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*Season's greetings from all of us at Forsyths and best wishes for the New Year.*

## OFFICE CLOSURES

### ARMIDALE

From: 1pm 24/12/2008  
To: 8.30am 5/1/2009

### COONABARABRAN

From: 5pm 23/12/2008  
To: 8.30am 5/1/2009

### GUNNEDAH

From: 5pm 23/12/2008  
To: 8.30am 5/1/2009

### TAMWORTH

From: 1pm 24/12/2008  
To: 8.30am 5/1/2009



December 2008

## CHRISTMAS PARTY SEASON & SEXUAL HARASSMENT

It's that time of the season - Christmas parties are upon us providing team members and clients a great opportunity to interact in a relaxed social environment without the constraints of work.

But beware – the Christmas party can be a legal minefield!

Sexual harassment claims are common following end of year celebrations and businesses are increasingly being held liable for the actions of their employees if they cannot establish that they have taken reasonable steps to prevent harassment occurring irrespective of whether it occurs at the workplace or off site. Reasonable steps mean pro-active, preventative measures. Lack of awareness that the harassment was occurring is not in itself a defence.

Employer's liability also extends to the serving of alcohol. Just as restaurants and bars are not allowed to serve drunk people, nor are employers. Occupational safety and health legislation requires employers make provisions for the safety of their employees, and this obligation doesn't stop at the work Christmas party.

The responsibility of the employer extends to ensuring that staff return home safely, after having hosted a work function at which large amounts of alcohol are served. This responsibility is heightened at Christmas time where taxis are scarce, queues are long, people are tired and frustrated and situations can boil over quickly.

Claims under the *Sex Discrimination Act 1984* (Cth) or the *Equal Opportunity Act 1984* (WA) can be costly and take an emotional toll on all involved, not to mention the possibility of unfavourable media attention.

### So what is sexual harassment?

Sexual harassment is **unwelcome** conduct of a sexual nature which would reasonably be expected to offend or humiliate a person. Sexual harassment can be a one-off event and is not limited to the actual workplace – it can take place at work functions. One employee getting a little too merry at the work Christmas party is sufficient to get you into a lot of trouble. However, mutual, invited or reciprocated sexual interaction, flirtation, attraction or friendship between colleagues is not sexual harassment.

Some examples of sexual harassment include:

- unwelcome touching, hugging or kissing;
- staring or leering;
- suggestive comments or jokes;
- unwanted invitations to go out on dates or requests for sex;

- intrusive questions about an employee's private life or body;
- unnecessary familiarity, such as deliberately brushing up against someone;
- insults or taunts of a sexual nature; and
- sexually explicit emails or SMS messages.

### **As an employer, what should you do?**

You should:

- ensure you have an appropriate policy that covers harassment, including sexual harassment, and an effective complaints resolution procedure;
- effectively communicate the policy to all employees in advance of the party;
- serve alcohol responsibly, such as serving full and half strength beer, and provide plenty of water and soft drinks;
- ensure adequate supply of food;
- encourage appropriate conduct by management;
- consider a general policy on alcohol consumption at work functions;
- make sure your clients are aware of your policy if they attend;
- consider arranging transport home or holding functions close to public transport; and
- take appropriate remedial action if sexual harassment does occur.

### **Is there anything you should not do?**

Do not assume you are immune from a complaint. Your staff will not write off inappropriate or harassing behaviour as a "one-off" due to excessive alcohol consumption or "because it's Christmas". Businesses need to ensure that all staff are made aware of what is expected of them and what will and will not be tolerated.

A general awareness of anything in the nature of a complaint, even if not reduced to writing, is sufficient for an employer to take action.

### **Is it worth all the effort?**

In an increasingly litigious work environment, some employers may be tempted to cancel their celebratory event because they believe it may not be worth the effort. It still is, but a few simple precautions will ensure that you can approach the New Year with a sense of hope, not trepidation.

### **Assistance**

Assistance can be gained from the Code of Practice for Employers put out at [www.hreoc.gov.au/sexualharassment/employers\\_code](http://www.hreoc.gov.au/sexualharassment/employers_code) or contact your local Forsyths team.

Armidale p 6773 8400                      Coonabarabran p 6842 0000  
Gunnedah p 6748 5000                      Tamworth p 6763 0100

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