

APPENDIX A

Below is a nationwide survey on states' and territories' high-court decisions regarding vicarious liability for sexual harassment. For every state and the District of Columbia, the first column details which scope-of-employment test it uses for sexual harassment vicarious liability cases. The second column details whether it has adopted the Second Restatement's aided-in-accomplishing exception or indicated its view on the exception. The third column, based on the cases included in the first two columns, concludes whether it has held an employer vicariously liable for sexual harassment; if so, how consistently it has done so; and, if not, whether its case outcomes suggest any willingness to do so in the future.

SCOPE-OF-EMPLOYMENT TEST	ADOPTION OF THE AIDED-IN-ACCOMPLISHING EXCEPTION	RESULTING VICARIOUS LIABILITY
Alabama		
<p>Motive to Serve. Doe v. Swift, 570 So. 2d 1209, 1212 (Ala. 1990) (holding, where a psychologist sexually assaulted a patient, that sexual assault is “wholly personal”).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment at least once. There is no evidence that currently suggests a willingness to change position.</p>
Alaska		
<p>Motive to Serve Veco, Inc. v. Rosebrock, 970 P.2d 906, 910 (Alaska 1999) (“[Sexual harassers] are acting for personal reasons and not, even in part, to serve their employer.”).</p>	<p>Adopted with limitations. <i>Rosebrock</i>, 970 P.2d at 915 (“An employer will only be vicariously liable for the acts of the complainant’s supervisor . . .”). <i>Ayuluk v. Red Oaks Assisted Living, Inc.</i>, 201 P.3d 1183, 1199 (Alaska 2009) (limiting the exception “to cases where an employee has by reason of his employment substantial power or authority to control” a victim and leaving these determinations to jury).</p>	<p>Employer can be liable based on the aided-in-accomplishing exception only if the perpetrator is a supervisor or has significant authority or power over the victim.</p>
Arizona		
<p>Variation on Motive to Serve State v. Schallock, 941 P.2d 1275, 1283 (Ariz. 1997) (“[T]o be within the course and scope, the act must be, at least in part, motivated by a purpose to serve</p>	<p>Adopted with limitations. <i>Schallock</i>, 941 P.2d at 1286 (adopting the exception but stating that special factors, including whether the</p>	<p>Employer can be liable based on either scope-of-employment test or the aided-in-accomplishing exception.</p>

<p>the master But . . . particularly in a sexual harassment case, the act in question is not the ultimate tortious act but rather conduct related to the tort.” (cleaned up)).</p>	<p>perpetrator is a supervisor, must be considered).</p>	
Arkansas		
<p>Mix of Motive to Serve and Enterprise Risk Porter v. Harshfield, 948 S.W.2d 83, 86 (Ark. 1997) (holding that the perpetrator “was not, by any stretch of the imagination, acting within the scope of his duties” where a radiology technician sexually assaulted a patient while conducting her ultrasound). Regions Bank & Tr. v. Stone Cnty. Skilled Nursing Facility, Inc., 49 S.W.3d 107, 109 (Ark. 2001) (affirming a lower court decision that a nursing home employee’s sexual assault of a comatose, quadriplegic patient fell outside the scope of employment).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment multiple times; this consistent refusal indicates an unwillingness to change position.</p>
California		
<p>Enterprise Risk. Mary M. v. City of Los Angeles, 814 P.2d 1341, 1343 (Cal. 1991) (holding, where a police officer sexually assaulted a detainee, that the assault was within the scope of employment because “[a] risk arises out of the employment when . . . an employee’s conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer’s business” (cleaned up)). Farmers Ins. Grp. v. County. of Santa Clara, 906 P.2d 440, 448–50 (Cal.</p>		<p>Mixed results.</p>

1995) (holding, where a male deputy sheriff sexually harassed multiple female deputy sheriffs, that the sexual harassment fell outside the scope of employment).		
Colorado		
<p style="text-align: center;">Motive to Serve.</p> <p>Moses v. Diocese of Colo., 863 P.2d 310, 329 n.27 (Colo. 1993) (“Although the commission of an intentional tort may sometimes be within the scope of employment, the agent’s intent in committing the tortious act must be to further the employer’s business.”).</p> <p>Destefano v. Grabrian, 763 P.2d 275, 287 (Colo. 1988) (holding sexual intercourse by priest with parishioners to be outside scope of employment).</p>		<p style="text-align: center;">State high court has refused to impose vicarious liability for sexual harassment multiple times; this consistent refusal indicates an unwillingness to change position.</p>
Connecticut		
<p style="text-align: center;">Enterprise Risk.</p> <p>Rawling v. City of New Haven, 537 A.2d 439, 444 (Conn. 1988) (“A sexual assault is generally viewed as foreign to the scope of employment unless the work setting itself precipitates the assault.” (internal citations omitted)).</p>		<p style="text-align: center;">Unclear.</p> <p style="text-align: center;"><i>Rawling</i> was decided on a different issue.</p>
Delaware		
<p style="text-align: center;">Mix of Motive to Serve and Enterprise Risk.</p> <p>Sherman v. State Dep’t of Pub. Safety, 190 A.3d 148, 173–74 (Del. 2018) (requiring both foreseeability and motive-to-serve as elements).</p>	<p style="text-align: center;">Adopted with limitations.</p> <p style="text-align: center;"><i>Sherman</i>, 190 A.3d at 181 (applying the exception but “tak[ing] into account the critical difference between police officers who act to arrest people and employees of most businesses” because other employees do not “wield the potent coercive power entrusted to our police” (internal citations omitted)).</p>	<p style="text-align: center;">Employer can be liable if a sexual assault was perpetrated by its police-officer employee.</p>
District of Columbia		
<p style="text-align: center;">Mix of Motive to Serve and Enterprise Risk</p> <p>Boykin v. District of Columbia, 484 A.2d 560, 561, 563 (D.C. 1984) (holding, where a public-school employee sexually assaulted a “deaf, blind, and mute” twelve-year-old</p>		<p style="text-align: center;">Mixed results.</p>

