# EMPLOYER LIABLE FOR EMPLOYEE ASSAULT ON CUSTOMER

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**Labor, Employment and Workplace Safety Alert**

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## WHAT HAPPENED?

In *Mohamud v WM Morrison Supermarkets plc*, the Supreme Court decided that the employer was vicariously liable for an employee's assault on a customer. Mr Mohamud, a man of Somali origin, went into a Morrisons supermarket that was attached to a petrol station and asked for some documents to be printed from his USB stick. Mr Khan, one of the staff members on duty, responded abusively using racist language. Mr Khan then followed Mr Mohamud out of the shop and into his car to tell him not to come back to the petrol station before physically attacking him. When Mr Mohamud got out of the car, Mr Khan continued attacking him, kicking and punching him on the ground. Mr Mohamud brought a personal injury claim against Morrisons claiming that it was vicariously liable for Mr Khan's acts. Mr Mohamud was unsuccessful in the High Court and Court of Appeal, but the Supreme Court decided that there was a sufficiently close connection between the assault and the employee's job of attending to customers, such that the employer should be vicariously liable for the actions of its employee.

## WHAT DOES THIS MEAN?

The Supreme Court confirmed that the "close connection" test applied in previous cases was the right test. To apply the test to this case, it was necessary to first consider the nature of the employee's role which "must be addressed broadly". Secondly, the court must consider whether there is a sufficiently close connection between the employee's position and the wrongful act. The necessary connection could be found in cases where employees use or misuse their position of employment so that they injure the claimant.

In this case, the employee's job was to attend to customers, and whilst the assault was not within the scope of the employee's job, it happened in an unbroken series of events from when the claimant made a request of the employee. There was no "metaphoric removal of the uniform" just because the employee stepped out from behind the counter and by ordering the claimant to stay away from the employer's premises, he was appearing to act for his employer's business. Since the role of the employee was to serve customers, though he grossly abused his position, the employer was held vicariously responsible for the subsequent assault.

## WHAT SHOULD WE DO?

This case does not establish new law but serves as an illustration of how the "close connection" test works in practice. Employers must remember that each case will be considered on its own facts and the "close connection" test is highly fact sensitive. Employers should take care when considering the suitability of employees for certain

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roles and continue to take action where there is a potential threat of violence between employees or between employees and third parties.

Larger organisations, which may have stronger negotiating power, should check whether their employer's liability insurance covers situations where employees abuse their positions whilst acting within the scope of their employment and if not, consider negotiating with their insurance providers for this to be included. Otherwise the employer may not be insured against any liability which arises in cases such as this.

## KEY CONTACTS



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