



# Covernotes

## Beware the Perils of the Work Christmas Party!

**The 'office' Christmas party 2021 will be a chance for colleagues to both let their hair down after a year's toil in the workplace and celebrate a difficult two years since the last such occasion.**

With Covid-19 having wiped out festive work get-togethers last year, however, are the risks to the business even greater than usual in 2021, what are those perils and why do you need to know your vegan roast from your vicarious liability?

Vicarious liability means someone else can sometimes be held accountable for the wrongdoings of another person. In the case of an employer, that could be the actions of employees at a Christmas party. Vicarious liability provides an injured party with adequate redress, overcoming situations in which an individual, such as an employee, cannot pay compensation for the injury or damage they cause, because they are uninsured. By making the employer liable, victims can seek compensation from their corporate insurance.

This scenario was seen in a case from 2018 – Bellman v Northampton

Recruitment Ltd – relating to a Christmas party incident in 2011, where the managing director's actions in causing injury to an employee resulted in a successful claim against the company.<sup>1</sup> The case showed how employers can be held vicariously liable if a sufficient link between an assault and the relationship between the wrongdoer and the employer can be established.<sup>2</sup> This risk is not limited to personal injury claims, and employers could be held vicariously liable for others acts of employees, resulting in employment tribunal claims.

So, what is the best advice for organising your Christmas party? Much lies in the planning. Employers should assess all risks before the party takes place, bearing in mind that alcohol can often be a contributing factor at events that get out of hand. Limiting employees' alcohol content, perhaps by providing a set number of drink tokens, might be a good idea.

Being clear about expectations with regard to employee behaviour ahead of the party is also important. Employers should stress that normal workplace rules of conduct and behaviour are

just as applicable at the party as in the normal workplace setting, and that harassment, discrimination, bullying and other malpractice will not be tolerated. Managers should be briefed to watch out for possible flashpoints and to lead by example. Should any incidents occur, they should then be addressed as fast as possible after the event.

Planning will also entail ensuring no staff are excluded. Some may not celebrate Christmas, so may need to be provided with a different way to mark the end of their working year.

Action on cyberbullying should be taken in advance of the party, with clear instructions that no compromising photos should be shared. Privacy settings on company social media accounts should be checked, ensuring managerial approval is required for all posts.

With an increased liability risk, particularly as attendance at a work Christmas party can be deemed to fall within the scope of the employee's job, it is well worth checking that the business has public liability protection in place, both the mandatory employers' liability protection and management

<sup>1</sup><https://ipsaloquitur.com/tort-law/cases/bellman-v-northampton-recruitment/>

<sup>2</sup><https://employmentcasesupdate.co.uk/content/bellman-v-northampton-recruitment-ltd-2018-ewca-civ-2214.9b4atbf51de7448f872dae7dc2c3d718.htm>

liability protection (MLP) cover, also known as Directors & Officers.

“In the event that an employment claim is made against an employer in relation to an employee’s wrongdoing, for which the employer is potentially vicariously liable, MLP cover will indemnify an insured for the damages and costs claimed,” explains AXA’s Callum Taylor, Head of Management Liability.

He adds that the insured needs to advise of the claim as soon as they become aware of it but, if conditions are met, the policy will indemnify the insured for the costs of legal representation, counsel’s fees and any compensation payable under either an award made by a tribunal or agreed to be paid as compensation, subject to any relevant conditions and exclusions.

Legal representatives would liaise with third parties, such as ACAS, the claimant and the claimant’s solicitors, as well as counsel and the tribunal, and represent the insured at hearings, draft a defence and also advise on possible resolution actions. Any settlement terms would be prepared, or an appeal considered, if the case is lost.

Crucially, this cover also provides access to a crisis helpline – something a business might well appreciate during the festive season.

But what about the day after the party the night before? If staff are back at work, the risks of the party hangover should also be recognised and mitigated and, of course, no employee allowed to work if their alcohol level is still high.

Tensions could carry over into the

post-party period, but so too could the impact of a lack of sleep. Companies should be particularly on their guard with regard to cybercrime phishing and social engineering attempts, in the aftermath of a party night, as well as any potential errors in employees’ work. Making sure that health and safety protocols are adhered to, and that robust cyber insurance and professional indemnity protection are also in place, could also be deemed part of best practice, post-party-night risk planning, so talk to your broker about the covers that will protect you, before you start pulling the party poppers.

## Don’t Take a Festive Break From Food Hygiene Controls

**Kitchens are hectic places during the festive season, and with current hospitality sector staff shortages, Christmas 2021 could see chefs and their teams struggling to cope.**

Despite the temptation to get food to the pass quickly, it is vital commercial kitchens do not neglect hygiene, particularly with the volume of catering they accommodate during the season. Whilst they might be focusing on the ‘C’ in Christmas, chefs must pay just as much attention to the other four – cleaning, chilling, cooking and cross-contamination control.

