

HRD Liability Update

Courtesy of Sample & Associates



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Negligent Training

By John Sample, Ph.D. SPHR

Negligence has to do with how careful the employer and employees of a business were when they caused an injury, and how careful they should have been according to the law. The injured person -- the plaintiff -- must demonstrate the following:

1. that the employees of the business had a duty to conform to a certain standard of conduct to protect others from unreasonable risk;
2. the business and its employees -- the defendant - breached the duty;
3. that the defendant's breach was the proximate cause of the plaintiff's injury; and
4. that the plaintiff suffered injury.

In general, the law imposes a duty on everyone to behave at least as carefully as a reasonable, ordinary, prudent person in a similar situation. This is known as the reasonable person standard. A defendant business must fall short of the standard in order to be found negligent. If a court establishes that the defendant acted reasonably, even though his or her actions caused the injury to another, the defendant is not negligent and not liable for damages. Children are typically held to a lower standard than adults; professionals, such as doctors and attorneys, are held to a higher standard.

Case Example - Negligence

Example 1. Elements of A Negligence Action Involving Failure To Train

Two patients at the medical center were in a room together. One of the patients was sitting up in a chair smoking. A sister of one of the patients was also smoking, but did not see the ashtray in the room, so she used a juice cup and a plastic soup tray for her ashes. At some point later, the nurse came in and restrained the patient in his chair. Before the sister lit another cigarette and, after letting her brother inhale, she extinguished it in the soup tray. Within minutes of her departure, a fire started in the wastebasket of the room.

Upon discovering the fire, the nurse in charge unsuccessfully attempted to untie the patient in the chair and put out the fire. With the help of other nurses who responded to her call for help, the patient in the chair was pulled into the hallway. The other patient, in the bed farthest from the door, could not be removed in time and died from smoke inhalation. The patient in the chair died later as a result of complications from burns suffered in the fire. The medical center had a policy requiring that nurses be trained on procedures to follow in the event of a fire, especially evacuation procedures. The nurses had not been trained on the evacuation policy as required by the medical center. The breach of the duty was the removal of a patient from the room engulfed in flames. The proximate causal link between the death of the patient and the duty to train the nurse on fire evacuation procedures was argued by the plaintiff's attorney in a consolidated wrongful death action. (See *Stacy v. Truman Medical Center* (836 S. W. 2d 911, Missouri, 1992))

Example 2. Criminal Negligence

Shoreline Support, a Wisconsin employer, was found guilty of reckless homicide of one of its bulldozer operators. Testimony during the trial established that the site where the bulldozer work was being performed was inherently dangerous. The operator of the bulldozer was still a teenager who had received approximately 49 hours of training. Expert testimony established that bulldozer operators should receive 1500 hours of training and supervision before working under the conditions described to the court.

The operator had to navigate a 8- by 20-foot bulldozer along a strip of land approximately 16 by and 75 feet in width. He was to scoop up rubble, make a 180-degree turn, and dump the rubble over the edge of a cliff. The bulldozer and body of the operator were found at the bottom of cliff. Since the accident was not witnessed, the court assumed that the operator was not being supervised or trained at the time of the accident. An expert testified that at least 1500 hours of supervised training was necessary before an operator would be able to safely operate a bulldozer under the conditions stated to the court.

An appeals court concluded that the jury could reasonably conclude that lack of training and supervision were causally related to the death of the bulldozer operator. (See *State v. Shoreline Support Corporation*. 1989 LEXIS 358)

Proximate cause is the legal term used to describe an act which causes a plaintiff's injury or, more accurately, causes the injury for purposes of assigning liability. Sometimes a defendant's act may be so remotely related to the plaintiff's injury as not to be considered a proximate cause. The issue of comparative negligence is an important issue. Often, accidents are not black and white events. The injured party, the plaintiff, is usually not 100 percent fault-free and a defendant 100 percent negligent. Comparative negligence permits a jury to compare the negligence of the plaintiff with the negligence of the defendant and decide damages accordingly. If the jury finds the plaintiff 10 percent negligent in an industrial accident, and the defendant 90 percent negligent, the defendant business has to pay only 90 percent of any damage award.

If the plaintiff sues under a theory of strict liability, he or she alleges that the defendant is liable regardless of fault. The issue of how careful a defendant was or should have been is irrelevant. If the defendant's activity was the proximate cause of the plaintiff's injury, the defendant is liable. Businesses that engage in ultrahazardous or abnormally dangerous activities are strictly liable for injuries to employees and the public. Examples would include demolishing buildings, crop dusting, manufacturing explosives, blasting, operating heavy and dangerous equipment, stringing lines for utility companies, and fumigating.

A negligence lawsuit has a requirement that the plaintiff prove his or her case by a preponderance of the evidence. In other words, a plaintiff must show that a majority of the evidence establishes that the defendant business committed the negligent act. This is different from the burden of proof in a criminal case. In a criminal case, the prosecution must prove the defendant's guilt "beyond a reasonable doubt" - a much higher standard. A negligent act may also be a crime, and the results from the civil and criminal cases do not have to be consistent; in fact, the outcomes are frequently contradictory. Because the criminal burden of proof is higher, a defendant may be found innocent of committing a crime, but liable for damages due to a negligent act. The O. J. Simpson murder trial and subsequent civil trial are a good example.

Not all negligence actions must be unintentional. A negligent act committed with intention are those torts for which the defendant intends the consequences of an act. A battery is an example of an intentional tort, as is assaulting someone (threatening someone with physical violence), invasion of privacy, and defamation.

Damages must be demonstrated in a negligence lawsuit, otherwise the lawsuit will be dismissed. Plaintiff's who successfully prove the defendant's negligence are entitled to compensatory and punitive damages.

Vicarious liability describes those instances wherein one person is held liable for the negligent acts of another, even though the first person was not involved in the act, did nothing to encourage the act, and may even have attempted to prevent it. The most common form of vicarious liability occurs in the arena of employment law. An employer is liable for any negligent acts committed by an employee acting within the scope of employment. In cases where two or more defendants (whether acting in concert or not) are responsible for a plaintiff's injury, and it is unclear which defendant is responsible for which portion of the injury, the defendants can be jointly and severally liable for damages. In other words, a plaintiff has the right to collect the damage award from the defendants as a whole or individually, depending on the plaintiff's preference. An example might be a situation in which two cars collide with a third, causing the plaintiff multiple injuries, and it is not known which collision caused the injury. Where it is clear which defendant caused which portion of the plaintiff's injury, each defendant will be liable only for the portion of the injury he or she caused.

If a person dies from a defendant's negligent acts, the surviving members of the estate may bring a lawsuit for wrongful death. Survivors include the decedent's spouse, children, and parents. Each survivor may recover for loss of the decedent's support or services. Additionally, the surviving spouse, minor children, and all children of there is no surviving spouse, may recover for loss of the decedent's companionship and protection. They may

also recover for pain and suffering. The estate can recover for lost earnings from the date of injury or death, and funeral and medical expenses if paid by the estate.

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