

The holiday season is upon us and for many Gibraltar employers this means the annual staff party. These parties provide an opportunity to celebrate achievements, reward employees for their hard work over the preceding 12 months and for colleagues to socialise in a more relaxed environment. However, without wishing to be party poopers, it is important to be aware that, while these events are usually lively and fun, they are effectively an extension of the workplace and, if not managed diligently, they can create potential liability and HR issues for employers.

Behavioural Standards and Employee Protocol

Prudent employers will already be aware of their potential responsibility for the actions of their staff towards colleagues and third parties in the course of their duties. However, it is important that they are also aware that any social event organised by the employer is an 'extension' of the workplace, regardless of the timing or place of the event.

It is important that employees are aware that these are not social gatherings between friends but, rather, between employees who are still bound by the relevant workplace policies and codes of conduct that apply on a daily basis in the workplace environment. Employers should therefore strongly consider having a policy or policies in place to cover acceptable behaviour or at least explain this to staff beforehand.

Discrimination

In order to avoid any discrimination, employers should consider the needs of all staff. Discrimination can arise in a number of areas but, in this context, thought should be given to, for example, the potential presence of persons of all faiths at the function (which may include partners and children of employees, where invited), the availability of appropriate food and beverages to meet all employees' religious and cultural requirements and the suitability of the venue for any vulnerable or disabled employees.

Employees should not be compelled to attend but don't forget that those on maternity leave should be invited to attend. However, the employer needs to consider whether such employees will attend, or potentially need (e.g. where they are breastfeeding) to attend, with their children and have regard to the statutory duty to protect the health and safety of pregnant and breastfeeding mothers in the workplace.

Generally speaking, employees who are on suspension or garden leave are not required to be invited and, indeed, to invite a suspended employee to attend would, save in very limited circumstances, be somewhat inconsistent with the decision to suspend.

Harassment

The law in Gibraltar gives protection from sexual harassment and also from harassment on the basis of disability, age, race, religion or belief and sexual orientation. It is worth remembering that 'harassment' can range from insulting behaviour to physical or sexual assault. In addition to the issues that may arise where an employee perpetrates an act of harassment, employers should be aware that it will be open to the victim of such harassment to seek damages against the employer.

Promises, Promises

The office party is not the place for a performance review, nor is it the appropriate environment for an employee to raise a grievance. Employers need to remain aware that, inter alia, because the office party is effectively an extension of the workplace, promises and/or representations made to employees at such functions can be binding.

Smartphones/Social Media

Smartphones are everywhere nowadays and, coupled with the proliferation of social media, this provides the opportunity to post photos or tweets from almost any occasion. However, posting inappropriate photos or comments from a work function of colleagues having fun or behaving badly can have serious repercussions. Employees should be reminded that the online world is both permanent and omniscient. The photos or comments can potentially be seen by superiors, competitors, customers and clients and there are now a number of authorities on the 'public' nature of social media postings. It is therefore important that employees remain conscious of the firm's policy (if any) on social media and, even in the absence of any such policy, it is important that reasonable social media etiquette and rights to privacy are observed. Employees should be reminded that the same harassment and bullying rules can apply to inappropriate posting from the office party as would apply if they were sitting at their desks.

Health and Safety

Employers can, in some circumstances, be held liable for injuries that occur to employees, workers and guests at office parties and the courts have shown a general willingness to ensure that employees suffering injuries at work take the benefit of their employer's insurance. Reasonable care must be taken for all those attending and consideration should be given, in advance, to the proposed activities, the numbers attending, the suitability of the venue and the availability of first aid facilities. At the function itself, the employer should ensure adequate supervision and safety is maintained. Also, employers should remain cognisant that breaches of certain health and safety legislation can result in criminal action and, in the most severe of cases, where employer's failings result in death, there is the possibility of conviction for corporate manslaughter.

Alcohol Consumption

Many employers will choose to have a free bar but employers should give consideration to limiting this in scope and/or duration, with a view to avoiding accidents, fights or harassment. The employer should also, of course, ensure that non-alcoholic drinks are available.

If possible, a member of the management team should remain 'alcohol-free' throughout the event, not only from a supervisory perspective but also for an evidential point of view in the event there are any subsequent issues or proceedings arising from the event.

The Walk (or Drive) Home

The employer needs to give consideration as to how its employees will get home safely. ACAS guidelines (which are generally representative of good practice in Gibraltar) remind us that an employer has a duty of care to its employees and, certainly, employers need to do all they can to prevent employees from driving home drunk. Employees should also be reminded that the journey home, particularly where it is taken together with colleagues, can also bear a sufficiently close relationship to the workplace to be considered as an activity undertaken in the course of employment and the usual employee behavioural standards and protocols should continue to be observed.

Have fun!

While employers need to be conscious of the above, there are many practical and easy steps that employers can take to ensure that the celebrations are fun and safe for everyone and ultimately beneficial for team building and employee morale. If you require any help in formulating policies to help avoid the pitfalls in respect of corporate functions and/or dealing with issues arising from the same, please do not hesitate to contact Alan Buchanan or Joseph Gomez of the Employment Section of our Dispute Resolution Team.

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