events which are away from the office but still involve employees from work, which are during or immediately after an organised party, are nevertheless "in the course of employment" for the purposes of an employer's vicarious liability.
- In ***Bellman v Northampton Recruitment Limited***, a group of employees carried on partying in a nearby hotel after the works Christmas party ended. An argument broke out between one employee and the managing director (MD) in which the employee criticised the MD's management skills. The MD assaulted the employee causing brain damage. The High Court originally ruled that the incident happened at a separate event and so was not in the course of employment and so the employer was not vicariously liable for the MD's actions. However, the Court of Appeal disagreed. It found that the MD was a senior employee who had control over the staff, the argument was work-related, and the MD was exercising authority over his staff in his official role. The party was a follow-on from the work event, so it was not an isolated activity which simply happened to involve colleagues. The Court of Appeal held that there was a sufficient connection between the MD's conduct and his professional role, therefore the company was held vicariously liable.
- In ***Livesey v Parker Merchants Ltd***, the Employment Tribunal (ET) held that an employer was not vicariously liable for an employee's harassment which occurred during a journey home from a work Christmas party. However, the EAT found that the harassment was part of a continuing course of conduct which first occurred in the course of employment, therefore it overturned the ET's decision and found that the employer was vicariously liable.

These cases demonstrate that English courts are increasingly prepared to find that **incidents which happen out of working hours and off work premises are nevertheless “in the course of employment” for the purposes of holding employers ultimately liable for employee conduct.** This is especially relevant at a time of year when staff will be enjoying social events, often with alcohol served, which carry on late into the night after official work events have ended.

Employers should ensure that their workplace policies are up to date so that employees are aware of rules on unacceptable standards of behaviour, bullying, harassment and other inappropriate conduct. Managers should be trained to understand these rules, recognise these behaviours, and take appropriate action at the earliest opportunity. Employers should ensure that they have a robust complaints/grievance procedure to ensure that staff are encouraged to come forward with complaints about these sorts of incidents and to ensure that they are addressed properly and sensitively. In all cases, employers should consider carrying out a risk assessment to gauge the potential risks arising from any social events which they are planning, and take appropriate steps to mitigate any unnecessary risks.

FRANCE

Under French law, employers have a general duty to protect employees' health and safety, and to prevent sexual harassment or bullying at work.

Employers may be held liable in case of a “work accident”, sexual harassment or bullying at work, especially if they commit an "inexcusable fault", which is when they have not taken adequate measures to prevent a risk they could have anticipated.

In principle, for an incident to be considered a “work accident”, the incident must have an established direct link with work. Thus, a work accident occurs during the performance of the employment contract, at a time and in a place where the employee is under the control and authority of their employer. Nevertheless, even outside of a work time and place, a work accident may occur if a certain and direct link is made between the accident and work.

As part of this general obligation to protect employees' health, **employers also have a responsibility in terms of alcohol consumption.** The French Labor Code prohibits alcoholic beverages in the workplace, except wine, beer, cider and perry. In any case, an employee cannot be drunk in the workplace.

Such responsibilities seem rather simple to apply when employees are required to work at their workstations. But at festive events, like work Christmas parties, employers have to be very cautious, particularly in view of the rules mentioned above, since there can be a lot of grey areas.

Indeed, like English employers, **French employers may be liable in case of sexual harassment between employees, even carried out outside of a work time and place,** if the people were in contact due to their work, which could of course be the case after a party if the employees leave the party together.

Even outside the time and place of work, an employee who insults another employee, for facts related to work, may also commit a fault or could, depending on the nature of the facts, disrupt the proper functioning of the company through their behavior, even if it took place in a private setting. Such behavior is more likely to happen if employees drink too much during a party organized by the employer.

Employers must therefore remain vigilant and try to prevent reprehensible behavior, especially in settings which can be more conducive to abuse, for example, during festive moments where employees can notably be invited to dance together.

Employers are advised to mention very clearly in the staff handbook or before any event that the provision of alcoholic drinks will be limited and subject to management authorisation.

When organizing drinks, alcohol specialists recommend (i) limiting the quantity of bottles available so that no one can drink to excess, (ii) assigning a person to “distribute” alcohol to prevent access to alcoholic beverages in self-service, and (iii) offering quality non-alcoholic drinks and food in order to mitigate the effects of alcohol consumption. Employers can also support employees who tend to raise their glasses a noticeably often, for example, with a taxi service or a carpooling system by volunteer employees.



Claire Chesneau
Associate
MGG Legal
clc@mgglegal.com



James Morrison
Associate
Doyle Clayton
[jmorrison@doyleclayton](mailto:jmorrison@doyleclayton.co.uk)
[.co.uk](http://doyleclayton.co.uk)



HAPPY HOLIDAYS!

ELLINT
NEXT

