**13-1647. Negligence in [hiring] [supervising] [retaining] an employee.1**

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*)2] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*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*)2] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(*name of employee*);

4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Name of the defendant*)’s negligence in [hiring] [retaining] [supervising] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*insert other employer conduct*)2] 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.]