



VLRH Newsletter



Volume 2, Issue 4

May 2011

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A South Texas Law Firm

SUMMARY

- An employer can be liable for the acts of its employees if they acted within the scope of their employment
- An employer may not be liable if an employee deviates from the employer's business
- An independent contractor is different from an employee

UPCOMING EVENT

**CONTINUING
EDUCATION SEMINAR
MAY 18, 2011!!!!**

VLRH's Spring Seminar will provide attendees with 1.0 hours of General Credit Hours.

To RSVP, please call 956-381-6602 or email jcantu@vlrhlaw.com

ANNOUNCEMENT:

This newsletter was penned by our newest attorney: Nick Dominguez, former senior briefing attorney for the 13th Court of Appeals

Respondeat Superior: Who's Responsible?

One of our attorneys (Steve Haynes) obtained a favorable verdict last month in an automobile accident case tried in Brooks County. Neither the Defendant, a home healthcare provider, nor her passenger (the Plaintiff) survived the accident. The Plaintiff's heirs sued both the Defendant's estate and the home health agency that employed the Defendant. The heirs sought to hold the agency liable by claiming that the provider was in the course and scope of her employment at the time of the accident.

The home health agency denied that the provider was in the course and scope of her employment at the time of the accident. After all, the provider had already completed her daily tasks by the time the accident occurred, and the accident occurred after the provider's normal work hours. The jury ended up agreeing with this position. This was obviously very good news for the home health agency, as zero liability was assessed against it despite the fact that its provider was found 100% responsible for the accident! To achieve this result, Steve had to explain to the jury the legal doctrine of respondeat superior.

Respondeat superior (Latin for "let the superior make answer") allows for an employer to be held liable for accidents caused by the negligence of its employee if the employee was acting in the course and scope of his employment at the time of the accident. In such situa-

tions we say that the employer is "vicariously liable" for the acts of its employee. An employer can be held vicariously liable under respondeat superior even if the employee commits an intentional tort, so long as the employee was acting within the scope of his or her employment.

There are various defenses to the doctrine of respondeat superior. For example, an employer may not be liable for an employee's tort if the employee departs from his employer's business for the employee's own purpose.

Another example where an employer can escape vicarious liability occurs when the alleged employee is really an independent contractor. An independent contractor is a person who, in pursuit of an independent business, undertakes to do specific work for another person. An independent contractor generally uses his own means and methods to do the work, and does not submit himself to the control of anyone else (with respect to the details of the work). If it is determined that an individual is an independent contractor as opposed to an employee, then the employer is generally not liable under respondeat superior for the acts of the independent contractor. (Obviously, there are other potential theories of liability which may make an employer liable for the acts of its independent contractors, but this is a one page newsletter!)

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We Know South Texas!