

**Watch for Vicarious Liability for Employee Negligence**  
*Williams Kastner Labor & Employment Advisor – Spring 2011*  
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Employers are often liable to third parties for their employees' wrongful acts. This liability is known as *respondeat superior* or vicarious liability. An employer can be liable for an employee's conduct even when the employee's wrongful conduct violates a work rule or the employee acts on his or her own in violation of supervisory direction. Rogue employees can be dangerous. An employer can be liable even when an employee injures his or her family member. That was recently addressed in *Rahman v. State*, 170 Wn.2d 810 (2011).

In *Rahman*, a Washington state employee drove his wife as an unauthorized passenger in a state vehicle on a business trip to inspect a construction site. During the trip, he failed to negotiate a curve and his car left the roadway and struck a tree, rolling several times. His wife was badly injured. She sued the State for vicarious liability under the doctrine of *respondeat superior* for her husband's negligence. The State rejected responsibility because the husband had used the State vehicle to transport an unauthorized passenger outside the scope of his employment. Initially, the trial court agreed with the State, holding that vicarious liability did not apply when the injured party was an unauthorized passenger. The appellate court reversed holding in favor of the wife. The State then appealed to the Washington Supreme Court.

The State Supreme Court began its analysis, reaffirming the rule that an employer is liable for the negligent acts of its employees that are within the scope or course of employment. The *Rahman* court noted that the husband was engaged within the scope of his employment when driving to the construction site and had not departed on a "frolic or detour." The *Rahman* court concluded that, although the husband had combined his own business [*i.e.*, giving his wife an unauthorized ride] with the State's business, his trip and route taken were dictated by official

State business and that the State would therefore be liable under the doctrine of *respondeat superior*. While the employer may impose workplace rules and standards, vicarious liability may be found even where the employee acts in a forbidden way. The fact that the husband acted against policy by inviting his wife to ride with him in a State car did not defeat the State's vicarious liability for the accident because his conduct was in the service of the State's business at the time of the accident.

The takeaways from *Rahman* can be chilling for employers. Even if you have a workplace safety rule which the employee violates, you may be responsible for harm caused by that employee's negligence, even while violating the rule including in lawsuits filed by family members against your employees. An employer's best defense is to train and educate its employees on work rules, discipline employees for violation of those rules, and if necessary, terminate the employees when they violate them. Such conduct will have the salutary effect of warning other employees to comply with work rules and potentially avoid the incident that leads to vicarious liability for the employer under *respondeat superior*. Nonetheless, as the *Rahman* court underscored, the fact that an employee's conduct which leads to the harm is in violating workplace rules, is not necessarily or even probably a defense to employer's liability for its employee's wrongful conduct.