

Personal Liability in the Workplace

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The information in
this webinar is only
intended to be
educational and
does not constitute
legal advice.

OSHA Section 17 Penalties: False Statements

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.



OSHA Section 17 Penalties: Willful (Intentional) & Death



Any employer who willfully violates any standard, rule, or regulations, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is second violation, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.



Concept of Respondeat Superior

Legal doctrine that employers are legally responsible for the wrongful acts of an employee, if such acts occur within the scope of the employment.

Most courts will use one of the tests:

1. Benefits Test: express or implied permission of the employer and are conceivably of some benefit to the employer
2. Characteristics Test: employee's action is common enough for that job that the action could be fairly deemed to be characteristic of the job

No consideration for quality of supervision – no excuses.

When *respondeat superior* is invoked, plaintiff is suing both the employer and the employee.

Court will generally look to the doctrine of joint and several liability when assigning damages.

Intentional Infliction of Emotional Distress

Karch v. BayBank FSB, 147 N.H. 525 (2002)

One Saturday night, plaintiff was talking to a friend on her cell phone when her conversation was picked up by her neighbor's radio scanner, who then invited their guests to listen, too (this is wiretapping). One of those guests was the VP at her workplace. VP did not like what she heard and proceeded to take actions described below. Eventually, plaintiff quit (what's known as a constructive discharge) and sued her employer and their VP for wrongful termination, violation of public policy, negligence and intentional infliction of emotional distress.

Court held "With regard to the plaintiff's claim for intentional infliction of emotional distress against the VP, the defendants assert that the claim fails to allege extreme and outrageous conduct. We disagree. The plaintiff claims that VP invaded her right to privacy and threatened, intimidated and retaliated against her. She also claims that the VP abused her position of power and threatened to monitor the plaintiff's conversations and discipline her without cause or legal right to do so. VP allegedly continued such activity after receiving notice that the plaintiff was experiencing physical and emotional distress caused by the hostile environment."

Willful Misconduct

Case of Moss, 451 Mass. 704 (2008)

Moss was riding in truck with coworkers (one passenger + one driver) when vehicle was hit and ended up tipped over. Moss fell out and was killed when truck landed on him. His wife received death benefits, but sued company owner and coworker/driver for serious and willful misconduct (which also doubles WC benefits in MA). At issue was whether Moss fell out of window or fell out because door malfunctioned and opened (which owner and driver knew about but claimed to have fixed).

Court found sufficient evidence from witness testimony that neither owner nor driver knew or had reason to know that a unreasonable risk of bodily harm with high degree of probably of substantial harm existed.

Separately, the driver was not also liable because he was not a supervisor and no direct control or responsibility of operations, including truck maintenance.

Workplace Violence

Dupont v. Aavid Thermal Techs., Inc., 147 N.H. 706 (2002)

Hilliard confronted Dupont at his workstation over his belief Dupont was having an affair with his girlfriend. It got heated, but instead of calling Security, two supervisors escorted Dupont and Hilliard outside, even though they “suspected that the situation would turn violent” and knew Hilliard had loaded handgun. They permitted confrontation to continue, failed to warn Dupont that Hilliard was armed, and failed to call the police. Hilliard killed Dupont, and then, killed himself.

Dupont’s family sued for both Supervisors and Employer and had to prove: (1) they owed Dupont a duty; (2) they breached this duty; and (3) the breach proximately caused Dupont’s death.

Court dismissed claim against Supervisors: general rule is private citizen has no general duty to protect others from the criminal attacks of third parties unless there is a special relationship (ex. Parent/child, schools/students).

Court held Employers have no general duty to protect employees from criminal attacks, but a duty may arise when the employer has unreasonably created a condition of employment that foreseeably enhances the risk of criminal attack. Here, the Supervisors escorted Dupont and Hilliard outside the building. Dupont was shot and killed shortly afterward.

Negligence and Duty of Care

All persons have a duty to exercise reasonable care not to subject others to an unreasonable risk of harm.



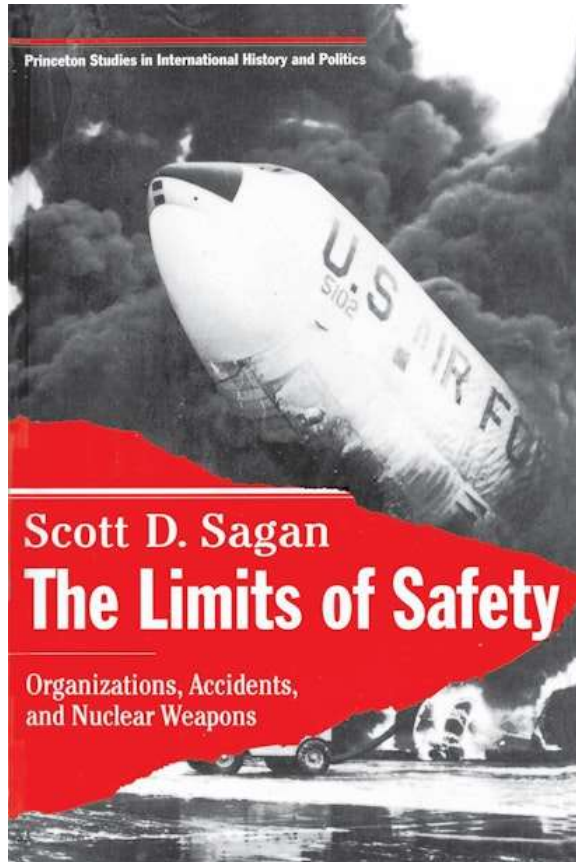
The existence of a duty does not arise solely from the relationship between the parties, but also from the need for protection against reasonably foreseeable harm; thus, in some cases, a party's actions give rise to a duty.

