

# Booze Blurs Your Evidence

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With Christmas only six weeks away, the parties have started. The annual work Christmas party is usually an anticipated event that can provide topics of discussion.

A case that arose from a 2014 Christmas party was heard in June in the Fair Work Commission. The case (*Keenan v Leighton Boral Amey NSW Pty Ltd* [2015] FWC 3156) involved what would be considered a fairly standard party, where the staff would attend a hotel and be served drinks and finger foods over four hours.

Unfortunately the conduct of one employee that followed was not considered acceptable by his employer, and he was dismissed. The dismissal was not due to work performance; it was due to his behaviour at the party, after quickly becoming intoxicated.

Inappropriate remarks to a director of the company, further disparaging and offensive remarks in relation to management to other staff members, inappropriate remarks and interaction with female co-workers and then an unexpected kiss of a co-worker led to an investigation and eight alleged incidents of misconduct including sexual harassment and bullying.

Upon the dismissed employee making an application for unfair dismissal, the commission had to consider whether the dismissal was harsh, unjust or unreasonable.

The commission gave more weight to the evidence of a co-worker over that of the dismissed worker because it was accepted the co-worker had consumed considerably less alcohol and would have had a more reliable recollection of events.

From this paragraph of the decision alone, there is a clear warning that the more intoxicated you are it is much more difficult to defend yourself with reliable evidence.

Another consideration remains - should your conduct out of work hours impact on your job security? What if you have had an exemplary work record until the work party? This will be considered next week.

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Elsbeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elsbeth-ledwy/> or you can find Elsbeth's column "Mind Your Own Business" in the Daily Mercury newspaper each Wednesday.



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