

## **LAW REVIEW**

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### **CITY OF SACRAMENTO LIABLE FOR FIREMAN'S SEXUAL ASSAULT?**

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During the Porn Star Costume Ball (I kid you not) at a Sacramento hotel in 2004, a Sacramento Fire Department Captain allegedly allowed firefighters to attend the event, in fact drive a fire truck to the party and use it to "pick up" women. That dubious policy resulted in a lawsuit.

#### **Porn Star Costume Ball**

Plaintiff, know as "M.P.", a 24-year-old woman working as a photographer at the Porn Star Costume Ball, alleged in a lawsuit, that a crew of firefighters had driven their trucks to the event and were drinking, even when some were on-duty. A fire Captain watched the firefighters drink and flirt, per M.P.

M.P. claimed she was invited onto the truck by fireman Mitchell who was on-duty and fireman Singleton who was off-duty and found herself blocked by the two. She alleged she was kissed in inappropriate places and violated in an even more inappropriate place. M.P. escaped when Mitchell's attention was diverted when someone walked by and yelled, "Fireman have all the luck."

M.P. sued the City of Sacramento and its fire department alleging among other things that the practice of firefighters attending social events in fire engines and picking up women was time-honored and known by the entire department--essentially a condoning by the City of the inevitable sexual assault.

## Sacramento's Defense

Sacramento defended claiming it was not vicariously liable for an alleged sexual assault committed during a social event, as any sexual assault would be outside the scope of employment. Further, the City had no knowledge of any such conduct, plus both officers had criminal background checks.

## Public Employer Liability

The general rule in California is that a public entity employer “is vicariously liable for the torts (civil wrongs) of its employees committed within the scope of the employment.” (The same rule generally applies in the private sector).

In fact, a public employer's vicarious liability applies even if the employee's wrongful acts are willful, malicious, and sometimes even criminal *if* they are directly related to the employee's work. If the relationship between an employee's work and wrongful conduct is “attenuated,” the wrongful act will not be found to be within the scope of employment, meaning the employer will not be responsible. Crash a company car on company business, the company is liable—as is the employee of course.

## *Mary M*

The leading California Supreme Court case is *Mary M.*, where the Court held that a police officer who raped a woman whom he detained while on duty could be considered within the scope of employment, essentially because of the high trust placed upon police officers. The *Mary M.* case was limited to police officers on duty.

M.P. attempted to expand the *Mary M.* decision making it apply to fireman-whether on or off-duty.

#### Decision

The Court of Appeal found no liability on the part of the City concluding that employees do not act within the scope of employment when they abuse job-created authority over others for purely personal reasons not related to their duties.

The Court concluded that the alleged sexual misconduct fell outside the scope of employment as firefighters.

#### Dissent

One Justice agreed that the alleged assault was not in the scope of the firefighter's employment; however, she wrote that the Plaintiff, M.P., should be entitled to have her case heard by a jury because her lawsuit alleged there was a *policy* in the fire department allowing fire trucks to be taken to social events and allowing fireman to drink and pick up women, and as the lawsuit alleged, that policy "put in motion a chain of events...where Plaintiff was sexually assaulted "

The dissenting Justice agreed that normally if a fireman goes to a bar and sexually assaults a victim, there is no employer liability, except in this case the lawsuit alleged there was a *policy* permitting firefighters to go to bars, drink, and pick up women, and that allegation should be decided by a jury, not in pre-trial motions.

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