Parties owe a duty to those third parties foreseeably endangered by their conduct with respect to those risks whose likelihood and magnitude make the conduct unreasonably dangerous.



Other Safety-Related Negligence Examples

- 1.It was very busy and you were under heavy deadlines so you let someone you trusted drive a forklift without a license and the driver kills a) coworker, or b) visitor.
- 2.Your job is to regularly inspect and provide maintenance to machinery, but you have too busy lately and your boss knows it. But, a worker loses a hand when the machine malfunctions.
- 3.A worker reported damage on the warehouse rack, but you forgot about it. When a worker is goofing around, he runs into it with a pallet jack the following week, the post bends causing a ton of material to fall onto the worker, crushing both legs.



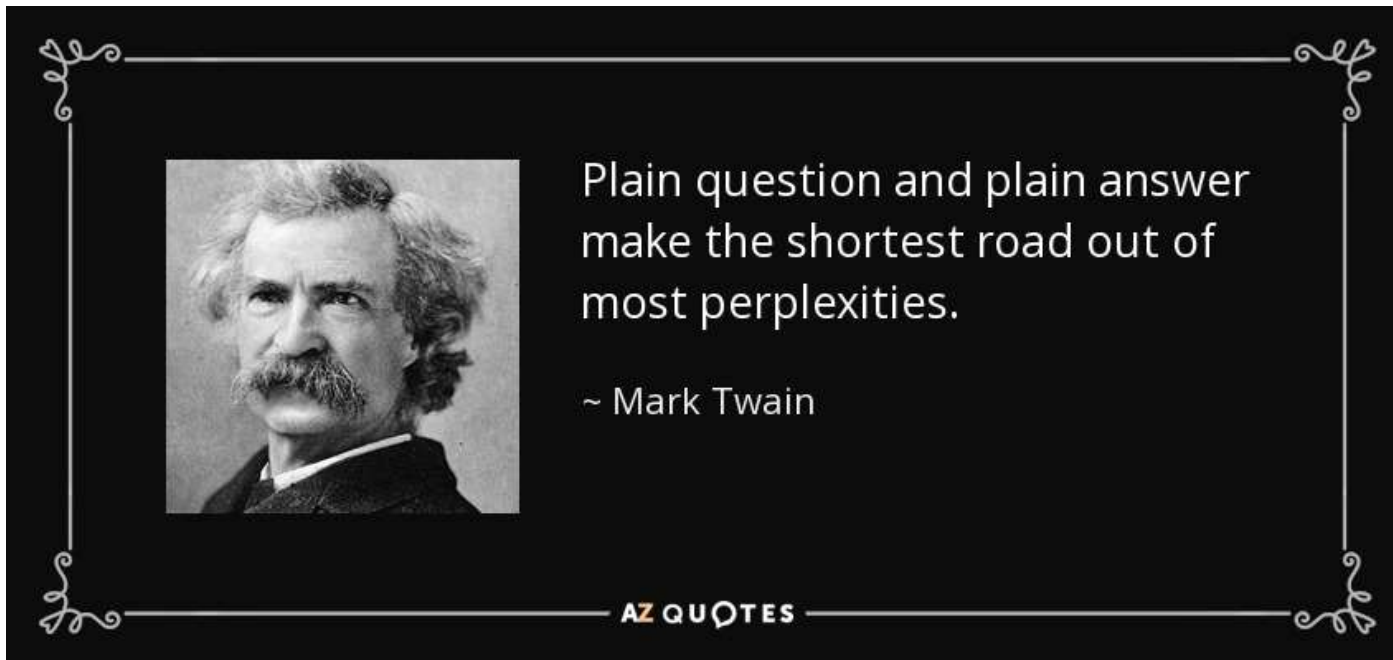
“things that have never happened before
happen all the time”

—Scott Sagan *“The Limits of Safety”*

Managing Your Own Risk at Work



- ✓ Know and follow the law, regulations, and company policies
- ✓ Keep your own education and training current
- ✓ Listen, respond to every complaint, and take corrective action
- ✓ Investigate, communicate, and keep good records (CYA)
- ✓ Identify risks and be proactive; better to be safe than sorry
- ✓ If you see someone cutting corners or violating safety rules, say something, do something
- ✓ Mitigate risks to the best of your ability and resources



If you have a question, feel free to contact me at amy.cann@mclane.com

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