



# *Santa's* naughty list

K&L Gates' **Michaela Moloney, Meg Aitken** and **Sarah Goegan** discuss laws for the holiday season.

**IS YOUR WORKPLACE** gearing up for the holiday period, or winding down? As the end of 2018 fast approaches, employers should take note of the following tips for a successful holiday season.

### **The office end of year party**

End of year festivities combine the workplace and social events. These events are often held at external premises and can involve mingling with clients and customers. Whether your workplace end of year party is held at the workplace itself or off-site, employers have an obligation to provide a safe environment and protect employees from unlawful conduct such as sexual harassment and bullying. An employer will be liable for the actions of their employees who engage in unlawful conduct unless it can show that it took reasonable steps to prevent the conduct from occurring.

So, how to avoid this?

- Each business should have a comprehensive set of workplace policies that clearly set out the types of behaviours that are not tolerated and which are unacceptable in the workplace or at work events, such as discrimination, sexual harassment and bullying is a must.
- Employers should make sure their employees have been adequately trained in these policies. In the training sessions you should provide specific examples of conduct that will not be tolerated, from unwelcome touching to jokes of a sexual nature to unsolicited remarks about a person's appearance or private life. This will make sure there are no misunderstandings.
- As the holiday season draws near, a gentle reminder never goes astray. Take the opportunity to remind employees of their obligations under workplace policies, through an office email or team discussion is encouraged.

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- Employers should ensure, as far as practicable, that alcohol is served and consumed in a responsible manner at workplace events. This includes making sure there is food available, providing an adequate supply of low alcohol/non-alcoholic drinks, and in certain circumstances making transportation arrangements available to employees.

**Hiring holiday staff**

Many workplaces, particularly in the retail sector, hire extra staff over the holiday period, most commonly as 'Christmas casuals'. Before commencing the hiring process, ensure you are familiar with the National Employment Standards (NES) that apply to all employees. It will also be necessary to confirm whether an award or enterprise agreement applies to employees, and don't forget that tax, including PAYG withholding and superannuation obligations also apply.

Employee entitlements differ depending on whether your new recruits are full-time, part-time or casual. Employees may be covered by the General Retail Industry

Award 2010 (Retail Award), and will need to be paid award rates, including penalties if they are working on public holidays such as Boxing Day and 1 January. Underpaying employees can expose your business to potential Fair Work Ombudsman actions and penalties.

To build a strong and productive relationship with all new employees, it is crucial to ensure that all new hires are trained in workplace policies and made aware of goals and expectations of the business.

**Annual shutdowns and downturns**

It is common for businesses to shut down or run on skeleton staff over the holiday period.

If an award or agreement dictates how and when you can direct your employees to take leave, it may be necessary to give a certain amount of notice (e.g. four weeks under the Retail Award) that employees will need to take annual leave as part of a close down during the holiday period.

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If an employee does not have enough annual leave to cover the shutdown, they may agree to take annual leave in advance or unpaid leave.

Some employees may also be entitled to annual leave loading or penalty rates during their annual leave. Again, it is important to ensure that you are across the industrial instruments that apply to your employees. ■

*For more information about issues relating to employment and workplace relations please contact Michaela Moloney, Partner at K&L Gates (Michaela.Moloney@klgates.com). This article is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.*