

# Legal Torque

## SANTA'S COMING TO TOWN: WHAT DOES THAT MEAN FOR EMPLOYERS?

*-Miles Edwards-*

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Well, it's that time of year again already: every department store and supermarket in Auckland is selling Christmas decorations. Yes, another year has just about shot past and the "silly season" is upon us again. This also means for many of us, customer Christmas functions and of course, the office Christmas party.

The office Christmas party is an important occasion for taking the time to celebrate the year gone by. However, most office parties will involve celebrating with alcohol. For employers, this means that the office Christmas party (indeed any event hosted for employees involving alcohol for that matter), is an area of potential problems and liability which needs to be well managed to avoid the year ending on a less than festive note. The cliché of the drunken employee at an office Christmas party exists for good reason.

Under the Health and Safety in Employment Act 1992 employers owe a duty to each of their employees to take all practicable steps to ensure their safety while at work, and that includes any social functions that the employer hosts at or away from the workplace. The first step for an employer in demonstrating compliance with the Act is to have an acceptable use policy for the consumption of alcohol in the workplace (including a clearly recorded position as to what constitutes misconduct), and to implement that acceptable use policy objectively and consistently.

The decisions that have been issued by the Employment Relations Authority and the Employment Court over the last year demonstrate the need for an employer to

have clearly expressed terms and conditions of employment and "acceptable use" policies if an employer wishes to have an acceptable frame of reference for disciplining and/or dismissing an employee for misconduct.



So, just as we recommend that employers have an "acceptable use" policy for their employees' use of email and internet, so do we also recommend that employers have an "acceptable use" policy for the consumption of alcohol, and in regards to behaviour, at the office Christmas party and any other social events which may be attended by employees.

In some businesses, the consumption of alcohol is absolutely inconsistent with the safety risks present in the workplace. Consequently, such a business should have "an acceptable use" policy completely prohibiting the consumption of alcohol and stating that the consumption of alcohol in the workplace is viewed as serious misconduct. With such a business and such an acceptable use policy in place, any office Christmas party should be alcohol free unless held out of the workplace and out of working hours, eg for a business with staff working between Monday and Friday, on a Saturday night and at a restaurant.

In California, the Courts have held that employers are liable for personal injuries caused by employees who drive home drunk from employer sponsored parties. While our ACC legislation generally means that one

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individual is not liable to another for personal injuries, it is entirely conceivable that an employer might be found to have breached the Health and Safety in Employment Act, and be prosecuted accordingly, if it is found that the employer supplied alcohol to its employees in a manner that was reckless as to their safety in the workplace and they suffered an injury after consuming the alcohol.

If you are hosting an office Christmas party for your employees this year and supplying alcohol, then in order to ensure your employees' safety at work and insulate your position from any allegation of having breached the Health and Safety in Employment Act, as a bare minimum you should ensure that:

- Every employee has read and understood your business' acceptable use policy regarding consumption of alcohol in the workplace;
- Food is served in substantial quantities;
- Non-alcoholic drinks are available in substantial quantities;
- No further alcohol is served to visibly intoxicated employees;
- Taxi cabs or transport are available to ensure that employees who have consumed alcohol are driven home safely;

- All other practical steps will be taken to ensure that employees who have drunk alcohol will not drive a vehicle afterwards.

At Fortune Manning, the members of our Employment Law team are expert at guiding our employer-clients through the provisions of the Employment Relations Act and the Health and Safety in Employment Act with pragmatic, cost-effective advice.

We are able to help you with any concerns you may have about hosting your Christmas party, or any other matter, by:

- preparing employment agreements and "acceptable use and behaviour" policies for your employees;
- advising you on effectively implementing your employment agreements and "acceptable use and behaviour" policies;
- advising you on lawfully disciplining and/or dismissing staff; and
- advising you in respect of, and acting for you, in any OSH matters.

If you have any employment related queries, please feel free to phone. Two members within our employment team are Cathy Bormans phone 915-2412 or Miles Edwards phone 915-2424

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