



cullings

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cullings is the newsletter of
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Season's Greetings

*It is hard to believe that
Christmas is once again upon us.
It seems only yesterday that the
year began.*

It has been a very significant year. We had the American elections with Barack Obama being elected as US President. It was a fascinating election to watch both with the primaries and then the election itself. It was a close drawn out battle.

Having an African-American as President and an individual of such intellectual abilities provides the United States with a fresh start and the world with an exciting new era in foreign policy.

In New Zealand, we have had a change of Government as well. John Key has spoken regularly at my Breakfast Club over the years and is always a very willing and welcome participant. We will be looking to bring him back next year along with other speakers.

The National Government has already brought with it some changes to employment laws. The 90 day probationary

period whereby employers can fire staff without being subjected to a personal grievance for unjustified dismissal has been passed into law just as this newsletter went to print. There is also some fine tuning to the way the Employment Relations Authority works in the future.

The worldwide recession is of concern to all and we hope that its impact on New Zealand is minor and of short duration. However, in the meantime restructurings and redundancies are becoming more common.

I know 2009 will open with some concerns for you because of the global recession. New Zealand appears to be better placed than most countries to weather the storm and come out unscathed. We hope you find yourselves in that position as the year ensues.

I wish you all a Happy Christmas and a safe New Year with your families. We look forward to working with you in the New Year.

Peter Cullen.



Inappropriate advances

In past Christmas newsletters we have emphasised the need for employers to realise their health and safety obligations extend to work Christmas parties. Another example of an employer obligation that's pertinent at this time of year relates to complaints about harassment. An employer should take all such complaints seriously.

This was highlighted by a recent case at the Employment Relations Authority, when a Christmas party set off an unfortunate chain of events. Ms A was an 18 year old apprentice who had worked for Mr B and Mrs C for 6 months.

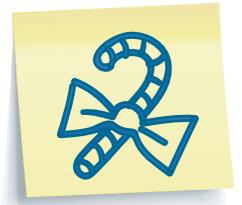
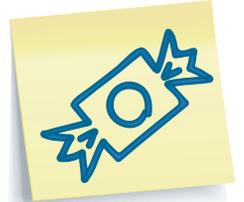
At the Christmas party, Mr D, the factory foreman made a sexually explicit request to Ms A (the contents of which were never disclosed). When Ms A complained to her employers the following Monday, they claimed that Ms A conducted herself in a sexually provocative manner in the workplace. Ms A then took sick leave on a medical certificate. Her employer issued her with a final written warning for unauthorised leave, stress and false accusations. A number of days later Ms A resigned, claiming constructive dismissal.

The Authority was satisfied that Ms A had been subjected to behaviour of a sexual nature by Mr D at the Christmas

function which was both unwelcome and offensive to her. Mr B and Mrs C did not have a duty to believe Ms A's complaint but they did have a duty to inquire into the facts of her complaint fairly and reasonably. This was something they failed to do. The obligation to inquire into the facts and report back on that inquiry was not negated because of the employer's view that Ms A conducted herself in a sexually provocative matter, this was a separate matter.

The Authority found that Ms A had been unjustifiably constructively dismissed, she was awarded three months lost wages and \$15,000 in compensation for hurt, humiliation and distress.

Any employee complaints about sexual harassment, bullying or other such behaviours at the Christmas party require serious consideration. Investigate them. Don't use alcohol as an excuse for offensive inappropriate behaviour. Duties should not be taken lightly and kept in mind as the 'silly season' descends.



Santa Shortage

Unemployment rates are on the rise. Student job search has advised people looking for work to lower their expectations. Where once people could walk into and out of jobs there are now queues of applicants. But there is an alternative to applying for welfare. For suitably qualified individuals with a penchant for travel; head to Germany. They are apparently suffering a Santa shortage.

A leading job agency reports that Germany is running out of qualified Santa Clauses and needs to recruit and train them fast. You must be: child-friendly, reliable, crime free and able to act. Earn up to 60 Euros (\$75) an hour, passport required.



Too hungover to work?

Have you (or someone you know) ever been drunk at a Christmas party, woken up at midday the next morning and can't make it to work? All is not lost, the law may protect you.

A Scottish postman was dismissed for taking time off for a hangover after a Xmas party last year. The English Employment Tribunal has held that his dismissal was unfair – given his otherwise exemplary attendance record. The moral: this might only be applicable in Scotland.

Christmas vs ACC – the show down

At the risk of being killjoys, it is worth noting the consequences that Christmas has upon ACC claims. Recent statistics show that a quarter of all injury claims received by ACC are alcohol-related. Those claims show that alcohol is a factor in injuries occurring when individuals are not only drunk but also when disorientated, fatigued and hungover. In 2007 over 19,000 people received a moderate to serious injury during their Christmas holidays.

ACC is responding by coordinating with with the Alcohol Advisory Council to raise awareness of the issue and to suggest that employers develop robust workplace alcohol programmes in consultation with their employees.