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## Partygate: Work-Place Negations, Intoxications and Investigations

Many of you will have read the Sue Gray report published last week into the investigation into alleged gatherings of Number 10 staff on UK Government premises during Covid restrictions. It makes a sobering read. The report has ramifications far beyond the government and is a reminder of two important aspects of any employment relationship and particularly now when so many of us are heading back to the office:

1. Appropriate behaviour in the workplace; and
2. How to (and how not to) conduct an investigation.

### APPROPRIATE BEHAVIOUR IN THE WORKPLACE

The work-from-home culture that emerged from the initial lockdowns put a stop to one of the riskiest aspects of employment law liability, albeit temporarily. As many people worked remotely and those in critical jobs were not meant to hold social events with colleagues, the potential problems around behaviour and intoxication were less of a factor.

There is no doubt that many employees have suffered during the pandemic but, as the return to the work environment is starting to gather pace, the challenge will likely see a renaissance in many workplaces.

Some issues to consider:

- At its most pernicious, there is a looming mental health crisis that can result in erratic and inappropriate behaviour in the workplace that needs to be managed sensitively and can potentially amount to a legal disability capable of protection. Many employers with staff returning to work are seeing behaviours which need active management. Many employers are re-running dignity at work training and anti-harassment training. Now is certainly the time for a refresher.
- To the extent that disciplinary action is necessary, one generally expects the more senior staff members involved to suffer the greatest sanction. After all, senior leadership sets the tone and ultimately must be responsible for the culture of any organisation.



- If social events are to be had, plan ahead and appoint responsible senior members of the team to ensure the safety of attendees. Gray found evidence of excessive drinking, altercations between staff and multiple examples of a lack of respect and poor treatment of security and cleaning staff. Consider an Alcohol at Work policy (which covers social event and “Wine Time Friday”) and a speak up policy where staff who believe they have been mistreated can speak up freely.
- Remember that employers are vicariously liable for work related social events, whether they are on the premises or in the private homes of work place leadership, whether or not staff bring their own booze and also events at the “after party” for those who linger on.

For many organisations the prospect of having employees back at work is exciting. Colleagues have missed each other and missed the collegiality of the workplace. The return to the office is something to be celebrated – but with caution. A party is still a party, even at a place of work.

In the event of an event (or series of events) causing internal issues and a requirement for an investigation arises, the Number 10 experience also provides some helpful pointers.

### AN APPROPRIATE INVESTIGATION

There has been intense scrutiny over the appointment and progress of Gray’s investigation which has been a theme in some recent employment tribunal claims. A key part of investigations is not just the conduct of individuals *per se* but also the process must be handled fairly, impartially and with due process. A bungled investigation can result in an adverse ruling. Some points to consider on work-place investigations in light of the Gray report:

- The first and most obvious lesson is to appoint an independent investigator. Independent of the events themselves but also independent of the decision maker for the purposes of any disciplinary sanction. The Cabinet Secretary initially charged with conducting the investigation subsequently had to recuse himself when it transpired he had attended one of the events which was the subject of the investigation.
- If the most senior members of an organisation is due to be investigated, it can make for a very uncomfortable time for a more junior team member or for HR which is usually charged with leading the investigation. Ensure that all of those involved are protected from detriment or any repercussions. Whilst one cannot guarantee anonymity or confidentiality of those involved, do try to conduct all investigations confidentially and sensitively.
- If the matter has potential for criminal activity, consider if and when the police need to be involved. This may have ramifications for the timetable and the investigation itself.
- At the outset of the investigation, clearly set out the scope and try to gather all evidence. Unfortunately for Gray, some of the evidence made its way into the media before it could be gathered internally. Some evidence was not to be found: at the outset of any investigation served on those involved or who may have evidence a “litigation hold” notice which requires any evidence not to be destroyed but rather preserved and retained. This is particularly important for those employers that have automatic destruction policies. Evidence takes many forms including WhatsApp messages and photographs – even on personal devices.
- It is important for any investigator to balance the need for a timely investigation against the need to be thorough. There was a lot of media speculation as to why the report had taken so long to be published or the reason for the delays. The length of any investigation will always depend on the circumstances and the time required to collect and weigh up the evidence.



- Remember that all versions of the report are potentially discoverable: any changes in versions will be combed through and need to be explained. Investigation reports are not generally privileged but need to be prepared on an open and on the record basis.
- Finally, changing the rules to avoid a sanction after findings of fact have been made is inexcusable. If those who can avoid liability what hope does any organisation have of leading by example?

Please see our previous client alerts on [workplace investigations](#) for more golden rules and [common pitfalls](#).

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