

# Employee Conduct Outwith the Workplace

December 2025

# Agenda for Today



- The law on misconduct out of work
- Examples of Misconduct: Festive Edition
- Criminal Offences
- Sexual Harassment In or Outside of Work
- Tips for employers in managing Christmas functions



# Misconduct Outside of the Workplace



- ‘Conduct’ is a potentially fair reason for dismissal in the Employment Rights Act 1996, (ERA)
- Can extend to conduct out of work:

“[...] so long as in some respect or other it affects the employee, or could be thought to affect the employee, when [they] are doing [their] work”. [Singh v London Country Bus Services Ltd]

The employer must be able to demonstrate that misconduct was the reason for the dismissal and that they acted reasonably.

# Examples: The Festive Edition



## Cordiner v Virgin Media Limited

An employee was dismissed for using racially and sexually offensive language, as well as sexually harassing a male colleague, whilst at the Company Christmas Party.

→ **Ruling:** The employee's unfair dismissal claim was rejected as it was deemed gross misconduct.

→ **Reasoning:** It was an official event and had a direct link to employee relationships.

An employee was dismissed for hitting a colleague in the face whilst walking home from the Company Christmas Party, causing serious injury.

→ **Ruling:** The employee's unfair dismissal claim was rejected by a tribunal as being grounds for a fair dismissal.

→ **Reasoning:** The incident was a direct result of the Christmas Party, despite occurring after the party ended, and so was sufficiently closely connected to work and would not have occurred otherwise.

## Gimson v Display By Design Ltd

# Examples: The Festive Edition



Eggleton v Kerry Foods

Two employees engaged in a fight in car park across from the workplace outwith working hours

→ **Ruling:** The employee's unfair dismissal claim was rejected as it was deemed gross misconduct.

→ **Reasoning:** Conduct clearly affected working arrangements as other employee didn't feel safe to attend. Didn't matter it was a domestic matter, sufficient to breach the trust and confidence of the employer



# Misconduct Outside of the Workplace



- Misconduct should relate to the employment, role or have relevance to employer's business – must be a 'link'
- Fact specific
- Consider full context
- Any damage to reputation should be investigated and evidenced
- Consider sanctions short of dismissal



# Criminal Offences



- Criminal offences committed outside of work may be grounds for a disciplinary sanction, if found to have an impact on the employment
- May be appropriate to suspend disciplinary process to await outcome of criminal proceedings in certain circumstances
- Except for regulated industries, no blanket requirement for employee to inform employer about criminal charges/cautions etc
- Criminal conviction can be morally challenging but is not automatically a reason for dismissal
- Could potentially result in an SOSR dismissal

# Sexual Harassment In or Outside of Work



*Unwanted conduct of a sexual nature that has the purpose or effect of violating your integrity, or creating an intimidating, offensive, hostile, degrading, or humiliating environment, such as:*

- Inappropriate touching
- Sexually explicit jokes, innuendos, or the showing of pornographic materials
- Continual invasion of personal space
- Persistent requests for dates or sexual advances - Rejection or acceptance thereof is irrelevant, if you are then treated less favourably by the person who has harassed you.

Can extend to work-related events or environments that are completely not related to work if the sexual harassment that has taken place impacts the work environment.

# Sexual Harassment Cont.



→ As of October 2024, there is a new legal duty on employers to take “reasonable steps to prevent sexual harassment in the workplace”

- Sexual harassment policy
- Clear reporting procedures
- Relevant training to all employees conducted regularly
- Sexual harassment risk assessment
- Ongoing monitoring and reviewing of effectiveness of these measures

# 'Tis the Season...



**Festive Work Parties hold increased employment law risks such as harassment, discrimination and accidents.**

→ They are often considered an extension of the workplace, where employers can be held vicariously liable for the actions of employees, or actions occurring can impact the work environment and the relationship between colleagues.

→ unofficial v official night out?

# 'Tis the Season...



## Tips for employers:

- **Set clear expectations:** Communicate expected standards of conduct to employee prior to the event, emphasising a zero-tolerance policy for misconduct, and ensure managers lead by example.
- **Provide a safe environment:** Plan for risks by considering factors such as the amount of alcohol served, non-alcoholic food and drink options, and having a plan to get employee's home.
- **Consider new legal duty to prevent sexual harassment**
- **Manage alcohol consumption:** If providing a free bar, remind employees of their obligations or consider setting limits.
- **Take action swiftly:** If misconduct or harassment occurs, investigate fully via the correct company procedure



# Thank You for Listening

Any questions?