Their hygiene regime needs to focus on these on a throughout-the-day, end-of-shift, daily, weekly, monthly and biannual/annual basis.<sup>1</sup>

On an ongoing basis, it is about doing things such as using different cutting boards for different foods, wiping down prep areas, emptying bins, regularly changing cleaning cloths and sanitising



water and always cleaning equipment between cooking red meat, poultry and fish.

At the end of each shift, it entails actions such as, cleaning all work clothing and cloths, sweeping and washing the floor, cleaning down equipment and ensuring nothing is left switched on. Over the festive season, paying particular attention to the cleaning of ice machines, buckets and drip trays in the bar area is also especially important.

Monthly chores include checking on fire risks. Grease and oil accumulation is a major hazard due to the build-up

of fat and oil, and greasy deposits. Highly flammable deposits within ductwork can often be overlooked, and expert help may be required, to ensure the risk is addressed. The right fire extinguishers need to be at hand, well-maintained and capable of being used by fully trained staff, who know which substance to use on each type of fire. Extractor hood filters should also be regularly replaced, to keep ventilation flowing.

Oil in deep fat fryers needs to be regularly changed, and no waste oil should ever be poured down a drain. Doing so can lead to prosecution. Oil

<sup>1</sup><https://www.foodsafesystem.com/commercial-kitchen-cleaning-checklist/>

waste cannot be placed with regular waste and needs to be specially collected.<sup>2</sup>

Cleaning freezers, walls and ceilings should be done at least monthly. Checking that fridge seals are not broken or dirty is an ongoing requirement.

There is more, however. With new dishes often frequenting a Christmas menu for a limited period, it is imperative kitchens are on top of their allergen control and fully aware of whether any of the 14 allergens, which they are legally required to advise upon, are present in their dishes. Customers must be informed of these in a proactive way, and cross-contamination controls put in place, to ensure no allergen can be transferred from one ingredient or dish to another.<sup>3</sup>

If festive PPDS (Pre-packed for Direct

Sale) food is being offered – perhaps a festive sausage roll or turkey and stuffing sandwich – legally this must also now carry details of any allergens present, if the dish has been prepared at the premises from which it is being sold, or taken out for sale, perhaps at a festive market or food stall.

Whilst Christmas can be a time of gluttony, it can also be one of significant food waste, with tonnes of edible poultry and carrots thrown out each festive season.

Any food waste must be disposed of in a hygienic and environmentally friendly manner, but unnecessary food waste could also be avoided. The Government advises that leftovers can be cooled, then popped in the fridge or freezer within 1-2 hours, for reuse in other dishes, such as turkey curries and

stews. As long as this is done in a food-safe way, it could prevent unnecessary food waste heading to landfill.

Get kitchen risk management right, and your dishes tickling the taste buds, and you may well generate return visits next year. Get it wrong and you may need to call upon your public liability, employers' liability and management liability insurance policies, as well as perhaps other covers.

As we head into Christmas 2021, it's worth checking with your local broker that you have everything in your insurance armoury you need, just in case the worst should occur.

<sup>2</sup><https://www.food.gov.uk/business-guidance/food-and-cooking-oil-waste>.  
<sup>3</sup><https://www.food.gov.uk/safety-hygiene/food-allergy-and-intolerance>.

## Resolve to Check Your Rebuild Costs are Accurate

**It's the time of year when we should all be thinking about resolutions. If you are a business owner, you could do worse than resolve to check that your business property is insured for the correct rebuild cost.**

This is partly because the costs of the materials that you would need to rebuild your property, should it suffer something hugely damaging such as fire, serious flood, storm impact or terrorism damage, have increased significantly. It is further impacted by wage increases, in part due to construction-sector labour being in short supply post-Brexit. Between 2020 and 2021, 1.5m workers were lost to the construction sector.<sup>1</sup>

Cost pressures have also been applied by Chinese demand for steel



on the world market and extended lead times for all materials.

The costs associated with the specialists you would need to employ for a rebuild have also increased, as professionals, including surveyors and architects, have to respond to dramatic rises in the cost of professional indemnity insurance in their sector by either passing on the costs or facing financial perils as a practice.<sup>2</sup>

A survey has found that most commercial properties are not insured for the right amount in the UK, with more than 84% either underinsured or insured for too much.<sup>3</sup> Many business owners have insured properties on the basis of 'market value', rather than rebuild cost.

Even if the rebuild cost was calculated correctly, this could have been some years ago when the insurance cover was placed. The price rises in the costs of building materials that we are seeing now make it important to check how close your buildings sum insured is to the actual amount you would be likely to have to pay, if you needed to rebuild your property.

