

NEGLIGENT HIRING: The Employer's New Frontier

As we all know, workplace violence is on the rise. Our newspapers regularly remind us of the escalating violence at work. Each year almost one million individuals become victims of violent crime while working, according to the Bureau of Justice Statistics. As these instances continue to rise, they breed lawsuits which are now showing up as binding appellate court decisions. And thus is born yet another tort giving rise to more employer liability.

Liability for negligent hiring is based upon the notion that if an employer hires an employee with propensities presenting danger to customers or other employees, the employer should bear the loss caused by its unfit employee. The tort has developed in California in factual settings where the Plaintiff's injury occurred in the workplace, or the contact between the Plaintiff and the employee arose from the employment relationship.

California courts have held that an employer may be liable for negligent hiring if it knows the employee is unfit, or has reason to believe the employee is unfit or fails to use reasonable care to discover the employee's unfitness before hiring him. Evan F. v. Hughson United Methodist Church (1992) 8 Cal.App.4th 823, 843.

The courts have also held that an employer can be liable for negligent hiring if the Plaintiff demonstrates that the authentication of the unfit employee's credentials would have shown the unfitness thereby precluding the unfit employee's employment. Roman Catholic Bishop v. Superior Court (1996) 42 Cal.App.4th 1556, 1566. The case suggests that an employer having no other reasonable basis upon which to believe an applicant is unfit, may avoid liability if it takes reasonable steps to authenticate the applicant's credentials.

The negligent hiring tort extends not only to an employer's employees, but to independent contractors he may engage as well. Chevron USA, Inc. v. Superior Court (1997) 4 Cal.App.4th 544, 549.

The lesson of these cases is that employers should take care to verify a prospective employee's references. In doubtful cases it may be prudent to request that an applicant sign a release allowing a former employer to divulge the entire employment history. Documenting the steps taken during the verification process is important in order that the employer may later prove that it in fact exercised due care in the hiring of a particular employee.