

Vicarious Liability: Your Employees Could Cost You!

“Respondeat superior” is a Latin phrase that translates “let the master answer.” This is legal jargon relating to the breadth of the employer’s responsibility for the actions of his employees. Literally, and in basic terms, any injurious or wrongful act of an employee within the course and scope of his employment creates liability for the employer (the master). This is commonly known as “vicarious liability.”

An employer’s liability for injury or damage caused by employees is considered “vicarious” because the act was not committed by the employer, but by individuals for whom the employer is responsible. Just like a parent is responsible for the actions of a child, even if the parent had no knowledge of what the child was doing, so too is the employer responsible for the employee’s actions.

When crews are spread over several job sites, the employer loses some direct control over the actions of the dispersed employees; however, he is not relieved of his responsibility for the actions or inactions of these workers. The “master” will be required to financially stand up and answer for any injury or damage caused, even though he may not have been aware of those actions.

Within the framework of construction operations, the employer is obviously responsible for any work done incorrectly or poorly. For example, if an employee of a plumbing contractor does not properly cement or solder a pipe, leading to severe water damage from a break at the connection point, the employer is expected to pay for the damages.

Beyond simply being vicariously liable, the employer has the potential to be accused of “negligent entrustment.” Negligent entrustment can be asserted when an employer allows an unqualified person to use a dangerous instrumentality. Construction sites teem with dangerous instrumentalities; from items as simple as nail guns and power saws, to man lifts, grading equipment, and trenching equipment. Employers owe a duty to the employee, others on the job site, and even the general public to affirm an employee’s ability to safely and correctly operate equipment necessary for their job.

To avoid breaching this duty and allegations of negligent entrustment, the employer must test employees to confirm they are adequately trained to operate the equipment they are expected to use. This can be accomplished by observing the employee’s use of the equipment and correcting misuse. Observation and training should be done by a highly trained supervisor or by the supplier. The training must include detailed safety instructions and “what-if” scenarios. Once the employee has been “cleared” to use the equipment, continued observation is necessary to ensure the employee doesn’t become careless.

A common response to recommended training and testing is, “We don’t have time for that.” This may be true, but if you don’t have time to train, do you have time to go to court? Also, do you have the funds to pay the damages? Successful negligent entrustment suits often involve punitive damages that could drastically increase the cost for that particular incident.

Vicarious liability and charges of negligent entrustment aren’t limited to your employees. You may also face liability for the actions of entities or individuals to whom you sub-contract work. Making sure you hire qualified and properly insured subcontractors is of vital importance.

You, as the saying goes, are your employee’s keeper. Not due to lack of trust, but because you are ultimately responsible for the results and consequences of their actions. Choosing, training, and monitoring your employees and subcontractors will allow you to avoid or at least minimize many of the potential problems.