

Louisiana Employment Law Letter

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NEGLIGENT SUPERVISION

How well do you know your employees?

Does your business place employees in personal contact with the public? If so, you may owe a higher duty to properly train, supervise, and investigate your employees. The unsuspecting nail salon owner in the following case learned that lesson the hard way when one of her manicurists allegedly stole a customer's diamond engagement ring. The shop owner was stuck with the bill for the missing ring for negligently training and supervising its employees. Read on to learn more about those claims and how to avoid them.

Engagement ring disappears

An unsuspecting customer walked away from a nail salon in Metairie, Louisiana, with great-looking nails but without her engagement ring. The customer was a regular at the nail shop but probably not after that visit. She claimed that while soaking her nails, the manicurist insisted she remove her engagement ring. Finding the request unusual, the customer asked if that was necessary, but the manicurist insisted. After removing the ring, the customer placed her ring in a zippered makeup bag in her purse, which she placed on the floor next to her right foot.

After the soak, the customer washed her hands in a sink located about 12 feet from her purse. For that moment, she turned her back to the manicurist and her purse. The customer then had another manicurist polish her nails. When the manicure was complete, the customer left the nail shop without placing her engagement ring back on her finger or checking her purse for the ring. She shopped in two nearby stores before returning home.

When the customer returned home, she opened the zippered bag for the first time since placing the ring inside it. Her ring, however, wasn't there. She searched for the ring inside her purse without success. The next day, she filed a complaint with the Jefferson Parish Sheriff's Department.

The customer and a deputy went to the nail shop to look for her ring. Deputies questioned all the employees, including the suspected manicurist. The deputies took the manicurist to the police station and requested a polygraph test, but her husband instructed her not to submit to the test. Unfortunately, the ring was never recovered.

The customer filed a civil lawsuit against the nail shop, its owner, its insurer, and the manicurist. She alleged that the nail shop and its owner were negligent because they failed to properly hire, train, and supervise the employees, specifically with regard to securing customers' jewelry.

The trial court found that the nail shop was negligent and responsible for the loss of the ring. The trial judge awarded the customer \$8,500 to replace her ring and \$4,000 for mental anguish for its loss. The shop's insurer appealed the judgment to a Louisiana appeals court.

Appeals court finds nail shop negligently trained and supervised its employees

The appeals court explained two grounds for the negligence claims against the shop. The first is a Louisiana law stating that "[e]mployers are answerable for the damage caused by their employees in the exercise of the functions in which they are employed." In determining whether an employer is liable for the wrongful acts of an employee, the courts generally consider the following factors:

1. Was the employee's wrongful conduct primarily employment-rooted?
2. Was it reasonably incidental to the performance of the employee's duties?
3. Did it occur on the employer's premises?
4. Did it occur during hours of employment?

It isn't necessary for each answer to be "yes" for the employer to be liable, although the mere fact that a wrongful act occurs on the employer's premises during work hours usually won't be enough to subject an employer to liability. That type of liability is called vicarious or "*respondeat superior*" liability. If the legal standard is met, the employer is automatically responsible for damages caused by the employee. The same theory was used by an employee in another case discussed in this month's newsletter (see "Supreme court puts an end to employee's fancy footwork" on page 4).

In the nail salon case, the appeals court upheld the trial court's decision based on a finding that the employer itself was negligent in the training and supervision of its employees. The shop admitted that it had no policies or procedures on handling customers' valuables and didn't provide employees with any training in that area. In fact, the shop owner admitted that she didn't formally train her employees at all. She testified that she relied on their licensing/certification to perform manicures as a substitute for training from her. Based on those facts, the appeals court agreed that the shop was negligent in training and supervising its employees.

Because the court concluded the employer was liable for negligent training and supervision, it didn't discuss the negligent hiring claim. The appeals court affirmed the award of \$8,500 for the customer's ring but reduced the award for mental damages to \$1,500. *Bourgeois v. Allstate Ins. Co.*, 2002 La. App. Lexis 1725 (La. Ct. App. 5th Cir. 5/29/2002).

Does this case 'ring' a bell for you?

We hope this case has made you more aware of the amount of contact your employees have with the public, leading you to evaluate your hiring, training, and supervision techniques. Employee contact with the public puts you at greater risk for negligent hiring, training, and supervision claims. There are things you can do, however, to manage the risk.

First, realize that your actions as the employer are under the microscope in this type of claim. Employees do bad things, and you can't always prevent them. But in a direct claim against your company for negligent hiring, training, or supervision, courts will look at whether you took reasonable steps to guard against employee wrongdoing. In other words, it's not just about whether the employee stole the ring — it's about your company's actions beforehand.

With that in mind, do some self-evaluation. Start at the beginning with your hiring process. Some industries, such as childcare, are required by law to perform criminal background checks on employees. Even if those checks aren't mandated by law, they're important if your employee will be placed in close contact with the public. If a prospective employee has a record of convictions or guilty pleas, consider the nature of the job held or sought, the nature and gravity of the previous offense(s), and the time passed since the conviction(s) to determine whether the person is fit for the job. It's always a good idea to carefully check the applicant's references, both personal and employment.

Once hired, your employees should be trained on safety issues and appropriate conduct when dealing with the public. You should always seriously investigate any complaint made against employees and take appropriate action. You should also conduct periodic refresher training sessions on issues such as sexual harassment, safety rules, and appropriate conduct with the public. Keeping a vigilant eye on your applicants and employees will help you defend yourself against negligence claims if an employee misbehaves.

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