

Actual vs. Apparent Authority: Limiting Business Liability From Unauthorized Employee Actions

Corporate News: A Legal Update

By Emilie Rohde and Michael Van Someren on May 29, 2025

As a business grows and adds new members to the team, it can be difficult to identify what role each person plays and their level of authority.

While some have the ability to make important decisions on behalf of the business, others do not—but they may nevertheless have the power to bind the business to obligations the business had no intention of undertaking.

As a result, business owners must ensure that their employees clearly understand the scope of their employment.

Types of Authority

When one person acts on behalf of another or an entity, they are acting as an agent of the principal. Whether or not someone is an agent determines the extent to which they are able to bind the business through, for example, signing contracts on behalf of the business.

There are two types of legal authority that allow an individual to serve as an agent. The first type is actual authority, which can be express or implied. The second is apparent authority. The distinction is simple. Actual authority is when a business explicitly authorizes an agent to undertake certain actions on behalf of the business, which is usually established through a written directive. Apparent authority is when it reasonably appears to third parties that an agent has the authority to undertake certain actions on behalf of the business, which is usually established through business conduct.

Apparent authority is more nuanced than actual authority as it deals with whether or not someone appears to have authority as opposed to whether someone was expressly granted authority. If a third party reasonably relies on the appearance of an agent's authority to act on behalf of the principal, the agent can bind the principal—even if they did not actually have authority.

Best Practices to Protect Businesses Against Unauthorized Employee Actions

Business owners must ensure that their employees clearly understand the scope of their employment. In furtherance of this goal, businesses should be prepared to:

- **Respond quickly if an employee acts without authorization.** Immediately clarify to the employee and any third party involved that the action was not authorized and the business does not intend to be bound.
- **Let all parties know what employees are authorized to do.** If an employee acts outside of their express authorization, their actions will not be binding if all parties are informed.

Additional steps to avoid giving the appearance of authority to an employee in a way that implies authority include:

- **Assign appropriate titles to employees.** Ensuring employees have appropriate titles can make it clear whether or not someone is authorized to take particular action.
- **Limit access to unnecessary information.** Limited access for non-authorized employees to obtain certain information, such as a company credit card or wiring instructions, can also reduce the likelihood of accidentally becoming bound.

Incorporating these simple steps can go a long way to protect a business from unauthorized action and taking on unwanted liabilities.

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