

## Montague v. Amn Healthcare, Inc.

### An Employer's Liability for the Intentional Torts of an Employee

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There are many concerns an employer may have when hiring, supervising, and training an employee. Whether or not that employee is going to poison a coworker is not typically one of those concerns. The California Court of Appeal addressed the employer's liability under just such a set of facts in *Montague v. Amn Healthcare, Inc.* (February 21, 2014). Ultimately, the court of appeal found the trial court properly granted summary judgment in favor of the employer on the plaintiff's vicarious liability and negligent training causes of action.

Theresa Drummond was hired as a medical assistant by Nursefinders, a staffing company that then assigned her to work at a Kaiser facility. At the time, Sara Montague was also working as a medical assistant at the same Kaiser facility and began working alongside Drummond. Early on in their working relationship, Drummond and Montague had a disagreement regarding how rooms were to be stocked and subsequently had second disagreement about misplaced lab slips. A few weeks after the last disagreement Drummond poisoned Montague by pouring carboric acid into her water bottle. After getting very sick, Montague brought suit against Nursefinders alleging vicarious liability and negligent training. The trial court dismissed the suit against Nursefinders on summary judgment because Nursefinders could not be held vicariously liable for a special employee working exclusively under the control of Kaiser, and Montague's negligent training cause of action lacked causation.

The court of appeal upheld the trial court's dismissal of Montague's vicarious liability claim holding that Drummond's act of poisoning Montague was outside the scope of her employment. In reaching that conclusion, the court found that Drummond's conduct was neither incidental to her duties as a medical assistant nor was it reasonably foreseeable in light of the employer's business. First, there was no evidence the poisoning arose out of a work-related dispute, as opposed to personal animosity that Drummond developed for Montague. Second, while the employment brought Drummond and Montague together, Drummond's conduct was highly unusual and not foreseeable.

Addressing Montague's allegation of negligent training, the court of appeal found Montague's negligent training cause of action lacked causation. Citing *Flores v. Autozone West, Inc.* (2008) 161 Cal.App.4<sup>th</sup> 373, held that Montague could not reasonably state that Drummond's criminal assault was the result of Nursefinders' failure to make clear that poisoning a coworker would not be considered an acceptable employee act, because the employer had provided an orientation, including information on workplace violence.

There are two important take-aways for employers from *Montague*. First, an employer should address work related conflicts immediately because the employer could potentially be held liable for the intentional torts of an employee arising from a workplace dispute if it is on notice of a potential problem

and fails to address the issue. Secondly, employers should train employees in workplace violence on hiring and keep a record of each employee's training.