

Business & Employment Brief

Your Legal Team for Life

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Court of Appeal Rules on Employers' Vicarious Liability

The Court of Appeal has given further guidance on the circumstances in which an employer can be liable for wrongdoings committed by its employees in the course of their employment. In the first case, a senior healthcare assistant, Mr Marsh, who was at home and off duty was telephoned by his manager and asked if he might work a particular shift. Mr Marsh, who was drunk, reacted badly to the request and cycled for 20 minutes to his workplace where he seriously assaulted his manager. Mr Marsh was sentenced to 15 months imprisonment for the assault after pleading guilty. In the second case, the managing director of a company that manufactured bed frames suffered a fractured vertebrae when he was assaulted by an em-

ployee after he questioned his work rate. The employee was later convicted of grievous bodily harm.

In the first case, the Court of Appeal held that Mr Marsh was acting for his own personal reasons. The instruction from his manager was "...no more than a pretext for an act of violence unconnected with the work as a healthcare assistant." The employer was therefore not vicariously liable.

In the second case, the act of violence occurred in the workplace during the course and scope of employment and was a response (albeit an extreme response) to an instruction from his employer. The assault was therefore within the course of employment and the employer was held to be vicariously liable for the assault on its own Managing Director!

Conflicting AWR Statistics

The Recruitment and Employment Confederation (REC) has reported that 81% of employers plan on keeping the number of agency workers they have at current levels or increasing them. This is despite the Agency Workers Regulations increasing the rights of temps broadly to those of permanent staff.

However, the Association of Professional Staffing Companies, following a survey of 42 recruitment agencies, has concluded that 29% expected employers to terminate temporary worker contracts before expiry of the 12 week qualifying period for such rights.

Social Network Database Claim

In California a former employer is suing an ex-employee for taking his followers on the social networking site Twitter with him when he left.

Such claims may occur in the UK but an employer would have to show a breach of confidentiality, breach of a database right or breach of some other contractual obligation to be successful. In any event, organisations should ensure they have a robust social media policy in place to prevent such claims.

Unfair Dismissal Qualifying Period

It is understood, despite no formal announcement being made, that the increase in the unfair dismissal qualifying period from one to two years will only apply to those employed on or after 6th April 2012.

Kate Middleton
on Employment



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Bank Deposit Protection Rules for Businesses

In December 2010, new limits were announced for the levels of protection available for different investments underwritten by the [Financial Services Compensation Scheme](#) (FSCS).

The FSCS protects the deposits of small companies, which are those which meet two of three criteria:

- they have fewer than 50 employees;
- their turnover is not more than £6.5 million per year; and
- the balance sheet total is less than £3.26 million.

The £85,000 limit is also available for unincorporated organisations, partnerships and sole traders, but in the latter case the limit would apply in total to all (i.e. business and personal) accounts held by the customer with the same lender. One possible area for concern is whether deposits held in different members of the same banking group are covered separately. In this case, if each of the banks is

separately authorised by the Financial Services Authority, the FSCS would pay compensation up to the limit of £85,000 per person (from 31 December 2010, the limit is being raised to the sterling equivalent of €100,000), per authorised institution. If each of the banks is not separately authorised but is covered by the parent company's authorisation, the FSCS would pay compensation up to the limit of £85,000 once, irrespective of how many different group members a person held accounts with.

In July 2009, it was announced that the scheme was being improved for those with deposits at and loans from the same bank. These will now be 'netted off' for the purposes of compensation, which will improve the position for some customers.

Deposit takers in the Channel Islands and Isle of Man are not covered by the scheme.

If you would like advice on this subject contact Lauren Dimmack on 01276 681217 or e-mail: lauren.dimmack@brooks-partners.co.uk.

Lauren Dimmack on
Commercial Matters



Company Formation Checklist

You may have come across advertisements which make forming a company sound very easy, but before you go ahead there are some serious issues to think through.

Decide what to include in the Articles of Association and Memorandum of Incorporation. These documents lay down how the company is to be structured and what its operating procedures will be. Include names of the director (s) and company secretary (if necessary). Include any positions that have special names or rights (e.g. managing director) and any specific limitations on directors.

Determine who will own the shares and in what proportions. Changing this later on is fraught with potential tax traps. If you own trademarks you need to decide whether to keep them or sell or lease them to the company.

If the company will use a property owned by a director you need to decide whether or not you should have a lease and don't forget to consider the tax implications. Cars can be a major source of friction in small businesses. Take advice on whether cars should be owned by the company or not, how they are financed and insured etc.

Give thought to what the 'corporate look' is going to be. If you plan to use a trade name, do a search to make sure the company name AND trade name can be used

without legal ramifications. Companies House produces guidance on many company issues including basic guidance on the Companies Act 2006.

Your stationery, website and emails must show your registered number and other details. Adding your VAT number is usually a good idea (particularly if stationery will be used for invoices) so this needs to be sorted out as early as possible.

If your turnover is more than the VAT limit you must register for VAT and tell HM Revenue and Customs that the company is trading. Failure to do so within the time limit may lead to a fine.

By law employers must have employers' liability insurance. However, very small companies which employ only their majority shareholder are exempt from the requirement to carry employers' liability compulsory insurance. This has brought them into line with sole traders who do not employ anyone else.

Normally, you will not be able to open a corporate bank account until your bank has seen the company's certificate of incorporation. If you need borrowing, consider what security can be offered and who will give guarantees if necessary.

Employees have numerous rights and it is important to know which laws apply and to be ready for forthcoming legislation.

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