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Employer Beware: The Doctrine of Respondeat Superior

Every employer should be aware of the doctrine of Respondeat Superior. According to the doctrine of Respondeat Superior, an employer may be held liable for the actions of its employees only when the employee is acting in the course of his or her employment.

In defining the "scope of employment" New Jersey follows the Second Restatement of Agency, Section 228 (1957) which states:

(1) Conduct of a servant is within the scope of employment if, but only if (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master, and (d) if force is intentionally used by the servant against another, the use of force is not unexpected by the master." Alito, New Jersey Employment Law (2nd Ed.) Section 3-18-1, at 136-137 (1999) quoting Restatement (Second) of Agency, Section 228 (1957) See also, Di Cosala v. Kay, 91 N.J. 159, 169-170 (1982).

This article was written by Kathleen A. La Vallie, Esq. an associate with the firm of Leonard S. DePalma, L.L.C., Attorneys at Law.

The case of Gilborges v. Wallace, 78 N.J. 396 (1978) demonstrates the complexities of the doctrine of Respondeat Superior. In Wallace, Wallace was employed by Cross Country as an over-the-road truck driver.

The Truck Accident in the Wallace Case

The day before the accident he had returned to the Cross Country terminal some time in the afternoon, having been on the road for two weeks. He was told by Joseph Koenig, the president and co-owner of Cross Country, that he was to drive to Trenton the following day for a load "to go west."

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Law Firm Briefs

Since Our Last Issue ...

Lissette Badillo, a graduate of Berkeley College with an associates degree in Paralegal Studies, joined the firm as a paralegal in March 2002.

Great Quotations ...

"One's work may be finished someday, but one's education, never."

- Alexander Dumas, The Elder

"Vision is the art of seeing the invisible."

- Jonathan Swift

This required him to be at the terminal the next morning to pick up a tractor and an empty trailer and drive to Trenton where the trailer was to be loaded for the trip west.

A Brief Stop Home In Royersford, PA

Desirous of going home and getting cleaned up, Wallace telephoned his wife in Royersford, Pennsylvania, approximately 30-40 miles away, and asked her to drive him home from the terminal, as she usually did. However, the family car was being repaired, and his wife was unable to come for him.

Wallace then asked Mr. Koenig whether there was any means of transportation available for him to get home, saying he was dirty and needed to clean up and get fresh clothing if he was to make the next day's trip west. Koenig suggested that Wallace use the Cross Country pick-up truck and gave him the ignition key and a set of license plates to use on the truck. Koenig also asked Wallace when he would be back so that "they would have my truck ready to go out." Wallace drove home in the pick-up truck. The next morning on his way back to the terminal he was involved in the accident with the Giannini vehicle." Id. at 350-351.

Although Wallace testified that he had permission to use the pick-up truck on many occasions, Koenig denied granting Wallace permission to use the pick-up truck. Id.

The New Jersey Supreme Court's Ruling

The Supreme Court of New Jersey adopted the "dual purpose" rule which further expanded the reach of *Respondeat Superior*. The "dual purpose" rule applies when a trip "serves the servant's private affairs and also is in furtherance of the master's business, the master is subject to

liability for the servant's actions." Id. at 35.1 Cinque v. Crown Oil Corp., 135 N.J.L. 38, 40-41, 48 A.2d 777 (E. & A.1946); 1 Restatement, Agency 2d, s 236 at 523 (1958). "

Also, where the instrumentality being used by the servant is owned by the master, such use raises a rebuttable presumption that the servant was acting within the scope of employment." Id. at 351. Cucci v. Jaldini, 141 N.J.Super., 297, 300, 358 A.2d 201 (App.Div.1976).

The Supreme Court believed that a jury had to make the determination as to whether Wallace was acting, not only on his behalf, but also for the benefit of the employer. Therefore, the Supreme Court remanded this case for trial based on the above ruling. This opinion also addressed several other issues not pertinent to this topic.

If you are an employer, you should make certain that you delegate to your employees only those acts or tasks for which you will assume responsibility. The consequences to your company could be grave for actions done by your employees within the scope of his or her employment.



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