



## **Employer not responsible for employee's assault on customer**

### **Link between wrongdoer's actions and job needed to make employer liable**

Those who suffer harm at the hands of a company employee may be able to bring a claim against the wrongdoer's employer and obtain damages from its insurer. However, a recent Court of Appeal decision confirms that even when an employee's wrongful act takes place during work time and on company premises, the employer will not necessarily be held responsible.

#### **Facts**

In the case *Mohamud v Morrisons* Mohamud was attacked at a Morrison's petrol station by Kahn, one of the supermarket's employees. Mohamud had entered the service kiosk at the petrol station and asked Kahn whether he could print off some documents from a USB stick. Kahn verbally abused Mohamud, using racist language, and then followed him outside onto the forecourt and subjected him to a serious assault involving kicks and punches.

#### **CA**

The court found that the connection between this assault and Kahn's employment was not sufficiently close to enable Mohamud to recover damages from Morrisons. Although it was part of Kahn's job to interact with the public, the court found that the attack had been carried out for reasons of his own and was not related to his work duties. The legal principle of 'vicarious liability', which means that employers are held responsible for their employees' acts or omissions, did not therefore apply.

#### **Law**

By contrast, in a 2012 case, *Wallbank v Wallbank Fox Designs* the court found that a company could be sued for a junior employee's attack on a senior manager who had criticised his work performance. The circumstances of the assault in that case did give rise to a sufficiently close connection with the perpetrator's employment to make his employer liable.

Usually, the courts take a fairly broad approach when deciding whether a particular act occurred in the course of an individual's employment, so as to make the employer liable. Cases in this area quite often concern types of employment where there is a need to keep order and discipline. For example, if a nightclub doorman uses excessive force when restraining a customer and causes injury, his employer is likely to be liable, even if it can show that it trained the doorman to be more restrained in the use of force.

However, where it is claimed that an employer is liable for an act of discrimination perpetrated by an employee, the Equality Act 2010 provides the employer with a defence if it can show that it took all reasonable steps to prevent that employee from discriminating. Such steps will usually involve training employees in equal opportunities and making it clear to staff that discriminatory practices will not be tolerated.

It can be difficult for employers to rely on this statutory defence if there was a known risk that the perpetrator might act in a discriminatory way – perhaps because people had complained about his behaviour in the past, but nothing was done about it. This suggests that allegations of discrimination should be investigated, even where no formal complaint has been made.

Sometimes employees will make their concerns known on a confidential basis but even then, there might be justification for putting the alleged perpetrator under closer supervision.

Whistle-blowing is another area where employers may be held liable for their employees' wrongdoing. Since mid 2013, statutory whistleblower protection has included an express provision making an employer liable if one of its employees victimises a colleague who has blown the whistle. As with discrimination, there is a defence if the employer can show that it took all reasonable steps to prevent the victimisation.

### **Comment**

There will always be a risk that a 'loose cannon' member of staff will behave violently, causing the employer to be liable for the consequences. The right sort of recruitment procedures should go some way towards helping to minimise the risk of employing someone like this in the first place.

Being able to demonstrate that staff have received appropriate training is also likely to reduce risk overall, though it might not always enable an employer to escape liability. In any event, employers should ensure that they have appropriate liability insurance in place at all times.

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