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ARE YOU HOSTING THE "AFTER PARTY" FOR YOUR EMPLOYEES?

Richards Buell Sutton's Employment Law Newsletter
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The holiday party season is upon us and arriving with it is the tricky question of what events are "hosted" by an employer. Is the employer liable if, after an office party, some employees continue to celebrate while others head home?

In the last year we have had some reminders on what factors are relevant in answering this question, from the case of *Danicek* v. *Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111 (Can LII).

BACKGROUND

Ms. Danicek was an articled student who attended an associate lawyer's dinner organized by one or more associates at her law firm. The firm knew about, and paid for, this event which occurred approximately three times per year. None of the firm's partners attended these dinners with the exception of new partners who were sometimes in attendance. Following a dinner in April of 2001 a number of the employees headed to a bar for some dancing. The firm did not pay for the costs incurred at the bar and attending the bar was not planned in advance by the dinner organizers, however, it was a common occurrence for an "after party" to follow the dinners. Alcohol was served at the dinner and consumed in the bar. At the bar Ms. Danicek and a man from her firm were dancing when the man fell onto Ms. Danicek and they both landed on the floor. It is believed Ms. Danicek banged her head on the floor in this accident. By the time the dance accident occurred there were only three firm employees left at the bar. After the fall it was agreed Ms. Danicek should attend the hospital to assess her injuries. She and two other employees from her firm took a taxi to the hospital.

This case does not specifically decide the liability (if any) of the employer for this accident. However, in the course of the litigation, the question of whether the event at the bar was related to Ms. Danicek's employment – and whether it was related to the employment of the man who fell – had to be assessed by:

1. The court [for the purposes of determining whether the firm's insurance policy applied: 2011 BCSC 65 (Can LII)] and
2. The Workers' Compensation Appeal Tribunal (the "Tribunal") [to assess whether the Plaintiff or her

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dance partner were considered “workers” acting in the course of “employment”: WCAT – 2008 – 03353].

These two forums apply different criteria and the results are impacted by the insurance policy language and the statute governing workers’ compensation. However, there are some key criteria that were relied on which provide some useful tips for employers.

Some additional facts from the Danicek case are helpful in understanding the tips to be taken away from the cases.

The purpose of the dinner was viewed by the employee who organized it as an event to promote collegiality among firm employees and as a “perk” for the employees’ hard work. The dinners were generally considered to be “social” events, however, there was conflicting evidence from employees on whether there was a firm “expectation” that associates and students attend. Approximately 20 employees attended the dinner while a smaller number, estimated by the court to be about 7 to 12 people, attended the bar. The employee who organized the dinner paid for it understanding she would be reimbursed, however, she paid only $17.50 for drinks at the bar for a few junior colleagues. She gave evidence that she wasn’t sure whether the firm would reimburse the smaller expense or not which is why she did not offer to pay for everyone’s drinks for the duration of their time at the bar. The Tribunal did not regard the employer covering the expense of $17.50 as the employer “funding, hosting or supporting the activity”. The employer also reimbursed cab fare from and to the dinner for employees. The Tribunal again did not consider the fact that some employees expensed a cab ride from the bar, as opposed to from the restaurant, as evidence that the bar was part of a work event. Because alcohol was served at the dinner the Tribunal accepted the employer would have an interest in ensuring the employees got home safely.

TIPS FOR EMPLOYERS

1. Ensure a safe ride home is available for employees after an employer sponsored social event where alcohol is served. If an employee later attends another event before using the cab fare to get home the second event is not, on this basis alone, a work related function.
2. Don’t offer to reimburse expenses from the “after party”. Although payment by the employer of “after party” expenses won’t, by itself, make the “after party” a work related event, it can create uncertainty.
3. Letting your employees control the “after party” event may not be enough to protect you from liability. Whether or not an employer controls an activity is only one indicator of whether something is in the course of employment for Workers’ Compensation purposes.

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4. An event that has a "benefit" to the employer in promoting good will or fostering good relationships among employees can be an event with a business purpose even if it is a social event and no business or work is discussed.
5. Pick a fixed location and time frame for your event that helps clear people out of the employer sponsored event after a certain period. The result might have been different if the people who wanted to stay out later continued to have drinks at their table in the restaurant where the dinner was served.
6. Monitor the amount of alcohol consumed by your employees and know when "enough is enough".
7. Avoid the temptation to have an open bar or, at least limit the time the open bar will be available to employees on the employer's tab.

THE LEGAL RESULTS

The Tribunal ruled that dancing at the bar was not a work related event. Ultimately the Tribunal concluded: "Once the dinner was over, I consider that the employees made personal choices as to whether they would continue with activities which were now predominantly social in nature". The court also concluded that, for the purposes of the insurance policy language, the event was not within the scope of employment. The court noted: "There were some business reasons for Alexander Holburn to sponsor such [dinners]: they promote good will for the firm and they were an opportunity for associates to become acquainted. The attendance at Bar None, however, has a far more tenuous connection with employment . . . Additionally, it cannot be said that the law firm sponsored this . . . The evidence does not support the suggestion that Alexander Holburn gained any residual benefit from the attendance of its employees at Bar None".

This case reminds us that "employment" is a relationship that goes far beyond "work activities". A person does not have to be engaged in productive activity for the employer's business in order for something to occur in the course of employment. At some point though, actions become a personal choice.

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