Christmas parties: an employer’s guide

The company Christmas party can be a morale-boosting occasion for employees as it provides an opportunity for employers to thank staff for their hard work over the year.

Employers should remember, however, that the workplace party can be an employment law minefield. Problems range from employees drinking too much alcohol to instances of misconduct, harassment and employee absence the following day.

As the party season approaches, XpertHR Professional provides you with a model statement to give to all employees in advance of the event.

The statement covers
❯ dietary requirements
❯ transport
❯ alcohol consumption
❯ misconduct and harassment
❯ failure to attend work the next day

Law relating to the statement

Further resources from XpertHR Professional relating to the Christmas period
Statement wording

You [and your spouse, civil partner or partner (including same-sex partners)] are invited to attend this year’s company [Christmas party], which will take place on [date]. The details are as follows:

❯ Venue: [address].
❯ Times: [details of any drinks reception time, dinner time and evening finish time].
❯ Dress code: [details].

The set menu will be as follows:

❯ Meat option: [details].
❯ Vegetarian option: [details].

If you [and your spouse, civil partner or partner] would like to attend, please confirm your attendance, and specify your menu choice, to [name] by [email/telephone] no later than [date]. If you have any special dietary requirements that mean that neither of the above set menu choices is suitable, please notify [name] as soon as possible and we will endeavour to accommodate you. Please be aware that, for these purposes, special dietary requirements cover matters such as allergies, food intolerances and religious beliefs and not simple dislikes of particular foods.

The Company will provide [a free bar [of beer, wine, water and soft drinks only] all evening/wine, water or soft drinks with dinner but thereafter the bar will be a paying one].

You will be expected to pay for any alcoholic or soft drinks consumed during the course of the evening.

[The Company will provide a coach between the office and the venue, which will return at the end of the evening. If you wish to reserve a place on the coach in both directions, please contact [name] by no later than [date]. If you do not reserve a place on the coach, we will assume you are making your own arrangements to get to the venue and then home afterwards.]

We do also need to remind you that you [and your spouse, civil partner or partner] are required to conduct [yourself/yourselves] in an appropriate, mature and responsible manner throughout the evening. In particular:

❯ Alcohol should be consumed in moderation. [The provision of free alcoholic drinks by the Company is not an excuse to drink excessively.]
❯ You should not drink and drive. If you will not be driving, please make arrangements in advance to get home, for example by public transport or taxi [or by reserving a place on the Company-provided coach]. Never use unlicensed minicabs. [Name] can provide details of local taxi firms close to the venue if necessary. The Company [will/ will not] pay for the cost of taxis home [on production of an appropriate receipt].
❯ Improper conduct or other unacceptable behaviour will not be tolerated and is a serious disciplinary matter. This includes excessive drunkenness, the use of illegal drugs, unlawful or inappropriate discrimination or harassment, violence such as fighting or aggressive behaviour and serious verbal abuse or the use of other inappropriate language, whether this is towards a fellow employee, an invited guest or a member of the waiting or bar staff. [In this regard, we would refer you to the provisions of the Company’s policy on dealing with harassment complaints [and policy on work-related social events].] Please be aware that such misconduct may amount to gross misconduct depending on the circumstances of the case, and possible summary dismissal.
❯ Under health and safety legislation, you have a general duty to take reasonable care of your own health and safety and that of others who may be affected by your acts or omissions. Please bear this in mind when consuming alcohol. [We would refer you to the provisions of the Company’s health and safety policy for further information.] [Please provide a copy of this statement to your spouse, civil partner or partner, as the same rules apply equally to his or her behaviour.]

At the party, [names] have been appointed as supervisors and they will be responsible for monitoring the activities of attendees and for ensuring that the
evening is a trouble-free one. If you experience any problems during the course of the evening, please do speak to one of them.

Finally, you are reminded that you are required to report for work the following day, unless you have arranged in advance to take this as a day’s annual leave. Any unauthorised absence on the day after the party will be treated as a disciplinary issue. Any sickness absence on this day will be required to be supported by a [doctor’s certificate/signed self-certificate confirming the reason for absence and that the illness is not alcohol-related]. A hangover is an unacceptable reason for sickness absence.

All that remains is for the Company to wish all attendees an enjoyable evening.

Law relating to this document

Employers have a general duty under s.2 of the Health and Safety at Work etc Act 1974 to ensure, as far as is reasonably practicable, the health, safety and welfare at work of their employees. If an event is associated with work (hosted or organised by management, for example), the statutory duty is likely still to apply. Employers should therefore take steps to ensure that the party venue does not present any health and safety risks, and that employees do not put themselves or others at risk either during or after the party. Employers are under an obligation to take reasonable steps to ensure that their employees do not act under the influence of alcohol or drugs if this is likely to risk the health and safety of others. In addition, employers should consider matters such as how employees will get home after the party. Employers should consider carrying out an assessment of the risks associated with the party, venue, travel arrangements, etc and notify employees of any particular hazards identified in advance. Evidence showing that these aspects have been looked at will assist an employer’s defence should any claims arise.

Under s.7 of the Health and Safety at Work etc Act 1974 employees have a general duty to take reasonable care of their own health and safety and that of others who may be affected by their acts or omissions at work. Employers should therefore remind employees of the health and safety implications of excessive alcohol consumption at the party.

The most likely claims to arise as a result of a party or other event are harassment claims. The Equality Act 2010 contains a definition of harassment. It occurs where person A engages in unwanted conduct related to a relevant “protected characteristic” that has the purpose or effect of violating person B’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. The relevant protected characteristics for harassment are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. Harassment based on association and perception is also covered. For example, an employee who is harassed because he or she has a disabled child and a heterosexual employee who is harassed because colleagues believe him or her to be gay would both be protected.

