

Christmas party fails

Christmas....that time of year when the festivities not only bring joy but excessive expenses, potential harassment claims, and other employer headaches. As Phyllis Diller once said, *"What I don't like about office Christmas parties is looking for a job the next day."*

This month, we explore the top Christmas problem areas:

Getting beyond merry: parties and alcohol

An employee has a few drinks before the work Christmas party, is served and helps himself freely to alcohol during the party, and then retires to a public bar with a few colleagues. This scenario sounds normal for many work Christmas parties. But, in his wake, this employee apparently told a Director to "F... off, mate" later advising that, "All those Board members and managers are f....., they can all get f....", and was involved in five separate incidents involving female colleagues, telling one "I'm going to go home and dream about you tonight", and another that, "My mission tonight is to find out what colour knickers you have on".

The employee in question was a Team Leader and ironically one of two elected employee Work Health and Safety Representatives. He had been through an induction process when he joined the company on its policies, and his employment contract stated that breaches of company policy may be grounds for dismissal. So, the company believed that, when the full picture of what occurred that night emerged, they were within their rights to dismiss him.

The employee however successfully claimed unfair dismissal. The Fair Work Commission found that, among other things:

- No manager was tasked with supervising the overall running of the Christmas function or the conduct of staff - the company relied on hotel management.
- Some of the events, including sexual harassment happened at the after party and were not sufficiently connected to work. 'Out of hours' conduct can be a cause for dismissal but in limited circumstances.
- There were alternative actions to dismissal that the company could have taken.
- There were issues with procedural fairness in how the company managed the

investigation and employee meetings following the Christmas party incidents.

It's important that employers hosting work Christmas parties ensure that where alcohol is being served, they have taken steps to make sure that the event remains in the spirit of the season, such as: making employees aware of the company policies and expectations of behaviour during the party (including the consequences of breaching policy); make sure someone at managerial level or above is responsible for managing conduct during the party (and the responsible manager is sober!); ensure that the function has start and end times; and team members have a way of getting home safely.

Binging on Christmas expenses

It's easy to spend too much at Christmas. If you are splurging on clients, to be a legitimate business expense and therefore deductible, the expense has to be related to how your business generates income. So, excessive expenses may draw the attention of the regulators and the deduction denied.

If you are hosting client functions, inviting them to lunch, or to your Christmas party, entertainment costs are not deductible.

For staff, if you really want to avoid tax on your work Christmas party then host it in the office on a work day - that way, it's likely to be exempt from Fringe Benefits Tax (FBT) regardless of what you spend per person.

But, if you are hosting a work Christmas party outside of the office, keep expenses under \$300 (GST incl.) per employee to stay under the FBT minor benefit exemption threshold. So, post Christmas party taxi travel expenses, the cost of the Christmas party itself (including meals, drinks and entertainment etc.,) will all be exempt from FBT as long as the cost is kept below \$300 per employee. But, employers cannot then claim a deduction for the Christmas expenses or claim GST credits.

Christmas gifts for the team should also be kept to under \$300 (GST incl.) to ensure they do not incur FBT. Employers can claim a deduction for ad hoc Christmas gifts as long as they do not relate to entertainment.

Post Christmas regrets

February is when a lot of businesses pay their Activity Statements. Avoid Christmas cashflow hangovers. Make sure you protect your position and stay on top of not just Christmas expenses but debtors, stock, and staffing costs.

Would you buy a house with friends or relatives?

It's not uncommon for friends and relatives to band together to capitalise on the investment property market. But what happens when it all goes wrong?

The Housing Industry Association shows that it now takes 2.04 average full time salaries to comfortably service a standard mortgage on a median priced detached house in Sydney. So why not pool your assets?

The tax issues

Capital Gains Tax applies to any change of ownership of a CGT asset, unless the asset was acquired before 20 September 1985 when the CGT rules first came into effect.

In general, if you jointly own an investment property, your individual exposure to CGT will depend on how the property is owned. If the property is held as *tenants in common* then any CGT exposure is in line with your ownership interest – this might be 50/50 or some other configuration. If the property is owned as *joint tenants* then each owner is treated as holding an equal interest in the property for CGT purposes.

Like CGT, how the expenses and income from the investment property is represented in your tax return also depends on how the property is held. For example, if you and a family member each own a 50% interest in the property you will need to split the rental income and expenses 50/50 when preparing your tax returns.

The main exceptions to this are where you are carrying on a rental property business (e.g., you own a significant number of rental properties and manage this in a business-like manner) in which case a partnership agreement will generally determine how the income and expenses are split or where one owner has borrowed money to acquire their interest in the property in which case they can claim a deduction for their own interest expenses (these do

not need to be split with other owners who may have used their own savings to acquire the property).

The legal issues

Disputes between friends and relatives can occur very easily. One area that often triggers a dispute is when one party wants to take some form of action and the other doesn't – like selling the property or investing in expensive renovations. If the problem cannot be resolved the issue may be taken to court to force a resolution. State laws allow for one party (a co-owner) to make an application to the Supreme Court for the sale or partition of the property. Following an application under the partition laws of each State and Territory, a court may make an order for partition or sale of the property.

This is where a legal agreement, a Co-owners Agreement, to underpin the terms of ownership can really help – even for the best of friends or the closest of relatives. Legal issues covered include:

- Ways to resolve disputes;
- What share each party owns;
- When you can sell;
- Who pays the bills;
- What happens when a party dies;
- What happens if a party becomes bankrupt;
- When you can exit the agreement; and
- When you can buy the other party out.

If you are considering buying property, we can help you with a Co-owners Agreement and the tax implications.

Quote of the month

"Happy, happy Christmas, that can win us back to the delusions of our childhood days, recall to the old man the pleasures of his youth, and transport the traveller back to his own fireside and quiet home!"

Charles Dickens

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.