

# **Respondeat Superior, A Look at When Employers May be Held Liable for Their Employee's Conduct**

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Perhaps you own or manage a car dealership. Maybe an advertising agency? You may own an insurance business or you sell products over the internet. Regardless of your type of business if you have employees under your supervision you may be liable for their misconduct. Imagine a scenario where your employee gets into a fender-bender while making a delivery for your company. Or perhaps your new employee misrepresents the functions of your product to a customer. This article will examine the basic structure of employer liability for actions of employees.

## **Why Would the Employer Be Liable for the Employee's Conduct?**

Respondeat Superior in Latin literally means “let the superior make answer.” In legal terminology, respondeat superior or “vicarious liability” is the doctrine in which an employer or principle is held liable for their employees’ or agents’ wrongful acts committed within the scope of employment. A California appellate court described the doctrine as follows:

“Under the respondeat superior doctrine, an employer may be vicariously liable for torts committed by an employee. The rule is based on the policy that losses caused by the torts of employees, which as a practical matter are certain to occur in the conduct of the employer’s enterprise, should be placed on the enterprise as a cost of doing business.” (Kephart v. Genuity, Inc. (2006) 136 Cal.App.4th 280)

Thus, the doctrine of respondeat superior evolved primarily for public policy reasons. Courts have identified three primary policy reasons for implementing this doctrine: (1) To prevent recurrence of the tortious conduct; (2) to give greater assurance of compensation for the victim; and (3) to ensure that the victim’s losses will be equitably borne by those who benefit from the enterprise that gave rise to the injury.

## **When Will the Employer Be Liable for the Employee's Conduct?**

The basic test for vicarious liability of an employer is whether the employee’s tort was committed within the scope of employment (a “tort” is broadly defined as a civil wrong for which the law provides a remedy). Determining exactly what constitutes conduct “within the scope of employment” is a difficult task and the subject of numerous judicially developed rules and guidelines. Therefore, identifying a precise framework here is not practical. In determining whether an employee has departed from the course and scope of their employment however, a number of factors should be considered and weighed. These include, but are not limited to:

- intent of the employee;
- nature, time and place of the employee’s conduct;
- type of work the employee was hired to do;
- incidental acts the employer should reasonably expect the employee to do;
- amount of freedom allowed to the employee in performing his or her duties; and
- amount of time consumed in the personal activity.



If a lawsuit is brought against an employer for an employee's conduct, the above factors would be weighed to determine whether the employee was acting within the scope of his or her employment. To illustrate, consider the following two scenarios: The first: your employee is hired as a pizza delivery person and in the process of delivering a pizza to a customer he or she rear-ends another car. If the employer was sued by the other driver, many if not all of the above-mentioned factors would weigh in favor of finding the driver was acting "within the scope and course of employment." Now compare the scenario wherein the same employee completes the pizza delivery to the customer and subsequently drives 10 miles away from the pizza shop to visit a friend. Just in front of the friend's house, the employee hits another car. Here, the above-mentioned factors arguably would lean in favor of finding the employee had strayed beyond the scope of his or her employment, thus the employer may not be liable for the employee's car accident.

### **What if the Employee's Conduct was Intentional?**

The doctrine of respondeat superior is not simply to provide access to deep pockets for tort victims, but rather to shift burdens of loss equitably—where an employer may ultimately benefit from the injury-producing activity when such losses may practically occur from the conduct of the enterprise, it is more equitable to find responsibility in the employer. However, this doctrine is not without its limits.

The Kephart court explained the employee's purpose and intent in acting are important considerations when determining whether those actions were within the scope of employment. The reason provided by the Court was "[a]n employer will not be held liable for an employee's assault or other intentional tort that did not have a causal nexus to the employee's work." (Kephart, 136 Cal.App.4th at 290).

In Kephart, an employee of Defendant Company was driving on the highway near San Francisco when he engaged in an act of "road rage." Ultimately forcing the Plaintiff's car off the road where it rolled over causing damage and injury. Plaintiffs brought suit against the driver and the driver's employer on the grounds the evidence indicated defendant driver (employee) was scheduled to travel on business that day—thus, he was driving within the course and scope of employment. The Court held the evidence showed defendant's "road rage" conduct was motivated entirely by the driver-employee's personal malice, and did not relate to the scope of his employment. As such, the Court found Defendant company was not liable for the actions of, and damages caused, by its employee.

### **What You Can Do**

Preparing for and accepting a certain portion of responsibility for the actions of your employees while "on the job" is simply a cost of doing business. You should however, take steps to communicate with your employees the parameters regarding their behavior while working. Develop clear and identifiable policies pertaining to employee conduct, particularly when employees have a significant amount of "off-site" autonomy. Be proactive and be prepared!

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