

## Employers No Longer Liable for Employees' Unforeseeable Unlawful Acts Under Michigan Law

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In a significant reversal of prior precedent, the Michigan Supreme Court held that employers are not vicariously liable for unforeseeable criminal acts committed by employees outside the scope of employment, even if the employee used his supervisory authority to perpetrate the violation. The Court explicitly overturned a 1996 Michigan Supreme Court decision in *Champion v Nation Wide Security* that had held employers vicariously liable for unforeseeable unlawful acts of supervisors.

The plaintiff inmate in *Hamed v Wayne County* was offered better treatment by an on-duty Deputy in exchange for providing sexual favors. After resisting this offer, the Deputy transferred the plaintiff to an area of the jail free of surveillance cameras and sexually assaulted her. The Deputy was eventually terminated and subsequently charged with criminal sexual conduct. The plaintiff sued, among others, Wayne County, alleging that Wayne County was vicariously liable for the Deputy's sexual assault because the Deputy used his authority to take advantage of her.

The Court of Appeals, relying on *Champion's* holding that "employers are vicariously liable for acts of quid pro quo sexual harassment committed by an employee when the employee uses his supervisory authority to perpetrate the harassment," held that Wayne County was liable for the Deputy's acts because the Deputy "used his authority as a sheriff's deputy to exploit plaintiff's vulnerability."

On appeal, the Michigan Supreme Court overruled *Champion* and held that employers are not strictly liable for violating the Michigan Civil Rights Act where a supervisor accomplishes the rape of a subordinate employee through the exercise of supervisory responsibility over the victim, if that conduct was unforeseeable and outside the employee's scope of employment. The Supreme Court noted in dicta, however, that employers can still be liable if "the employer knew or should have known of the employee's propensities and criminal record." That is to say, an employer may be held vicariously liable if it can be shown that the employer knew of prior similar conduct and knew of the employee's propensity to act in accordance with that prior, similar conduct.

Although employers cannot be vicariously liable for unforeseeable unlawful acts committed by its employees, employers may still be liable for an act of quid pro quo sexual harassment that was committed within the scope of employment or for a foreseeable act that was committed outside the scope of employment (e.g. a criminal assault) if the employer knew or should have known of the employee's history of wrongful conduct and propensity to act in accordance with that history.

For more information, contact your Miller Canfield Employment + Labor attorney.