

Chicken and stitches

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By **Charlie Plumb**

Not every person you hire is a future employee of the month, and there is only so much an employer can realistically do when vetting job candidates. Nevertheless, employers may face lawsuits from angry clients or customers when an employee acts out.

Ed Harris was lured to his local Philadelphia KFC restaurant by an \$8 special that included 10 pieces of chicken, biscuits and two side orders. He had the misfortune of dealing with KFC employee Michael Henry. When Harris hesitated on selecting side orders, Henry said “hurry up.” When Harris told Henry he wanted to deal with another cashier, Henry unleashed a threatening, profanity-laced tirade toward him. After Henry brandished a gun that he held under the countertop, Harris raised his hands and said: “What? You’re going to shoot me over a bucket of chicken?” Harris used a momentary distraction to try to escape the restaurant and evade the gun-toting employee. He was not successful. Henry caught up with him at the door and pistol-whipped him.



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Henry was not a stranger to the criminal justice system. KFC only performed criminal background checks for management positions; it did not conduct a check of Henry, who was a cashier. A criminal background check would have revealed a number of arrests and two convictions – one for receiving stolen property and another for unauthorized use of a vehicle. Harris, who sustained a concussion and fractured wrist and received eight stitches, sued KFC for negligent hiring and supervision.

Harris' claim against the restaurant was thrown out. The court didn't buy the customer's argument that the employer was required to conduct criminal background checks of all job applicants. Henry's convictions were for nonviolent crimes. Nor could Harris show that KFC knew or should have known that its employee had violent tendencies. There were not any earlier examples of Henry acting in an aggressive or confrontational manner toward other customers or co-employees.

Employers can expect to face claims by customers who are injured by employees. An employer who knows about an employee's violent past or has information that puts it on notice of an

employee's violent tendencies (such as complaints from customers or co-employees) may find itself liable for the employee's violent acts.

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- Gavel to Gavel: Chicken and stitches, *The Journal Record*, 7/12/12
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