In October 2021, the BCIS House Rebuilding Cost Index, calculated for the Association of British Insurers that domestic buildings insurance policies can be index-linked, showed an annual increase of 8.8%.<sup>4</sup>

The cost of materials for 'all work' increased by 23.6% between

<sup>1</sup>[https://www.rebuildcostassessment.com/single-post/underinsurance-made-worse-by-rising-construction-costs?utm\\_campaign=Underinsurance+made+worse+by+rising+construction+costs&utm\\_medium=email&utm\\_source=INFLUENCER-NEWSLETTER](https://www.rebuildcostassessment.com/single-post/underinsurance-made-worse-by-rising-construction-costs?utm_campaign=Underinsurance+made+worse+by+rising+construction+costs&utm_medium=email&utm_source=INFLUENCER-NEWSLETTER)  
<sup>2</sup><https://www.architectsjournal.co.uk/news/insurance-crisis-a-ticking-timebomb-for-architects>  
<sup>3</sup><https://www.rebuildcostassessment.com/commercial-property-why>  
<sup>4</sup><https://www.rics.org/uk/products/data-products/insurance/bcis-house-rebuilding-cost-index/>

September 2020 and September 2021. The cost of steel in this period rose by 72.6%, and that timber climbed by 73.3% during the past 12 months. Even the cost of paint has risen by nearly a third.<sup>5</sup>

With price rises expected to affect construction well into 2022, as the Construction Products Association said in August they anticipated issues to continue for six to nine months, and the Federation of Master Builders (FMB) believed the situation will last throughout 2021, it is time to resolve to calculate what your business's property rebuild cost would be, and keeping this regularly under review.

If this seems daunting, ask your broker to assist and guide you through how your sum insured should work, for both your property's fabric and rebuild, and the contents you own. Doing this now, and getting your figures in order, could prevent heartache at a later date.

<sup>5</sup><https://www.homebuilding.co.uk/news/construction-materials-shortage>



## Will Inspectors Feast on a Plant-based Defect Diet This Winter?

**During the pandemic, there was an easing of the usual arrangements and plant inspection regime that a manufacturing or engineering business must maintain.<sup>1</sup>**

Now there are no excuses for not getting inspections and maintenance up to scratch. With a £43,000 fine recently handed out to an automotive firm and its landlord, for failure to rectify defects with a dangerous platform lift, it would be wise to act with immediate effect.<sup>2</sup>

In 2019-2020, there were 7,075 health and safety notices handed out by the Health and Safety Executive (HSE), and 325 convictions achieved.<sup>3</sup>

Not having guards or safety protection systems functioning and doing their job in mitigating risks is often part of this overall picture, as is inadequate maintenance, servicing and repair.

Given the constant risks workers can face in manufacturing and engineering businesses, and the severe penalties that can result, including imprisonment, why do firms continue to use equipment that inspectors have already deemed to be unsafe or which they know is unsafe?

Cost may be one reason, but the other is often one of business interruption. To be without a piece of plant for a period could disrupt production or workflow. For this reason, some firms, which have ultimately been heavily fined, have even physically removed the decommissioning tape applied by inspectors, to carry on using dangerous equipment.

However, malfunctioning plant can quickly break down and lead to business interruption, a loss of sales and potentially reputational damage, if you cannot deliver on contracts. To not act on defects, on the basis of business

interruption concerns, can be counter-productive.

Whilst machinery breakdown may be insured as a risk, knowingly operating a defective machine or item of plant can invalidate any future claim for breakdown. There is nothing to be gained by continuing to operate defective plant.

The 2019 Allianz Engineering, Construction and Power revealed that 16% of inspected escalators and moving walkways had a potentially life-threatening defect.<sup>4</sup> Following the pandemic and the temporary relaxation of engineering inspections, plant must be professionally checked over, to eradicate such risks.

Any company operating plant and machinery has a legal and moral duty to keep it in suitable condition for its ongoing use. Engineering inspections are specifically designed to identify faults and defects before they present an unacceptable risk.

They also assist by helping to pinpoint what could be the anticipated end-of-life date for a piece of plant, and help businesses to budget for plant repurchase and investment.

If you have any form of equipment subject to statutory inspection, and such inspection has not occurred during the pandemic or since, it is time to put that right. In addition, test equipment thoroughly, speak to employees and pick up on any concerns, correct malfunctions and repair safety systems which have failed well before an inspector calls and identifies dangerous or life-threatening plant and machinery.

For help in working through these risks, arranging engineering inspections and organising your insurance, please get in contact.

