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EMPLOYER'S LIABILITY FOR THE ACTS OF OFF-DUTY POLICE OFFICERS WORKING FOR THEM

Companies will often hire off-duty police officers to work on their properties in an attempt to deter crime, keep the peace, and help out if criminal activity should arise. Police officers often take this work to help supplement their income provided by their respective police departments.

However, sometimes an incident occurs on a property, such as an apartment complex, where the off-duty police officer working for the complex, as an employee, is involved in a confrontation which ultimately results in litigation.

An individual may bring a claim based on what they perceive to be excessive force and/or an assault. They will generally allege that such act was committed while the police officer was in the course and scope of his employment with the apartment complex. In wrongful death cases, the estate of a decedent may bring civil litigation against the apartment complex alleging that their loved one was wrongfully killed by the off-duty police officer.

NEGLIGENT HIRING & RETENTION

One cause of action that is often used by Plaintiff's attorneys is negligent hiring and retention. The allegation also shows up as negligent retention of the particular officer. The allegation essentially states that the company (or apartment complex) knew the individual was incompetent and that his incompetence created an unreasonable risk of harm to others. The allegation is usually that this off-duty officer had a propensity to engage in dangerous activities and the company *should have* known better than to hire and/or retain the officer as an employee.

The main issue in this type of case is whether the company showed "due care" in verifying the officer's good employment status with his particular police department. The question then becomes whether a simple inquiry alone is enough.

Often times a company will merely do a background/criminal check on a prospective employee (the off-duty police officer) and leave it at that. Even more surprising is that some companies often just rely on the fact that the prospective employee is currently employed as a police officer. Companies may fail to exercise “due care” in verifying his good employment status with the department.

WHAT TO DO

There are some things a company or apartment complex can do to help protect themselves. Here are some actions you can take:

1. When hiring an off-duty police officer, do a complete criminal background check on the officer;
2. Consider interviews with supervisors and/or individuals in control of this particular officer at his police department;
3. Check for the following:
 - ★ Were any grievances filed against the officer?
 - ★ Were there any reprimands?
 - ★ Were there any disciplinary problems?
 - ★ Any suspensions?
 - ★ Any assaults this officer has been involved in while working as a police officer?
 - ★ Any demotions for this officer?

Subsequent checks of the above, possibly every six months, might also decrease a company’s exposure and demonstrate that it continues to exercise due care in retaining this particular officer.

In our next issue, we will discuss a *respondeat superior*, a second cause of action we routinely see in these types of cases.

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