

Negligent Hiring and Respondeat Superior 2.docx

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FILE	NEGLIGENT_HIRING_AND_RESPONDEAT_SUPERIOR_2.DOCX (20.05K)		
TIME SUBMITTED	17-AUG-2020 01:31PM (UTC-0700)	WORD COUNT	1353
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The Legal Elements of Negligent Hiring and Their Application on the Superior Case

Negligent hiring refers to a personal injury claim raised against an employer because of a bodily injury that happens to an employee. As such the injury could result from the employee's own negligence or the negligence of the employer (Cavico et al., 2016). This, therefore, puts the question of whether an employer has a duty to investigate the employee prior to hiring him/her. It also raises the question of whether the employer failed to execute his/her duty of investigating an employee before hiring them. With regard to negligent hiring, its main elements are; the employer is entitled to hiring competent employees. Negligent hiring also occurs when an employer breaches his/her duty of hiring competent employees. Negligent hiring also happens when the employer's breach results in the injury of an employee. Finally, negligent hiring occurs when the employee's injury is a type of harm that the law permits recovery for.

Superior engaged in negligent hiring by hiring Jones as an apprentice electrician (Langvardt et al., 2019). Superior did not seek to ascertain whether Jones was a qualified electrician. Jones only indicated in his application letter that he was a qualified driver and had a valid driving license. Jones further indicated in his application letter that he had never been initially cited for a traffic violation. The details Jones indicated in his application letter were therefore unrelated to his job title as an apprentice electrician and yet Superior went ahead and hired him. Jones was therefore incompetent to be hired as an apprentice electrician according to *Malorney v. B&L Motor Freight, Inc., (1986)* case.

Superior also breached its duty of hiring a competent employee. Superior failed to adequately investigate Jones before hiring him. Since Superior as an agency was the employer, in this case, it definitely understood the job requirements for the position of an apprentice

electrician. ¹ Superior did not however take any reasonable steps to check if Jones qualified or satisfied the job requirements the company needed.

Superior further showed some negligence by promoting Jones to being an electrician which resulted in Jones being assigned ¹ a company vehicle. Superior gave Jones an opportunity to drive the company's vehicles based on the indications Jones gave in his application letter. As much as Jones was a qualified driver, Superior failed to investigate Jones' claims ¹ that he had not been cited for any traffic violations. Superior believed in Jones' lies because Jones was incompetent in terms of driving as ¹ he had had his license suspended because of careless driving and at times driving without a license. As much as the injury that occurred to the Carsons was exclusively due to Jones negligence, Superior could also be held liable. The Carsons could, therefore, recover financial losses and personal injury damages that occurred as a result of the accident should they provide sufficient evidence that significant damage occurred.

The damages sought by the Carsons were therefore proximately caused by Superior's negligence and thus they are warranted to seek recovery based on negligent hiring. Negligent hiring did not however happen on the basis that Superior as an employer's breach resulted in the injury of an employee. It is not clearly indicated whether Carson's were employees of superior and this, therefore, disqualifies this element of negligent hiring. Finally, negligent hiring did not occur on the basis that the employee's injury is a type of harm that the law permits recovery because it is not clear whether the Carson's were employees to Superior or not.

The Legal Elements of Respondeat Superior and their Application on Superior's Case

Respondeat superior imposes both criminal and civil liabilities on employers and requires several elements including; a scenario where ² the employee's social or recreational activities and pursuits on the employer's premises after the hours the employee is endorsed by either the

express or implied permission from the employer (Lederman, 2016). If the recreational pursuits conceivably benefit ¹ the employer, then the employer can be held liable for the employee's actions. Further, if the employee's action is one that is common for the job position in which he/she is hired to perform, such ² that the action can be deemed to be related or a characteristic of the job, then the employer can be held liable for the employee's actions. Strict liability could also ² be imposed regardless of how closely the employer has been monitoring the employee.

However, some aspects may invoke some questions regarding the implementation of respondeat superior. These include ² the extent of control that the employer and employee have agreed that the employer might exercise over the details of work. Respondeat superior is also dependent on ² whether the agent or employee is involved in a distinct occupation and whether the type of work being done by the employee should be done under the employer's direction or without supervision. The skills required of the employee in performing their job duties and whether the employer supplies all the requirements needed by the employee to undertake his/her job responsibilities and where also determine the way in which the respondeat superior is implemented. The length of time during which an employer engages an employee, whether the employer is paid based on the job he does or the amount of time he/she works, whether the employee's work is part of the employer's regular activities also affects the respondeat superior. Additionally, whether the employer and the employee intend to create a working relationship, whether the employer is in business or not and ² the extent of control that the employer has exercised in practice over the employees' details also influences the implementation of the respondeat superior.

¹ Superior allowed Jones to use the company's vehicle by driving home on it after working hours as much as Jones' riding home does not directly benefit his employer Superior. Based on

¹ *Raleigh v. Performance Plumbing and Heating* (2006) case, Superior could be held liable for the accident Jones caused as ¹ he was using the company's vehicle and behaved carelessly. The act of driving is also a characteristic of the new job that Jones had as an electrician making the Superior Company liable for Jones's actions. Jones is also working as an occupational driver and electrician. Jones's driving actions are not done under the strict supervision of the company as Jones was trusted as a qualified driver with no driving errors. Driving skills were also a requirement for the position of an apprentice electrician in which Jones was being hired by the company.

The superior company was also engaging in electronics production as a business. The vehicle in which ¹ Jones was driving in at the time of the accident was also a key requirement for him to perform his job and the vehicle was provided for by the company. Both Jones and the superior company were aware they were building a working relationship. This is proved by the fact that Jones's new position was that of an electrician eligible to be ¹ assigned a company vehicle to work with during the day and drive home in after work. This is opposed to the initial position of an apprentice electrician in which Jones was hired. ¹ Based on the outlined legal elements of a respondeat superior, then the Superior company was liable for the injuries of Carson's caused by its employee's Jones' careless driving (Suleh-Yusuf, 2018).

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