



# Human Resources



Do you employ staff?

## Employment Law Update - November 2023

We will be updating you shortly, about some expected employment law updates which will come into force in early 2024. However in the meantime and in advance of your forthcoming work-related Christmas celebrations, we thought we would share some interesting, historic case law, as food for thought.

### **Bellman 'v' Northampton Recruitment Limited (Vicarious Liability)**

This case relates to vicarious liability and was heard in the High Court, rather than in an Employment Tribunal. An employer will usually be held liable for the acts of an employee, if the acts are ‘in the course of employment’. The legal test is whether the acts were ‘so closely connected with the employment that it would be fair and just to hold the employers vicariously liable’.

In this case, Mr Bellman worked for his employer, Northampton Recruitment Limited, as a Sales Manager. After a company-organised Christmas party had ended, the company’s Managing Director (MD) paid for transport to take a number of attendees, which included employees, to a local hotel for more drinks in the hotel reception area. The drinks were mainly paid for by the MD and in the early hours of the morning, the conversation turned to business plans for the following year and Mr Bellman brought up the issue of a recent employee promotion which had proved controversial. The MD, who was now very intoxicated, became annoyed and began lecturing those present on his authority to make monetary and recruitment decisions about employees because he owned the company, and he was in charge. Mr Bellman, in a non-aggressive manner, challenged the MD's decision about the new recruit's work location and the MD then physically assaulted Mr Bellman, knocking him to the floor, where he hit his head. As a result of the assault, Mr Bellman suffered a severe brain injury with subsequent emotional, and behavioural consequences, rendering him unlikely to ever return to paid employment again. He subsequently sought damages from the employer, on the basis that the company was vicariously liable for the MD's actions.

### *The High Court Decision*

The High Court decided that there was not a sufficient connection between the nature of the MD's employment and the assault and therefore determined that the employer was not vicariously liable. They also reasoned that even though there was a work-related conversation, this did not mean the incident occurred ‘in the course of employment’ as this would extend the remit of an employer's vicarious liability to all work-related conversations.

The High Court's decision was subsequently appealed on the basis that there was a sufficient connection between the professional position of the MD and his ‘wrongful act’, especially due to the nature of the MD's role and the context of the circumstances leading up to the assault.

## *The Court of Appeal Decision*

The Court of Appeal (CA) allowed the appeal and to determine whether there was a sufficient connection, the CA highlighted that the first question to ask is, what is the nature of the individual's job and, secondly, was this connected to the incident.

When deciding what the nature of an individual's job is, the CA reiterated that this is a broad consideration which is not limited to the express activities which are assigned by an employer. For example, in this case, the MD's job was to be in overall charge of every aspect of the company's business, with no set hours, with authority to control his own methods of work and having responsibility for all management decisions. He also had authority to manage junior employees and would have seen the maintenance of managerial authority as an important part of his role.

Taking this nature of the MD's activities into consideration, the CA found there was sufficient connection between his field of activities and the assault. Regardless of the timing and location of the assault, the assault took place when the individual was exercising his managerial authority over junior employees, including giving members of staff a lecture regarding his authority.

As a result, the CA concluded that there was sufficient connection between the actions of the MD and the employment and overturned the High Court's decision, concluding that the company was vicariously liable for the assault.

## *Lessons Learnt*

The Court of Appeal's decision (to overturn the High Court's decision) was based upon the unusual facts of the case, which were that during the course of the impromptu drinking session, the MD engaged himself in his 'MD role' and expressed 'his authority' which then 'engaged the workplace'.

A defence to vicarious liability may succeed where the employer can show all reasonable steps have been taken to prevent an unlawful act occurring. As such, it is advisable therefore, that employers who arrange social events, or are aware that employees arrange these themselves, communicate a reminder to all employees, that their attendance at these events is voluntary, that all participants who choose to attend will attend and be treated on an equal basis and that discussions regarding work, or activities related to work activities, are strongly discouraged. This may help to prevent circumstances arising where an employee engages in their 'workplace role' during social events.

## **How Can We Help?**

If you have any queries relating to the content of this newsletter, or any other HR related topic, please do not hesitate to contact us at [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk).

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