

Some Christmas advice from Ogier's Employment Law team

News - 15/12/2016

Three things to remember about the Discrimination (Jersey) Law 2013 as we approach Christmas, the Party Season and of course Secret Santa:

- Unwanted conduct of a sexual nature that violates someone's dignity or which creates a degrading, humiliating or offensive environment is harassment.
- If it happens at a work-related social event, an employer can also be held liable for it.
- It is a defence for employers to show that they took reasonable steps to stop that unwanted conduct, or that kind of behaviour generally, from happening.

What the Law says...

Harassment is defined as "unwanted conduct that is related to a protected characteristic and which has the purpose or effect of - (a) violating the subject's dignity; or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the subject". A person also harasses the subject if the person engages in unwanted conduct of a sexual nature and which has the purpose or effect referred to above.

What we say...

The Law covers age, race, sex, sexual orientation, gender reassignment, pregnancy and maternity - but at Christmas parties, it's largely sexual conduct that is the subject of complaints. The three things that will determine whether a complaint is upheld are the perception of the person subjected to the conduct, the circumstances of the case, and what a reasonable person would have thought about the conduct that is being complained about. But it's not just the party that you have

to think about - an inappropriate Secret Santa gift or an attempt at "banter" that crosses the line can cause serious offence. These things might not lead to a complaint on their own, but they can end up contributing to a pattern of behaviour and, if unchallenged, can lead to repeat behaviour that leaves the other employee feeling humiliated, offended and isolated.

What the Law says...

Anything done by an employee in the course of his or her employment which is prohibited by the Law shall be taken as having been done by his or her employer as well as by the employee, whether or not it was done with the employer's knowledge or approval.

What we say...

Remember that what happens at the work party is happening at work - it doesn't matter what time the event happens, and it doesn't matter where it happens. The law extends to work-related social events, or events that people are attending because of their employment (so the Christmas party would qualify, but a chance meeting in a shop might not). You should assume that an employer is liable for what takes place at a Christmas party. You should certainly assume that, as an employer, you are responsible for events that take place on work premises and in work time, like Secret Santa gifts or informal office drinks.

What the Law says...

In a complaint made under the Law against an employer in respect of any act alleged to have been done by the employer's employee, it shall be a defence for the employer to prove that they took such steps as were reasonably practicable to prevent the employee from doing that act or from doing, in the course of the employment, acts of that description.

What we say...

Whilst an employee might still be liable for harassment under the Law for their actions, if that person's employer has taken reasonable steps to stop them doing the specific act that was the focus of the complaint or from generally acting in that way, the employer may not be held responsible. Employers should be clear with their teams about what is and is not acceptable inside or outside of work. A complaint under the Law doesn't just absorb time and potentially cost money, it also creates PR damage that can have a particularly bad impact on an employer's brand and

reputation.

One of the reasonable steps that an employer might take to demonstrate that they have done what they can to prevent discriminatory conduct in the workplace would be to update employee guides and handbooks, or they could invite an employment lawyer in to talk to staff about any element of employment or discrimination law. Our Employment law team would be happy to help with either of those things.

No employer wants to dampen the Christmas spirit or mood but it is important that all employees aware of their boundaries when at festive events. These things aren't just about showing that an employer has done what it can to stop bad behaviour from happening, they're about genuinely changing behaviour - and we're here to help.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



Helen Ruelle

Director of Local Legal Services

Jersey

E: helen.ruelle@ogier.com

T: [+44 1534 514417](tel:+441534514417)

Key Contacts



Rachel DeSanges

Head of Employment, Guernsey

Guernsey

London

E: rachel.desanges@ogier.com

T: [+44 203 835 9506](tel:+442038359506)



Will Austin-Vautier

Counsel

Jersey

E: will.austin-vautier@ogier.com

T: [+44 1534 514460](tel:+441534514460)



Laura Shirreffs

Senior Associate

Jersey

E: laura.shirreffs@ogier.com

T: +44 1534 514096

Related Services

Employment law

Local Legal Services

Legal