BEWARE! – ILLINOIS EMPLOYERS CAN BE LIABLE FOR AN EMPLOYEE'S NEGLIGENCE

Labor & Employment Law Update

By Michael Barnes on June 1, 2022

Courts in the United States are split on whether a company's acknowledgment of vicarious liability for an employee's negligence, bars a claim of direct negligence against the company. Based on appellate court decisions, Illinois had been one of the states that barred direct negligence claims against a company when the company had acknowledged being vicariously liable for its employee's actions. However, on April 21, 2022, in *McQueen v. Green,* the Illinois Supreme Court rejected the earlier appellate court decisions and held that companies can be both vicariously liable for an employee's negligence, as well as directly liable for the company's negligence.

In *McQueen*, a driver was instructed to pick up cargo from another business. The other business' employees loaded the cargo. The driver expressed concern that the cargo was not loaded properly and asked the other business' employees to correct the issue. They refused and stated that it had been loaded correctly. The driver called his supervisor and asked him what to do. After speaking with the other business' employees, the supervisor told the driver to return with the load. Of course, the driver was involved in an accident during the return trip because the improperly loaded cargo made the trailer unstable. At trial, a jury found the driver was not negligent, but that the company was negligent and liable for instructing the driver to return with the load and not training the driver on how to respond to an unsafe load. While the appellate court reversed the jury's decision, the Supreme Court upheld the jury's decision holding the company directly liability for negligence and the award of $1 million in punitive damages against the company for its negligence.

What does this mean?

This ruling will permit negligence claims, including negligent entrustment, supervision, retention, training and hiring, to be made against an employer, which were previously barred if the company admitted the employee was its agent. *The ability to bring additional negligence claims seems minor, but in terms of liability it turns a trickle into a waterfall.*

By being able to pursue additional claims of negligence, plaintiffs will be allowed broader reaches during discovery and will then seek to admit previously inadmissible bad facts into evidence and argue additional theories of liability to a jury in negligence cases.

In particular, for those in the transportation industry, plaintiffs in accident cases will likely be provided much more leeway in seeking discovery on issues that had previously been considered tangential and not relevant. For those with pending cases, do not be surprised if plaintiffs seek to use this ruling to try and expand claims, seek additional discovery and create additional liability for companies.

While this case involved the transportation industry, expect it to potentially extend to other areas of law where civil liability is at stake. Indeed, construction as well as health care industry employers should be aware of this decision and the possible impact it may have on their operations.

How can employers address this?

Be prepared! This means ensuring your management AND employees receive training on safety issues and legal compliance. For all industries, it is recommended to expand your safety, occupational health and related training and enforcing compliance with all applicable state and federal regulations and laws. For those in the transportation industry, this case highlights the importance of making sure your drivers are trained in all applicable safety requirements, including identifying when a load has not been properly loaded AND what to do – even if that means demanding that it be reloaded and not moving until it is loaded properly. This also means that dispatchers and managers at transportation companies need to understand steps to take when a driver reports a safety issue, in particular issues with a truck or load that may create safety issues.

While its generally understood that time is money, with the Illinois Supreme Court's change on this issue companies must remember that "an ounce of prevention is worth a pound of cure" or in this case $1 million in punitive damages.