

Ohio Supreme Court Clarifies a Plaintiff's Burden in Negligent Hiring, Retention, and Supervision Cases

By Karen. D. Adinolfi

In addition to statutory claims that employees may bring against their employers, there are a group of common law claims that are also available. It is not unusual, in a harassment or discrimination case, to also see claims for negligent hiring, supervision, and/or retention. The usual argument in those has been that, but for the employer's negligent hire, supervision, or retention of an incompetent or dangerous employee, the employee's alleged injuries would not have occurred. These are claims that do not typically receive a lot of attention, until now.

On December 8, 2020, the Ohio Supreme Court issued its decision in a case involving these claims. The plaintiff had alleged in her complaint that she had been sexually assaulted by an employee of the employer, and that the cause of that assault was the employer's alleged negligent hiring, supervision, and/or retention of the employee. The plaintiff did not sue the employee, and no criminal charges were ever brought against him.

The trial court granted the employer's motion for summary judgment, reasoning that the alleged behavior of the employee was not the subject of a civil or criminal proceeding, and as such, his alleged actions could not form the basis of a negligent hiring, retention, or supervision claim. The appellate court reversed, holding that there was no such requirement, and the Ohio Supreme Court affirmed.

The Court of Appeals had set out a five-part test to analyze whether a negligent hiring, supervision, and/or retention claim exists. These elements are: 1) the existence of an employment relationship, 2) the employee's incompetence, 3) the employer's actual or constructive knowledge of such incompetence, 4) the employee's act or omission causing the plaintiff's injuries, and 5) the employer's negligence in hiring, retaining, or supervising the employee is the proximate cause of the employee's injuries. Here, the Ohio Supreme Court focused on the fourth element, the employee's act or omission that caused the plaintiff injuries.

The employer, relying on Ohio Supreme Court precedent, had argued that if no civil or criminal proceedings had been brought against the employee or the employee has not been found civilly or criminally liable for the act complained of, then the employer could not be found liable on a negligent hiring, supervision, or retention claim. Not so, said the Ohio Supreme Court.

The conduct alleged to be the basis for the claim need only be "legally cognizable as a wrong," the Court said. The conduct need not depend on whether it has been civilly or criminally punished, just that it meet the above standard. Specifically, the Ohio Supreme Court held that "a plaintiff need not show that an employee has been adjudicated civilly liable or has been found guilty of a crime by a court in order for the plaintiff to maintain a negligent hiring, retention, or supervision claim against an

employer.” Such a claim is directly against the employer, based on employee conduct that the law regards as wrongful and that would not have occurred but for the employer’s failure to properly hire, supervise, or retain the wrongdoer. So long as the conduct complained of is recognized as a tort or crime in the State of Ohio, a complaint will not be dismissed if the wrongdoer is not found civilly or criminally liable.

In practical terms, this means ensuring that you are being thorough and diligent in the hiring process, that you have supervisors in place doing their job and dealing with misconduct, and that you do not hold on too long to an employee with a tendency to act in an inappropriate or violent manner. Once you’re on notice of bad behavior, it would be much easier for a plaintiff to succeed on one of these cases if the employee is retained.

If you have any questions or concerns, please do not hesitate to reach out to any of the listed Roetzel attorneys.

Doug Spiker

Practice Group Manager

Employment Services

216.696.7125 | dspiker@ralaw.com**Karen Adinolfi**330.849.6773 | kadinolfi@ralaw.com**Aretta Bernard**330.849.6630 | abernard@ralaw.com**Bob Blackham**216.615.4839 | rblackham@ralaw.com**Michael Brohman**312.582.1682 | mbrohman@ralaw.com**Eric Bruestle**513.361.8292 | ebruestle@ralaw.com**Helen Carroll**330.849.6710 | hcarroll@ralaw.com**G. Frederick Compton**330.849.6610 | fcompton@ralaw.com**Amanda M. Connelly**614.723.2012 | aconnelly@ralaw.com**Leighann Fink**330.849.6633 | lfink@ralaw.com**Monica Frantz**216.820.4241 | mfrantz@ralaw.com**Barry Freeman**216.615.4850 | bfreeman@ralaw.com**Morris Hawk**216.615.4841 | mhawk@ralaw.com**Phil Heebsh**419.708.5390 | pheebsh@ralaw.com**Deirdre Henry**216.615.4823 | dhenry@ralaw.com**Paul Jackson**330.849.6657 | pjackson@ralaw.com**Doug Kennedy**614.723.2004 | dkennedy@ralaw.com

Corey Kleinhenz513.361.8282 | ckleinhenz@ralaw.com**Jonathan Miller**419.254.5273 | JDMiller@ralaw.com**Stephanie Olivera Mittica**330.849.6671 | solivera@ralaw.com**Nancy Noall**216.820.4207 | nnoall@ralaw.com**Nathan Pangrace**216.615.4825 | npangrace@ralaw.com**Ahmer Sheriff**216.615.4849 | asheriff@ralaw.com**Brian Tarian**614.723.2028 | btarian@ralaw.com