

# Parties Can Impact Work

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Last week we considered the way intoxication at a work function can lead to problems of credibility in telling your side of the story.

The case also considered how out-of-hours conduct could provide a valid reason to dismiss an employee. The case involved eight allegations of sexual harassment, bullying, and inappropriate language and conduct.

The commission had to decide whether the dismissal for conduct outside of work hours was harsh, unjust or unreasonable. This required consideration of not only the events in question, but the process the employer took.

The commission was critical of the way alcohol was served. It considered that this was a matter within the employer's control, and the decision to place bottles on tables for self service of free alcohol ended up impacting the application for unfair dismissal. The commission, while not excusing the intoxication of the employee, recognised it was a mitigating factor. It was considered "entirely predictable" that some individuals would consume so much alcohol as to result in the behaviour that transpired.

The end result was that the dismissal was considered harsh, and the sacked employee was entitled to either compensation or reinstatement. The commission found while there was certainly inappropriate behaviour exhibited by the employee, these particular incidents were not outlined as a reason for dismissal.

Essentially, the employee was very lucky in this case to be reinstated because if the letter of dismissal had adequately cited behaviour that would have amounted to a valid reason for dismissal, he would not have been entitled to any remedy.

Employers need to ensure responsible service of alcohol and that they set out all relevant allegations of offending conduct in any dismissal. All employees should note how inappropriate conduct outside of work hours can still land them in hot water.

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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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