Employer liability beyond the workplace – "in the course and scope of employment"

Briefing Summary: In AB v Grafters [2025] EAT 126, the Cardiff Employment Tribunal ("**Tribunal**") grappled with the scope of employer liability, offering an important reminder for employers across all sectors that the boundary between work and non-work is not always as clear as it may seem.

Service Area: Employment, Pensions and Incentives

Location: Guernsey, Jersey

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In this case, an employee ("**AB**") believed she had a work shift and transport arranged. When that fell through, a colleague ("**CD**") informed her that she was not required to work that day and offered her a lift, which AB believed was to her home. Instead, CD took AB to a nearby golf course and subjected her to multiple acts of sexual harassment.

The key legal issue was whether the harassment occurred in the *"course and scope of employment"*, thereby making the employer vicariously liable. The Tribunal said no, reasoning that the acts occurred during an informal, unscheduled lift that was outside the employer's control.

AB appealed the decision, and the Employment Appeal Tribunal ("**EAT**") upheld the appeal on the basis that the Tribunal had erred in the application of the correct legal proposition. Specifically, it failed to consider whether the conduct constituted an *"extension of employment"*; that is, whether there was a *"sufficient connection"* to work to bring the conduct within the *"course and scope of employment"*. In determining that question, the EAT held that the Tribunal should have considered the following relevant factors:

- Whether CD's prior conduct in sending AB suggestive texts earlier that day while at work, brought the acts of harassment within the course and scope of employment.
- The closeness of the connection between CD's job and the reason AB was in his car that day, particularly as CD had previously driven AB to work.
- Whether CD took advantage of AB's belief that she was due to work, and whether the offer of a lift was part of his work duties or an extension of workplace activities.

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The matter was remitted to the Tribunal to determine whether CD's provision of a lift had a sufficient connection to work to fall within the ***"course and scope of employment"***. We will watch with interest how the Tribunal determines the matter.

Key takeaways for employers

- Both Guernsey and Jersey have similar vicarious liability provisions to those set out in the Equality Act 2010. Whilst not binding in the Channel Islands, this decision is highly likely to be persuasive in the Guernsey and Jersey Tribunals.
- Employers should have clear policies on employee conduct, even in informal or off-schedule contexts where there is a nexus with workplace activities.
- Legal liability may arise even when informal arrangements are involved.
- Where work involves shared transport, flexible shifts, or informal coordination among employees, employers should pay careful attention to the associated risks.