

NEGLIGENT RETENTION - How it Affects the Employer

The theory of negligent retention holds an employer liable for retaining an employee who is known to be unfit for the position. Like negligent hiring, this theory places a duty on the employer to conduct a reasonable investigation of any information that suggests an employee's unfitness and to respond reasonably to whatever is learned about the employee. For example, if an employer knew or should have known about allegations, rumors, or clear evidence of sexual abuse by an employee, they would have a duty to reasonably investigate the allegations and respond to its findings.

Consequently, any evidence that would suggest to a reasonable person that an employee might have a problem that potentially interferes with his/her job and/or the welfare of fellow employees, clients and customers, etc. requires a timely and affirmative act of inquiry by those in a position of authority over the employee. It should be stressed that the employer's duty, once triggered by a reasonable suspicion that a problem might exist, is two-fold:

- (1) reasonable investigation and, based on the findings,
- (2) reasonable intervention.

Reasonable intervention, in negligent retention cases, typically amounts to taking the appropriate actions to prevent reoccurrence of the offense.

In the negligent retention case, evidence of notice of a problem within employee is critical. As in negligent hiring cases, actual knowledge by the employer is helpful but not necessarily essential. For example, an employer's knowledge of an employee's conduct that reasonably indicated emotional instability or signs of exploitative tendencies, would trigger the employer's duty to intervene, investigate, and take whatever remedial measure is warranted.