

Insights

A MINEFIELD FOR EMPLOYERS? DRUNKEN CONSENT AND SEXUAL HARASSMENT

Sep 02, 2026

Summary

The key takeaway from *AB v GH Limited*? Consent, intoxication and “unwanted” conduct are not always as clear-cut as they might seem. With the duty to prevent sexual harassment strengthening on 30 October 2026, employers should be focusing on prevention before problems arise.

What happened

Under section 26 of the Equality Act 2010 (**the Act**), sexual harassment involves unwanted conduct of a sexual nature. The word “consent” does not appear in the Act.

In *AB v GH Limited* [2026] EAT 115, the EAT considered a constructive unfair dismissal and sexual harassment claim arising from a sexual encounter between colleagues at a hotel following a work Christmas party. Both individuals had been drinking.

The Tribunal found the conduct was not “unwanted” but did not specifically address consent. The Claimant appealed, arguing the Tribunal should have considered whether she had the capacity to consent while intoxicated when deciding whether the conduct was unwanted.

The EAT dismissed the appeal, holding that consent is relevant to the question of whether conduct is “unwanted” but is not a separate statutory test. Drawing on the criminal law case *R v Bree* [2008], it highlighted two important points for employers:

- Drunkenness does not automatically mean a person cannot consent. It is a question of fact and degree. Here, AB was not considered so intoxicated that she could not decide whether the sexual conduct was unwanted
- Just because someone consents does not automatically mean the conduct was wanted. The EAT highlighted the importance of workplace power dynamics, noting that a junior employee

may agree to conduct involving someone more senior, but could still potentially bring a harassment claim later

While this claim was unsuccessful, it is a reminder that alcohol and work events can be a risky mix for employers. Harassment claims often arise at work socials, parties, and other informal events, and few employers will relish arguing over exactly how much someone had to drink when assessing whether conduct was unwanted.

Prevention is key. On 30 October 2026, the sexual harassment preventative duty strengthens from “**reasonable steps**” to “**all reasonable steps**”.

Risk assessments should not overlook alcohol. External venues, free bars and “after-party” activity where employer control is weakest, are often the environments where risk is highest.

What to do now

With the new duty about to come into force, and in advance of the upcoming Christmas party season, employers should:

- Review and update risk assessments to address alcohol-related risks at work events
- Take practical steps to limit alcohol consumption, for example avoid free bars and consider drink tokens or earlier closing times
- Consider alternative team-bonding events that do not centre on alcohol and may also be more inclusive
- Where possible, hold events on their own premises where they have greater oversight
- Keep watch on situations which may lead to “after party” activity

If you have any questions about this development or its implications for your business, please contact [Caroline Noblet](#) or another member of [BCLP's UK Employment team](#).

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