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EMPLOYER'S LIABILITY FOR THE ACTS OF OFF-DUTY POLICE OFFICERS WORKING FOR THEM (PART 2)

RESPONDEAT SUPERIOR

In our last newsletter, we discussed how an employer who hires an off duty police officer can be sued for negligent hiring and retention. We will now discuss another theory of liability we routinely see, *respondeat superior*.

Under this theory of liability, an employer may be held liable for injuries proximately caused by the negligent actions of its employee done within the scope of his employment. Liability is imposed because the employer has the right to control the means and method of the employee's work.

This doctrine meets with an interesting twist, pursuant to case law, when an off-duty police officer is working for a private company. An off-duty police officer who has probable cause to believe that a crime is being committed is under a duty to investigate under the Texas Code of Criminal Procedure. The officer is also under a duty to prevent crime and arrest offenders. ***More importantly, caselaw indicates that an off-duty police officer who observes a crime becomes an on-duty police officer as a matter of law.*** Once the officer begins to investigate, he acts in his capacity as an on-duty police officer, not as a private citizen or employee of the private company.

The issue then becomes whether the officer actually observed a crime, and commenced his investigation prior to any altercation that resulted in an injury or death to a resident or guest. An officer may observe public intoxication, assaults, burglary of a habitation, theft and/or damage to individual's vehicle(s) in an apartment complex. If an off-duty police officer, working for an apartment complex, does in fact witness a crime, the issue then is whether he has begun his investigation as he would as an on-duty police officer.

Did the officer handle the confrontation as a law enforcement officer investigating a crime? This is where the dispute often begins. The defense typically asserts that the police officer identified himself as a police officer, detained the individual, and tried to elicit information in his investigation of the crime. The Plaintiff will contend that the individual was not detained, the officer did not identify himself as an officer, and the individual was not being investigated by the officer.

WHAT THIS INFORMATION MEANS TO APARTMENT COMPLEXES AND OTHER COMPANIES EMPLOYING OFF-DUTY POLICE OFFICERS

It is important for the apartment complex/company, as an employer of an off-duty police officer, to understand that caselaw does provide that an off-duty police officer acting for a private employer can become, as a matter of law, an on-duty police officer investigating a crime. Employers and off-duty police officers taking such work should be made aware of what to do and what not to do when confronted with a volatile situation while working for a private employer.

It is important for a police officer, working in his off-duty capacity for an apartment complex, to understand what it takes to witness and properly investigate a crime. When investigating a crime the officer should identify himself as a police officer, detain the individual for questioning, and try to elicit information in his investigation of the crime. The officer should already have this knowledge and training through his employment with the police department. Such knowledge should help insulate employers from liability down the road. At the very least, a proper response by an off-duty police officer should give an employer something to argue if such an incident occurs while an off-duty police officer is working on its property.

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