



Welcome

Welcome to the latest issue of *Employment Matters* - Pinnacle Development Solutions' monthly newsletter. Our continuing aim with this newsletter is to:

- keep you abreast of the latest human resources and training issues and changes in employment legislation
- highlight their likely impact on business and give you pointers as to what you will need to think about, and
- keep you informed of best practice and developments within the HR and training field.

We hope you will continue to find this newsletter of interest and a useful resource.

Who we are

Pinnacle is an extremely successful human resource and training consultancy that has successfully completed three years of business. Its consultants and associates have over 20 years of experience within the human resources and training arena.

We provide support and advice on a range of HR issues, from recruitment, business reorganisations, acquisitions and mergers to dealing with specific issues you may have with your employees. We also specialise in providing employment documentation,

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such as contracts of employment, policies and procedures, and employment handbooks.

And for those companies that find the ever-changing employment legislation and interference from Government too much to deal with when it comes to managing their own human resources issues, well, we can manage it on their behalf and offer a varied range of outsourced HR solutions.

So, welcome - we hope you find this newsletter of interest.

Key developments in November

Maternity pay increase delayed until April 2010

The Government still has a goal to extend Statutory Maternity Pay (SMP), Maternity Allowance (MA) and Statutory Adoption Pay (SAP) from 39 weeks to 52 weeks and to introduce Additional Paternity Leave and Pay (APL&P) by the end of this Parliament.

However, a Notice issued at the beginning of November states that the plans have been put back by a year. It says that: 'HMRC has, up to now, been planning on the basis of implementation for babies due on or after April 2009. We will now start planning implementation for babies due on or after April 2010.'

The announcement can be seen in full [on this page](#).



This now gives you a further year to ensure your family-friendly policies are in order or to start drafting with a view to implementation.

If you require any assistance in this regard, please contact us by [e-mail](#) or by phone on 0800 907 1015.

Christmas parties

Yes, Christmas is just round the corner and so, too, is the season for the traditional staff Christmas party, where managers and staff alike let their hair down and overindulge in the Christmas spirit.

Not wishing to dampen your spirits too much, the Christmas party can be regarded as an extension of the working environment and, therefore, the employer could be held liable for the acts and/or omissions of its employees if it has not done everything it reasonably could have done to prevent breaches of law.

Remember, discrimination cases can attract unlimited damages at an employment tribunal, costing you far more than you anticipated the party would do.



To help you with the forthcoming festivities, we're answering some frequently asked questions...

Can you discipline an employee for being drunk at the Christmas party?

Expecting staff to remain sober, particularly if the employer is providing some or all of the drinks, may be unreasonable. If proposing to dismiss a drunken employee, it must be shown that genuine business interests were threatened by their behaviour and that adequate investigations were conducted. Whether the dismissal is fair will depend on whether the nature of the misconduct was sufficiently grave. However, even when an employee commits a serious act

of misconduct, if the employer has condoned or encouraged drinking, this may be seen as a mitigating factor.

If you are going to be having a staff Christmas party, the best advice would be to make it clear to all employees beforehand exactly what behaviour is and is not acceptable. If you do have an instance of misconduct, treat the case on its own merits and seek further advice before making any decision to dismiss.

Can you discipline an employee for unauthorised absence as a result of a Christmas party?

In general, employers are lenient with staff returning to work after a Christmas lunch. However, the company's position should be made clear to all employees, particularly those who work on a shift pattern or have been contracted out to work for a client.

In *Ardyne Scaffolding Ltd v Rennie*, some colleagues left the work site and went to a pub the day before the Christmas holiday was due to start. Rennie returned to work clearly the worse for wear. The employer regarded this as gross misconduct and he was subsequently dismissed.

Although the Employment Appeal Tribunal (EAT) found the dismissal to be unfair, it

cut Rennie's compensation by 75% for blameworthy conduct.

Companies that have clear rules in relation to drinking or being under the influence of drink whilst at work will find it far easier to justify any subsequent disciplinary action as reasonable than those that do not.

However, rules should not be applied rigidly and each case should be treated on its own merits. A full investigation should be undertaken to establish that the incident is an example of misconduct and is not symptomatic of a longer-term drinking problem, which might better be dealt with through a capability procedure.

How can you make sure that there isn't a repeat of last year when people failed to turn up for work the day after the party?

