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Employer liable for employee's criminal act at work

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Retailers could see spike in claims from offended customers, says solicitor

Employers can be held vicariously liable for criminal acts committed by employees at work, the Supreme Court has unanimously ruled.

The widening of the tortious principle will now be feared by businesses that could face claims from customers, or even their own staff, if harmed by employees.



Previously, employers could avoid liability where employees acted for personal reasons, termed legally as 'on a frolic of their own'.

The decision handed down by the UK's highest court related to an altercation at a Morrisons supermarket petrol station in Small Heath, Birmingham, in March 2008.

Morrisons employee Amjid Khan rudely rejected Ahmed Mahmoud's request to print off some documents from a USB stick at the company kiosk he was attending.

After Mahmoud protested, Khan launched a tirade of racially-motivated abuse at the victim and followed him out onto the forecourt, before attacking him.

Mahmoud issued a claim against the supermarket which was dismissed by both the High Court and Court of Appeal because there was an insufficiently close connection between what Khan was employed to do and his conduct in attacking Mahmoud.

Delivering the lead judgment, Lord Toulson said the close connection test should cover two matters: what functions or 'field of activities' have been entrusted by the employer to the employee; and whether there was sufficient connection between the employee's position and his wrongful conduct for the employer to be held liable.

In reaching his verdict, the justice held that Khan's conduct in answering the claimant's request in a foul mouthed way and ordering him to leave was 'inexcusable' but within the 'field of activities' assigned to him. 'What happened thereafter was an unbroken sequence of events,' he reasoned.

Lord Toulson continued: 'It was a gross abuse of his position, but it was in connection with the business in which he was employed to serve customers.

'His employers entrusted him with that position and it is just that as between them and the claimant, they should be held responsible for their employee's abuse of it,' he said.

David Williams, a partner at DAC Beachcroft and a member of the Forum of Insurance Lawyers' (FOIL) welcomed the decision.

'The Supreme Court's judgments provide greater clarity on the types of relationship which give rise to vicarious liability, and confirm that the close connection test should be used when deciding whether an employer or business should be responsible for an action or omission of an individual.

'While each case should be considered on its own facts and merits, the judgments provide greater certainty to all parties in this evolving area of law.'

Christina Tolvas-Vincent, head of retail employment at Bond Dickinson, said the decision could leave retailers more likely to be held liable for similar incidents in the future and may face an increase in claims from customers.

'Employers should have a close look at their insurance policies to see whether these sorts of deliberate acts are excluded from the scope of their public liability insurance. Many policies may exclude deliberate acts, and hence, there could well be an issue.'

Meanwhile, Anne Davies, head of Withers's health and safety team, added: 'Employer's liability insurance is compulsory, so if an individual is an employee then insurers will have to provide an indemnity, unless there is a breach of the policy's conditions.

'The insurers may be able to make a recovery against the policyholder but would not be able to avoid making a payment to the injured party in these circumstances.'

Tolvas-Vincent urged employers to consider their potential liability and ensure staff are properly supervised.

'While employers don't need to make changes to employment contracts, they can give themselves further protection by ensuring staff are given training and are clear what to do if they encounter a difficult customer,' she said.

'We would also recommend that they investigate a job applicant's background and take up references before employing them in order to try to reduce the risks of such an event occurring. All these efforts could potentially act in mitigation should an incident occur and go to court.'

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