‘Tis the season to be jolly… careful

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The festive season is upon us and many are ready to embrace once again the annual Christmas party as we emerge from the restrictions of the pandemic.

Whilst most events go ahead hitch free, unfortunately incidents of inappropriate behaviour are not uncommon at these types of functions. Reports of sexual harassment often increase at this time of year. This can result in employers having to field serious complaints and investigate members of staff who have overstepped the line.

Shockingly, 72% of the UK population have experienced at least one form of sexual harassment in their lifetime and 29% of employed individuals experienced sexual harassment at work. Soberingly, statistics show that only 15%formally reported this to their employer.

As employers are liable for the conduct of their employees and have a duty to safeguard the health and safety of employees, it is important that employers take steps to prevent and deal with inappropriate behaviour. In this briefing, **BDBF Associate Blair Wassman** explores what constitutes harassment and sexual harassment, and what steps employers can take ahead of the end-of-year festivities.

What is harassment?

Harassment is unwanted conduct related to a protected characteristic (for example, sex, race or sexual orientation) which has the purpose or effect of either violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment is unwanted conduct of a sexual nature, which includes unwelcomed touching, sexual comments or jokes, suggestive looks or gestures and propositions and advances.

What does the law say about liability?

As a general rule, employers are liable for their employee's actions.

It is a myth that where functions happen outside of the office employers are no longer liable for their employees' conduct. Whilst this may be true in some instances, the default position is that employers are vicariously liable for acts of harassment committed by their employees during the "course of their employment" regardless of whether the employer knew or approved of the acts. This includes acts which are performed out of the employer's premises, for example, whilst employees are working remotely as well as at work social functions which take place after hours.

This means that countless employers have found themselves liable for the acts of employees which have occurred at the pub after work, or, indeed, at Christmas parties. However, employers do have a defence available to them. If an employer is able to demonstrate they took all "reasonable steps" to prevent the perpetrator from doing the particular act, they may avoid being held liable.

Such reasonable steps can include:

- effective anti-harassment policies;
- appropriate reporting procedures and management of complaints;
- regular training for managers; and
- protection of victims.

Tips for employers

To try to avoid such misbehaviour and limit risks, employers should consider taking the following steps:

- **Conduct a risk assessment:** think about the venue and whether there are areas which are concealed (maybe re-

think the dark photobooth in the far corner!). Consider how employees will get home following the function, for example, could you assist with a taxi service?

- **Lead by example:** encourage senior staff to limit their alcohol intake and to keep interactions professional. If they witness inappropriate behaviour, they should not turn a blind eye, but intervene if necessary and also report the acts to HR.
- **Timing:** consider whether a lunch or afternoon event is more suitable than the traditional evening party, which may, in turn, limit alcohol consumption and risk of harassment.
- **Don't authorise "after parties":** as tempting as it may be to continue the celebrations after the official work function, it is advisable for employers to distance themselves from "after parties". This includes expressly stating that the official function is the only function funded and approved by the employer and any events afterwards are not sanctioned by the employer and discouraged for the safety of all employees.
- **Remind employees of what is expected of them:** a reminder about workplace policies related to harassment before such events is helpful, as well as the procedures which are in place to deal with any concerns.
- **Take complaints seriously:** if you receive complaints following such events, ensure that they are properly investigated and treated with the necessary degree of confidentiality and sensitivity. Reassure the victim and put mechanisms in place to ensure their protection, if necessary.
- **Be supportive and have open communication lines**: try to foster a culture where employees are not fearful of complaining about incidents of harassment. Appoint

workplace champions and encourage employees to come forward about such incidents.

- **Hold offending parties accountable:** gone are the days where employers can write-off unwanted interactions as "banter". If employees have committed acts of harassment, regardless of their seniority, they should be held accountable and disciplined if they are found to be guilty.

Like most things in life, prevention is better than cure. Employers giving careful thought to their end-of-year functions, and following these recommendations, is certainly time well spent. It also demonstrates to employees that their wellbeing and safety at such events is important, and provides a warning to those who may be tempted to step out of line.

If you would like to discuss harassment or any issues relating to the content of this article, please contact Blair Wassman (blairwassman@bdbf.co.uk), or your usual BDBF contact.

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