Conduct shall be regarded as harassment only if, having regard to all the circumstances, it should reasonably be considered as having that effect. In other words, there is an objective element to the harassment test where it cannot be established that the harasser had a discriminatory purpose. The intention is that an over-sensitive complainant who takes offence at a perfectly innocent comment will not be considered as having been harassed for the purposes of the legislation.

Employers are liable for the discriminatory actions of their employees carried out in the course of employment. Discrimination legislation states that any act committed by an employee in the course of his or her employment is to be treated as also being committed by the employer, regardless of whether or not the employer knew or approved of the action. Whether or not an act of discrimination is carried out in the course of employment is a question of fact to be decided by tribunals. Most tribunals will find that discriminatory acts that take place at a party that is organised or funded by the employer have been carried out in the course of employment.

However, an employer may be found not to be liable if it can prove that it took steps that were reasonably practicable to prevent the employee from committing such an act in the course of his or her employment. Whether or not an employer will be able...
to rely on the statutory defence will depend on the facts, but it is clear that it is not sufficient for an employer simply to draft and circulate an equal opportunities policy, although this is a key first step. In order to have a defence, employers should:  
❯ ensure that up-to-date equal opportunities and anti-harassment policies are in place that clearly state that conduct at work-related events such as Christmas parties is covered, even if the event takes place out of working hours or off the premises;  
❯ distribute the policies to all their employees and make sure that they are made aware of and understand the issues covered by the policies;  
❯ train all employees on equal opportunities and the type of behaviour that is unlawful under discrimination legislation; and  
❯ send a statement to all employees in advance of a party, setting out the standards of behaviour and conduct expected from them and the consequences of non-compliance.  

Employees, as well as employers, may be liable for acts of harassment. An employee who alleges harassment could, therefore, bring tribunal proceedings against both the harasser and the employer. If the complainant is successful he or she can potentially claim compensation against both parties. There is no limit on the amount of compensation that can be awarded by tribunals in successful discrimination claims.  

If an employee raises a complaint of harassment or discrimination relating to an incident at a work party, it is important that the employer acts promptly. Failure to do so could amount to a breach of the implied term of trust and confidence, which could result in a claim of constructive dismissal if the employee resigns as a result. Failure to take an employee’s grievance seriously may itself amount to discrimination. The employer will need to decide whether the matter can be dealt with to the employee’s satisfaction informally or whether it is necessary to deal with it formally under its grievance, bullying, equal opportunities or anti-harassment procedure. As an allegation of harassment could form the basis of a complaint to an employment tribunal, employers should ensure that they comply with the provisions set out in the Acas code of practice on disciplinary and grievance procedures (on the Acas website).  

Employees should ensure that the choice of party venue and catering arrangements do not indirectly discriminate against employees of a particular religion or belief. For example, both alcoholic and non-alcoholic drinks should be available and a vegetarian alternative should ensure that religious requirements relating to not being permitted to eat certain meats such as pork and beef are taken into account. The location should be easily accessible and not put any disabled employees at a disadvantage.  

There is nothing to stop employers imposing a dress code for the party. However, any dress code should be reviewed to ensure that it does not discriminate against employees of a particular religion or belief. For example, a dress code that requires all women to wear dresses may indirectly discriminate against Muslims.  

Any entertainment should be checked in advance of the party to ensure it will not cause offence to anyone.  

If an employee fails to attend work on the day after a work party, the employer is entitled, in principle, to treat the unauthorised absence as a disciplinary matter. However, it is more likely that an employee will phone in sick rather than simply fail to attend work. While an employer might suspect that an employee is malingering or has a hangover, it is important that it clarifies the reason for the employee’s non-attendance before acting against him or her. If the employer has evidence to suggest that the employee is not genuinely sick (mere suspicion is not enough), it may treat the absence as a disciplinary matter.  

Employers may be held directly liable under common law if they do not take reasonable care of employees and their guests attending work parties. A claim under common law is likely to be based on negligence. In order to succeed in a negligence claim, the injured party would have to show that:  
❯ the employer owed him or her a duty of care;  
❯ the employer breached that duty;  
❯ he or she suffered an injury caused by the employer’s breach of duty; and  
❯ the injury was reasonably foreseeable.
Employers may also be held indirectly liable for harm caused to other employees or third parties by the negligent acts of their employees in the course of their employment. For example, if an employee causes an accident after drinking too much alcohol at the Christmas party, the employer is likely to be held vicariously liable, as the employee was carrying out, albeit negligently, what he or she was authorised to do. Employers should therefore take all reasonable steps to ensure that employees do not engage in unlawful conduct and that clear guidelines as to what is and is not acceptable behaviour are set out in advance.

More information on XpertHR Professional

If you found this model statement useful, you may also be interested in the following XpertHR Professional content:

❯ How to ensure acceptable conduct at office parties and other work-related social events
❯ Model policy on work-related social events

XpertHR Professional answers employers’ questions on various aspects of Christmas

❯ As Christmas is a Christian festival, can an employer still hold a Christmas party if some of its employees belong to other religions?
❯ What issues should employers take into account regarding the timing of a work-related social event such as a Christmas party?
❯ What issues should employers take into account when organising the catering for work-related social events?
❯ Can an employer dock the pay of an employee who has arrived at work late the morning after the company Christmas party?
❯ Where an employer has provided employees with a Christmas hamper in previous years is it under any obligation to continue this practice?

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