<sup>1</sup><https://www.hse-network.com/hse-suspends-routine-inspections-amid-coronavirus-fears/>  
<sup>2</sup>[https://www.birmingham.gov.uk/news/article/941/landlord\\_and\\_tyre\\_company\\_fined\\_43k\\_for\\_dangerous\\_platform\\_lift](https://www.birmingham.gov.uk/news/article/941/landlord_and_tyre_company_fined_43k_for_dangerous_platform_lift)  
<sup>3</sup><https://www.hse.gov.uk/statistics/enforcement.htm>  
<sup>4</sup><https://www.allianz.co.uk/news-and-insight/insight-and-expertise/why-business-should-prioritise-engineering-inspection-and-maintenance.html>



## Understand Where Commercial Fleets Sit Within Rule H1

**If you're buying something to pop into the Santa's sack of your HGV or coach business employees this Christmas, you might wish to make it an IOU for a copy of the new Highway Code, due out in spring 2022.**

Major changes will be introduced in the updated edition, most importantly for those in the HGV and coach sectors is Rule H1 – a 'hierarchy of responsibility'. This means that the needs of pedestrians, cyclists, etc. will be put before HGV and coach sectors. The HGV and coach sectors will bear more responsibility to be aware of the needs of other road users than any other 'subgroup' on the road.<sup>1</sup>

This hierarchy will affect any fleet drivers operating in England, Scotland or Wales, and its existence, and the accompanying new rules will require effective communication to all commercial drivers. The hierarchy's rationale is that of protecting the most vulnerable road users – pedestrians – who sit at the top of the hierarchy, followed by cyclists.

New rules will support the interests of these two most vulnerable groups. All drivers will have to cede priority to pedestrians attempting to cross the road. Vehicles wishing to turn left at a junction will also have to give priority

to cyclists travelling straight ahead.

These 2022 Highway Code additions will add to others already in force and which can be viewed in the current online version. These explain how to respect the Red X in a closed lane of a smart motorway, how variable speed limits work and what to do if you break down in all-lanes-running situations.<sup>2</sup> It is crucial all drivers know these rules.

The move to protect pedestrians and cyclists has also been evidenced in London this year, with the arrival of the March 2021 Direct Vision Standard.<sup>3</sup> This currently requires 12-tonne lorries to meet at least a one-star minimum standard, relating to the commercial vehicle driver's 'visibility' of pedestrians and cyclists, if they wish to drive in London. This will increase to a three-star qualifying standard by 2024.

It aims to enable the commercial driver to see the vulnerable road users through vehicle safety features. These include Class V and VI mirrors, blind-spot cameras, side under-run protection, close proximity sensors and an audible alert when turning left.

It is part of the Mayor of London's Vision Zero plan to eliminate all deaths on the city's transport network by 2041. Failure to comply will result in a fine of £550, reduced to £275 if paid

within 14 days, and 7,000 such fines were handed out in the first three months.<sup>4</sup>

This is a measure tackling a situation in which HGVs, despite contributing only 3% of the total miles clocked up by London's road users between 2018-2020, were involved in 41% of fatal collisions with cyclists and in 19% of those with pedestrians.

All of these changes impact on those driving for a living and must be embraced, if fines and other potential penalties are to be avoided. Commercial drivers and fleet managers need to understand their risks and mitigate their impacts on other road users, through robust driver training and education, and the use of safety systems and measures that keep others safe.

The H1 hierarchy's impending arrival suggests tolerance of commercial fleet negligence will be extremely low, particularly if HGVs and coaches are involved in accidents with pedestrians and cyclists. The time to act is now, to mitigate risks and learn how to better plan routes to avoid fines and other issues.

If you need a broker to help you do this, please get in touch. Working together, we can make the world of commercial driving still work for you.

<sup>1</sup><https://www.forbes.com/sites/carltonreid/2021/07/29/new-highway-code-to-rule-that-motorists-should-cede-priority-to-pedestrians-and-cyclists/?sh=59a341aa7ae9>

<sup>2</sup><https://highwaysengland.co.uk/our-work/smart-motorways-evidence-stocktake/new-highway-code-rules-will-make-our-roads-even-safer/>

<sup>3</sup><https://tfl.gov.uk/info-for/deliveries-in-london/delivering-safely/direct-vision-in-heavy-goods-vehicles#on-this-page-0>

<sup>4</sup><https://tfl.gov.uk/info-for/media/press-releases/2021/june/three-months-of-tfl-s-world-first-direct-vision-standard-shows-lorries-in-london-are-safer>



## Festive-themed Insurance Rib-ticklers

**Q. What's the biggest cyber insurance risk in a bakery at Christmas?**

A. Mince spyware.

**Q. What's the difference between a whole life policy and Peter Pan?**

A. A whole life policy eventually matures.

**Q. What's Santa's favourite type of insurance?**

A. Public Flyability.

**Q. What's Santa's favourite type of leisure insurance?**

A. Ho-ho-hole in one insurance.

**Q. Why don't you ever see Santa in an open hospital ward?**

A. Because he has private elf care.

**Mrs Claus to Santa: "Why on earth did you buy Pluvius insurance?"**

Santa to Mrs Claus: "Because it covers rain, dear"

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