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## LawTalk Blog



# Sacked after the work party?

Date: Thursday July 23, 2015

The boss said your behaviour at last night's work party was appalling!

At Andersons, we often work with clients who have unfortunately behaved in a less-than-virtuous manner at staff functions, and have therefore suffered the consequences of disciplinary action or even termination of their employment.

The line is often blurred between work time and personal leisure time, particularly when socialising with work friends outside usual working hours or attending events organised by the employer.

Otherwise upstanding workers can become much less inhibited at work functions, particularly when alcohol is supplied. Work events are commonly seen as a time to have some fun, let off some steam and mingle with close work friends as well as getting to know colleagues that one may not interact with during working hours.

At some stage during our working lives, it is likely we will witness the silly, drunken antics of work colleagues at parties and social gatherings. Most of the time, this behaviour is just harmless fun, but sometimes it can lead to embarrassment, distress and even physical injuries. The impressions and the stories following a drunken night out will often last longer than the fun and hysterics of the evening at the time. Sometimes, especially when it comes to work functions, the consequences remain long after the hangover has subsided.

But more than ever, it's important to remember that work functions are just that, **work** functions, and as **work** functions the employer is responsible for what happens to employees (and other attendees) at **work**. Additionally, employees also have a general duty to take reasonable precaution for their own safety and the safety of others. It goes without saying that employees should avoid becoming overly intoxicated to avoid becoming a hazard to themselves and others.

Social events that originate at work or are sponsored by the employer are often sufficiently 'work-related' to fall within the scope of a variety of laws, including:

- [Work Health and Safety laws](#);
- [Workers Compensation laws](#);
- [Anti-discrimination laws](#), including those dealing with sexual harassment and racial discrimination;
- [Criminal laws](#); and of course
- [Industrial relations laws](#) that deal with disciplinary action and termination of employment.

Employers can be held vicariously liable for the injuries sustained whilst at work functions (which is obviously heightened when alcohol is served) regardless of how remote the connection may seem, or how 'harmless' the original intention of the person who caused the injury.

The legal problems that can emerge from alcohol-fueled work functions became particularly apparent when the Fair Work Commission found that an employee had been unfairly dismissed even though the employee's behaviour was seemingly abhorrent and inexcusable. In this case, the worker yelled profanities at his bosses at a work function, spoke to colleagues in a disrespectful and abusive manner, and also sexually harassed colleagues.

In most circumstances, this conduct would easily amount to 'serious and willful misconduct' to justify the immediate (summary) termination of employment.

Whilst the Commission found that the conduct had indeed occurred, it also found that the employee's intoxication was a 'mitigating factor'. The Commission concluded that *"it is contradictory and self-defeating for an employer to require compliance with its usual standards of behaviour at a function but at the same time to allow the unlimited service of free alcohol at the function."*

In other words, if the employer supplies unlimited alcohol at a function, it should not arbitrarily sack workers whose conduct is less than satisfactory after consuming large amounts of alcohol.

The line is even further blurred when work events seemingly finish, but colleagues continue to associate after the end of the event. For example, we recently represented a worker who attended a work function whereby unlimited alcohol was supplied by management. This function ended at 10.00 pm and most management left, but several colleagues continued to associate at the pub for several more hours. A drunken argument broke out between our client and a colleague and our client proceeded to punch the colleague in the face. Our client was subsequently terminated for serious and willful misconduct.

Here the issues were not only whether the employer's supply of unlimited alcohol mitigated our client's conduct, but also whether this incident occurred during the work function or in our client's own leisure time.

Situations like this can become tricky and create some legal difficulties. If you believe you have been unfairly disciplined or dismissed from your employment, get in touch with [Andersons Solicitors](#).

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