

Work parties, alcohol and consent: EAT clarifies when conduct is 'unwanted'

In *AB v GH Limited* the EAT has clarified how consent and intoxication affect whether sexual conduct is 'unwanted' for harassment purposes. Consent is an important factor, but not conclusive, particularly where workplace power dynamics are at play, and intoxication does not necessarily mean that a person cannot give consent.

What happened in this case?

Following a work Christmas party in December 2021, AB, a female employee, and YZ, her male colleague, returned to the hotel where they were both staying. YZ helped AB carry her bags to her hotel room, where they continued talking. AB was upset about being unsuccessful in a job application and YZ hugged her. This interaction progressed to sexual contact, with items of AB's clothing being removed and YZ touching her breast. YZ then realised that he did not want matters to continue any further and he left the room.

Having resigned in March 2023, AB brought a claim in the Employment Tribunal (ET) alleging, amongst other things, sexual harassment and constructive unfair dismissal. The ET dismissed all the complaints, most of which it found were brought out of time. In respect of the allegation of sexual harassment at the Christmas party, the ET also held that AB had not proved, on the balance of probabilities, that YZ's conduct was unwanted by her. This was based on the ET's findings of fact,

including that AB and YZ were both drunk after the Christmas party, AB had instigated the removal of her clothing, and the sexual touching was consensual.

AB did not challenge any of the findings of fact. Her principal ground of appeal was that the ET had failed properly to consider consent, including her capacity to consent while intoxicated, and should have considered the issue by reference to criminal law principles when deciding whether YZ's conduct was unwanted.

What was decided?

The Employment Appeal Tribunal (**EAT**) rejected the argument that the ET was required to determine consent by applying criminal law principles, confirming that the relevant question was whether the conduct was 'unwanted' for the purposes of the Equality Act 2010.

The EAT confirmed that consent will make it less likely that conduct is 'unwanted', but it is not decisive. For example, a junior employee may reluctantly consent to sexual conduct involving someone in a position of power, while still regarding that conduct as unwanted. Conversely, where consent is freely and enthusiastically given, it will be very difficult to establish that the conduct was unwanted or had the prohibited effect required for harassment.

The EAT cautioned against replacing the term 'unwanted' with 'unwelcome' or 'uninvited', even though there is guidance from the Equality and Human Rights Commission's Code of Practice which suggests that these terms essentially have the same

meaning. The EAT found this guidance confusing, since uninvited conduct could still be welcome, and this would depend on the evidence. 'Unwanted' is an ordinary word which should be given its ordinary meaning.

For harassment to be established, the unwanted conduct must also have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. When considering whether conduct had that effect, the tribunal must take into account the individual's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect. Consent may also be relevant to this assessment. The EAT was satisfied that although the ET had preferred to refer to the statutory language of 'unwanted' rather than 'consent', it *had* made findings relevant to consent, including explicitly finding that AB had consented to the sexual contact by YZ.

The EAT also provided useful guidance on the effect of intoxication. It confirmed that a person may be so intoxicated that they lack capacity to consent. However, intoxication does not, in itself, mean that a person lacks capacity: the question is whether they retained the capacity to make the relevant choice. On the facts of this case, the ET had accepted that both parties were drunk, but did not find that AB was so intoxicated that she lacked capacity to consent. It found that she was able to hold a conversation, express what she wanted, and instigate the conduct that followed. The EAT also noted the ET's findings that AB had said afterwards that she did not have an issue with what had happened when she believed YZ had also been drunk at the time, and that her concerns only arose when she later came to believe that he had been sober.

What does this mean for employers?

Importantly, this was not a case involving a manager and subordinate. AB and YZ performed the same role and there was no evidence of an imbalance of power. The decision is nevertheless a useful reminder that consent and unwanted conduct are closely linked but not interchangeable. Where workplace power dynamics are at play, conduct could still be regarded as unwanted even where an employee has consented. Tribunals must therefore assess the full factual context, including any concerns about pressure or influence, rather than treating consent as the end of the matter.

The judgment also helpfully clarifies the role of intoxication in harassment claims. While a person may be so intoxicated that they lack the capacity to consent, the fact that someone has been drinking does not automatically mean that consent is invalid. The key question will be whether the individual retained the capacity to make that choice at the relevant time.

With the duty to prevent sexual harassment due to be upgraded on 30 October 2026 to a requirement to take *all* reasonable steps to prevent it, employers may wish to revisit their approach to alcohol at work-related events. Sensible measures could include limiting the availability of alcohol, ensuring food and non-alcoholic alternatives are readily available, reminding employees of expected standards of behaviour, and reinforcing the organisation's anti-harassment policy before events.

[AB v GH Limited](#)

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