

# “The Party is over!”



Here, **Scott Milligan** of McClure Naismith reviews the antics, and consequences of some staff that had a very merry Christmas and in doing have found themselves losing tribunals over alcohol abuse.

**The** Christmas party season might be over, and hopefully has passed without incident although I recall an event while working behind the bar in a hotel during my university days. Having enjoyed the benefits of a five course meal, a complimentary bar and a disco, all paid for by the managing director of a small local company, one of the employees showed his gratitude to the MD by swearing profusely, throwing a full pint of beer over him, then wildly attempting to land punches, thankfully in a style more reminiscent of Frank Spencer than Frank Bruno.

We may all be familiar with stories similar to the above during the festive season. However, it's not only during Christmas that alcohol consumption, and its subsequent effects, can be felt in the workplace. It's an issue that can crop up at any point in the year, and in much less extreme forms. A recent Employment Tribunal decision emphasises that employees can be dismissed not only for consuming alcohol during working hours or over consuming at a work event, but also for having consumed it the night before.

In the case of *Ian Waters -v- United Biscuits*, it was held that a factory worker was not unfairly dismissed after being fired for turning up at work smelling of alcohol. Mr Waters, a warehouse operative, had been at a funeral the previous evening, where he told the tribunal he had consumed between six and eight small bottles of beer.

After a poor night's sleep, Mr Waters turned up to work late. Although it was accepted by his supervisor that Mr Waters was not drunk, he was red eyed, tired looking and smelt strongly of alcohol. It was felt that he was not capable of carrying out his duties in the high risk warehouse area, and was banned from the floor. Mr Waters was later dismissed for gross misconduct.

The tribunal held that they could not conclude that dismissal was outwith the range of responses of a reasonable employer.

It may seem that this was a harsh dismissal, but, as the United Biscuits policy was clear in stating that incapability through alcohol would be treated as gross misconduct, the Tribunal felt it was a reasonable response to the situation.

Whilst most businesses have employees who may once in a while turn up having over indulged the night before, drunkenness at work and the more serious aspect of alcoholism as a disease has also been recently considered by the Employment Appeal Tribunal. It was held in the case of *Sinclair -v- Wandsworth LBC* that the Employment Tribunal was entitled to reduce a claimant's basic and statutory awards in relation to unfair dismissal for his contributory conduct in failing to seek treatment for alcoholism. The EAT also held that the Tribunal erred in not taking into account conduct relating to the underlying alcohol problem (drunkenness at work) in assessing the contributory conduct.

Therefore, it seems that tribunals are currently prepared to take a stance in favour of the employer in relation to alcohol abuse. With the government's current campaign on the binge drinking culture, awareness can only be raised, and employers are likely to be encouraged to take an increasingly tough line on this behaviour. To do so, a clear policy needs to be in place. This must be communicated to staff, and a consistent line taken on any breach of this policy.

Thought must be given, however, to the full extent of any problem that becomes evident. Although the Disability Discrimination (Meaning of Disability) Regulations 1996 expressly state that alcoholism does not amount to an impairment for the purposes of the Disability Discrimination Act, some support for treatment is expected from the reasonable employer and care must be taken when dealing with this condition that there is not a wider issue (e.g. depression) that may fall within the remit of the Act.

The seriousness of the problem is emphasised by the Health & Safety Executive, who state that alcohol is estimated to cause 3-5% of all absences from work, amounting to 8 to 14 million lost working days in the UK each year. In light of this, and the above recent decisions, alcohol abuse is an issue that HR professionals should be aware of all throughout the year, not just at Christmas.