

**13-1647. Negligence in [hiring] [supervising] [retaining] an employee.<sup>1</sup>**

To establish the claim of negligence in [hiring] [supervising] [retaining] an employee, \_\_\_\_\_ (*name of the plaintiff*) has the burden of proving the following:

1. \_\_\_\_\_ (*Name of the defendant*) was the employer of \_\_\_\_\_ (*name of the employee*);
2. \_\_\_\_\_ (*Name of the defendant*) knew or should have known that [hiring] [retaining] [supervising] [ \_\_\_\_\_ (*insert other employer conduct*)<sup>2</sup>] \_\_\_\_\_ (*name of the employee*) would create an unreasonable risk of injury to [a group or class that includes the plaintiff] [ \_\_\_\_\_ (*insert name of the plaintiff*)];
3. \_\_\_\_\_ (*Name of the defendant*) failed to use ordinary care in [hiring] [retaining] [supervising] [ \_\_\_\_\_ (*insert other employer conduct*)<sup>2</sup>] \_\_\_\_\_ (*name of employee*);
4. \_\_\_\_\_ (*Name of the defendant*)'s negligence in [hiring] [retaining] [supervising] [ \_\_\_\_\_ (*insert other employer conduct*)<sup>2</sup>] was a cause of \_\_\_\_\_ (*name of the plaintiff*)'s injury.

**USE NOTES**

1. In addition to this instruction, the jury should be instructed on negligence, UJI 13-1601 NMRA, ordinary care, UJI 13-1603 NMRA, and causation, UJI 13-305 NMRA.

2. See *Lessard v. Coronado Paint and Decorating Center, Inc.*, 2007-NMCA-122, ¶¶ 28, 37, 142 N.M. 583, 168 P.3d 155 (quoting the Restatement (Third) of Agency § 7.05(1) (2006) for the proposition that "[a] principal who conducts activity through an agent is subject to liability for harm to a third party caused by the agent's conduct if the harm was caused by the principal's negligence in selecting, training, retaining, supervising, or otherwise controlling the agent").

[Adopted by Supreme Court Order No. 10-8300-029, effective December 3, 2010.]