Make sure you provide plenty of non-alcoholic drinks and food. Before the party, ensure that all staff realise that

disciplinary action could be taken if they fail to turn up for work and there is reason to believe it is due to overindulgence.

What if an employee who has clearly drunk too much at the office Christmas party and is planning to drive home? It's not my responsibility, is it?

In fact, it is. As an employer, you have a 'duty of care' toward your employees and, as it's the company's party, you need to take some responsibility. Think about travel arrangements and maybe end the party before public transport stops

running. Or provide the phone numbers for local registered cab companies and encourage employees to use them. Hiring minibuses to take staff home is another option that would probably be greatly appreciated.

Are you discriminating against non-Christian staff by holding a Christmas party?

Employers can face discrimination claims if they do not take different religions into account when planning their Christmas party. A claim has not yet been lodged, but focusing on one Christian festival has the potential to cause offence. Location,

theme, timing and catering should all be carefully considered, and a choice of non-alcoholic drinks and vegetarian options are a must. Knowledge of the workforce's requirements is therefore vital.

Would the company be liable for the actions of an employee who harassed another member of staff?

Harassment includes any unwanted conduct that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. This can include a whole range of activities, such as remarks made by colleagues, practical jokes, etc.

Comments made at a Christmas party that are intended to be good natured, but are perceived by an individual to be offensive, could result in a claim.

An employer can be held vicariously liable for the actions of an employee, even if harassment occurs outside working hours.

In one case, a senior City lawyer admitted mentioning in public that a 29-year-old female solicitor had a 'great cleavage' and 'great baps'. The comments were made during an office Christmas party, but ended up in a Tribunal. The case was settled out of court for £1 million.

What if an employee suffers verbal abuse about being gay at the local pub before the party? It's not on work premises, so it's a matter for them, isn't it?

Wrong - going to the pub before the office party counts as an extension of work and so all the laws covering discrimination still apply. Make sure the

company has policies in place on bullying and harassment and discrimination, and that everyone knows what they are and what the penalties are for ignoring them.

How can you prevent harassment at the office Christmas party?

Even where harassment has taken place, the employer will not be liable if it can show that it took reasonably practicable steps to prevent it from occurring. Implement clear equal opportunities and anti-harassment policies, and update them to include new areas of discrimination. They should have management backing and be supplemented by training. Grievances should be taken seriously and consistently. Issue behaviour guidelines

and warn staff of the potential consequences of unacceptable behaviour.

We hope this doesn't dampen your spirits too much, and hope you and your employees enjoy the festivities, whatever form they may take.

If you require any assistance in this regard, please [contact us by e-mail](#) or by phone on 0800 907 1015.

Your questions answered

Since the publication of the first edition of *Employment Matters*, we have received positive feedback and some a very interesting questions from readers. One that caught our attention in particular was this one:

Do you have to provide reasons if you are not going to confirm someone's probationary period or is it sufficient to state that it is not company policy to provide reasons? Not giving a reason would ensure that the employer does not 'dig a hole' for itself by inadvertently giving the ground for a potential discrimination case.

An interesting point, but a practice that is more likely to result in a Tribunal claim from the employee for two reasons.

In the first instance, you are essentially forcing the employee into the situation where he or she has to bring a claim to find out the reason for dismissal. They have nothing to lose by issuing a claim form to find out what the reason for dismissal was or serving a sex or race discrimination

questionnaire - they just have nothing to lose and will cause you, the employer, more and unwanted work.

Secondly, you have denied yourself the opportunity to point to a contemporaneous explanation as to the reason for their dismissal. If Tribunal proceedings are brought against you, you run the risk that, when you give a reason in your ET3 response (eg 'we did not confirm the probationary period because of "x"'), it looks like a late invention in light of the impending litigation.

Our advice is - an employee should be left in no doubt as to why their employment is not being confirmed. You should meet with them to discuss the reason(s), which should NOT be a surprise to them. Allow them to respond in their defence and afford them the right to appeal to ensure you comply with the Statutory Dismissal Procedures. Then, finally, confirm the reason in a termination letter, keeping the reason(s) as succinct and brief as possible.

We hope you found this useful - if you have an issue you'd like us to cover in a later issue, [please e-mail us](#).

Further assistance

If you would like further information on any issues raised by this bulletin, or require advice or assistance with any other human resources matters, please call us today on 0800 907 1015 or [send us an email](#).

The information in this newsletter is of a general nature and is not intended to replace professional advice. We recommend you to ask for specific professional advice before taking any action.

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