



SOCIAL FUNCTIONS

This fact sheet provides information on workers' compensation coverage and an employers' duty of care obligations in relation to social functions involving employees.

INTRODUCTION

The following questions and answers provide general advice on workers' compensation coverage and an employer's duty of care and health and safety obligations at employer-endorsed social functions under the *Safety Rehabilitation and Compensation Act 1988* (SRC Act) and the *Occupational Health and Safety Act 1991* (OHS Act).

If an employee is injured at such an event, or when travelling between their workplace, the event and their residence, they are entitled to lodge a workers' compensation claim. Each claim will be determined on its merits taking into account individual circumstances. The employer will have the opportunity to make a statement on each claim and to affirm or assert factual information about the event and the circumstances of the employee's injury.

WHAT ARE THE EMPLOYER'S DUTIES AND RESPONSIBILITIES IN RELATION TO OFFICIAL PARTIES AND EMPLOYER SANCTIONED EVENTS?

Employers should always conduct a hazard identification and risk assessment of any proposed function or event and develop effective risk control measures consistent with a reasonably practicable approach [as detailed in section 16(1) of the OHS Act]. The planning for any function or event should be documented where possible.

When assessing the hazards and risks associated with any function or event, employers should consider the likelihood and consequence of an accident or injury occurring and what control measures need to be put in place to eliminate or reduce the hazard or risk. Some of the issues employers should consider include:

- > the location of the function—is it in a workplace under the employer's control?
- > if the location of the function or event is at an external location—other than a workplace under the control of the employer—has the location been assessed for any hazards such as the capacity of the location and associated issues such as access and egress?
- > whether employees should be provided with travel to and from the function or event
- > whether clear guidance or policy been developed and communicated to employees—does it address responsible drinking, anti-social behaviour and other code of conduct issues?

WHAT DUTY OF CARE OBLIGATIONS DO EMPLOYERS AND EMPLOYEES HAVE REGARDING CONSUMPTION OF ALCOHOL AT AN EVENT OR FUNCTION THAT IS ENDORSED OR ORGANISED BY THE EMPLOYER?

Alcohol use is a potential risk factor relating to both health and safety. Depending on the circumstances, alcohol use can give rise to breaches of sections 16 (employer's duty of care) and 21 (employee's duty of care) of the OHS Act. It is important that employers follow section 16 of the OHS Act and 'take all reasonably practicable steps to protect the health and safety at work' of their employees.

It would be considered good practice if the employer developed an internal policy that addresses the responsible consumption of alcohol on work premises, during work time and also for employer functions outside of the workplace. Employers should also:

- > set clear boundaries about behaviour at work-related events and functions
- > set clear start and finish times for events and functions
- > ensure that people vacate the premises at the end of a function if events or functions are held at the workplace
- > limit the ability of employees to consume excessive alcohol (where possible)
- > ensure that appropriate and adequate care is given to any employee who is affected by alcohol during a work-related event or function
- > take steps to address workplace attitudes that condone excessive drinking
- > ensure that all employees are fully aware of the repercussions of drinking in excess of the legal driving limits.

As part of the overall duty of care to their employees, employers should also ensure that the availability of alcohol is controlled (within their ability to control) and that alcohol is not made available from the function area past the end time as stipulated for the function or event. If it is possible for employees to continue drinking at the same premises, the end of the event or function should be made clear.

Finally, it is the employee's responsibility to drink alcohol responsibly and legally and to conduct themselves in accordance with the APS Code of Conduct or their organisation's policy or guidelines on behaviour and conduct.

ARE EMPLOYEES COVERED FOR STAFF PARTIES THAT ARE HELD ON-SITE OR OFF-SITE, WHETHER DURING THE WORKING DAY OR AFTER HOURS?

Attendance at any social function or event held at the employee's place of work, including during an ordinary recess or after hours, would most likely attract workers' compensation coverage under the SRC Act. These events would normally be considered 'for the purposes of employment'.

Workers' compensation coverage under this provision does not extend outside of the place of work. Cover for an injury would not exist if the employee was socialising in an area that the employer does not control (for example, out the front of the work building).

If the social function or event was held at the employees' usual place of work, travel between the employee's residence and the event would not be covered.

Attendance at a social function or event held outside of the employee's place of work may attract workers' compensation coverage under the SRC Act, provided the employee was temporarily absent from their place of work undertaking an activity associated with their employment or at the direction or request of the Commonwealth.

A social function or event will be considered 'associated with employment' if it is endorsed as such by an employer. For example, if an employer arranges an event, specifies the venue and time and encourages employees to attend, then an employee will likely be covered whilst at that venue during the specified times. Coverage is likely to exist for events organised in this manner, whether during work time or after hours.

When determining workers' compensation coverage for an event where the employer has not endorsed it as 'associated with employment', Comcare will have regard to:

- > whether senior officer(s) were in attendance at the social function or event
- > if senior staff did not attend, whether they supported the event by making arrangements to allow it to proceed
- > whether the social function or event was organised during work time, using work materials (for example, printed tickets, email invitations)
- > whether the employer organised or funded transport to and from the social function or event
- > whether employees were considered to be on duty for the duration of the social function or event or were granted special leave in order to attend the social function or event.

There was a clear legislative intent behind the changes to the SRC Act which excluded injuries that occur during temporary recesses outside of the workplace. Normal lunchtime social or recreational activities away from the workplace (such as going to the shops, a café or the park), whether in the company of work colleagues or not, would not be regarded as 'associated with the employee's employment'. Therefore 'unofficial' lunches or staff get-togethers would not normally be seen as events 'associated with employment'.

ARE THERE ANY KINDS OF INJURY WHICH MIGHT NOT BE COVERED AT A WORK-RELATED EVENT?

Coverage would be provided for injuries sustained at a work-related event subject to section 14(3) of the SRC Act. However, this excludes payment of compensation for injuries caused by 'the serious and wilful misconduct of the employee but is not intentionally self-inflicted, unless the injury results in death, or serious and permanent impairment'.

Employees under the influence of alcohol or non-prescription drugs are taken to be guilty of serious and wilful misconduct and would not be covered. Employees in breach of the APS Code of Conduct or any other relevant guidelines may also be regarded as guilty of serious and wilful misconduct and would not be covered.

IF I 'PARTY ON' AFTERWARDS, AM I COVERED AT ALL?

Coverage for injury would most likely not exist where an employee chooses to 'party on' after an employer sanctioned event. This is because the employee would no longer be undertaking an activity that is 'associated with their employment'.

Employers should make it clear that social functions or events away from work are only endorsed for a specific duration. Coverage will not exist before or after the specified time for the social function or event because the activity is not associated with the employee's employment.

WHERE CAN I FIND FURTHER INFORMATION ABOUT ATTENDING WORK FUNCTIONS?

- > Frequently Asked Questions about Social Functions and Events
- > *Safety Rehabilitation and Compensation Act 1988* provides the workers' compensation provisions
- > *Occupational Health and Safety Act 1991* provides information about an employers' duty of care

Disclaimer: The above hypothetical scenarios are intended as general guidance only. Each claim would be considered on its individual merits and according to the presenting facts, and against the legislation.