<p>student, that the sexual assault fell outside the scope of employment because it was not enough that the perpetrator's employment position "afforded him the opportunity to pursue his personal adventure" (emphasis omitted).</p> <p>Brown v. Argenbright Sec., Inc., 782 A.2d 752, 758 (D.C. 2001) (stating that sexual assault is not per se outside the scope of employment but that "it is probable that the vast majority of sexual assaults arise from purely personal motives").</p> <p>Lyon v. Carey, 533 F.2d 649, 655 (D.C. 1976) (holding, where a deliveryman sexually assaulted a customer, that scope-of-employment was "a question . . . for the trier of fact").</p>		
<p>Florida</p>		
<p>Motive to Serve</p> <p>McGhee v. Volusia County., 679 So. 2d 729, 732 (Fla. 1996) (holding that a police officer's non-sexual physical assault could be within the scope of employment if it was "accomplished through an abuse of power lawfully vested in the officer").</p> <p>The <i>McGhee</i> court relied on a lower court's discussion of sexual misconduct by a police officer and conclusion that such "[c]onduct is within the scope of employment if it occurs substantially within authorized time and space limits, and it is activated at least in part by a purpose to serve the master. The purpose of the employee's act, rather than the method of performance thereof, is said to be the important consideration." <i>Id.</i> (quoting <i>Hennagan v. Dep't of Highway Safety & Motor Vehicles</i>, 467 So. 2d 748, 751 (Fla. Dist. Ct. App. 1985)). The Florida Supreme Court has not itself considered a sexual harassment vicarious liability claim.</p>		<p>Unclear, but the court's analysis in <i>McGhee</i> indicates that an employer can be vicariously liable for sexual harassment.</p>
<p>Georgia</p>		

<p>Motive to Serve. Piedmont Hosp., Inc. v. Palladino, 580 S.E.2d 215, 217 (Ga. 2003) (finding an employer not liable because sexual misconduct was “not taken in furtherance of the employer’s business”).</p>	<p>Likely resistant to the exception. In <i>Palladino</i>, the court stated that an employer “cannot be held vicariously liable merely because [the perpetrator’s] employment allowed him access into [the victim’s] room and provided him with an opportunity to commit [sexual assault].” 580 S.E.2d at 218.</p>	<p>State high court has refused to impose vicarious liability for sexual harassment at least once. There is no evidence that currently suggests a willingness to change position.</p>
<p>Hawaii</p>		
<p>No test articulated specified. Sharples v. State, 793 P.2d 175, 177 (Haw. 1990) (holding that sexual misconduct of patient by therapist “was, as a matter of law, not within the scope of his employment” citing only an “analogous” case with no factual application).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment at least once. There is no evidence that currently suggests a willingness to change position.</p>
<p>Idaho</p>		
<p>The Idaho Supreme Court has not considered a sexual harassment vicarious liability claim.</p>		<p>Unclear.</p>
<p>Illinois</p>		
<p>The Illinois Supreme Court has not considered a sexual harassment vicarious liability claim.</p>		<p>Unclear, but the court has indicated it would not hold an employer vicariously liable. In a statutory case where a physician sexually assaulted a patient, the court stated, “The sexual assault, itself, was not medical care, nor was there even any pretense that [the perpetrator’s] sexual acts were necessitated by, or in any way related to, the medical care he was providing to [the plaintiff].” <i>Kaufmann v. Schroeder</i>, 946 N.E.2d 345, 349 (Ill. 2011).</p>
<p>Indiana</p>		
<p>Enterprise Risk. Stropes <i>ex rel.</i> Taylor v. Heritage House Child.’s Ctr. of Shelbyville, Inc., 547 N.E. 2d 244, 254 (Ind. 1989) (holding, where a nurse’s aide sexually assaulted a fourteen-year-old disabled child that plaintiffs “must show that the acts committed by [perpetrators] fell within the range of circumstances and</p>	<p>Has not adopted the exception. <i>Cox</i>, 107 N.E.3d at 459 (noting that the court has “not adopted” the exception).</p>	<p>Mixed results.</p>

<p>activities over which [the employer] would be expected to exercise control” and remanding to apply this analysis).</p> <p>Cox v. Evansville Police Dep’t, 107 N.E.3d 453, 461–62 (Ind. 2018) (finding an employer liable where a police officer sexually assaulted a citizen because “delegating employment activities . . . carries an inherent risk that those activities will naturally or predictably give rise to injurious conduct When tortious acts are so closely associated with the employment that they arise naturally or predictably from [those] activities . . . , they are within the scope of employment . . .”).</p> <p>Barnett v. Clark, 889 N.E.2d 281 (Ind. 2008) (finding no liability where employee hired plaintiff and a few days after she started, checked her work in a back room and then closed the door, blocked it with a chair, turned off the lights, and sexually assaulted her).</p> <p>Doe v. Vigo County, 905 F.3d 1038, 1042-44 (7th Cir. 2018) (applying Indiana law to conclude that a sexual assault of a civilian by a park-maintenance specialist was outside the scope of employment).</p>		
Iowa		
<p>Motive to Serve.</p> <p>Godar v. Edwards, 588 N.W.2d 701, 706-07 (Iowa 1999) (“Although [the perpetrator] had the opportunity to become acquainted with [the victim] by virtue of his duties . . . the actions were [not] committed in furtherance of [those] duties.”).</p> <p>Martin v. Tovar, 991 N.W.2d 760, 766 (Iowa 2023) (concluding that “[an officer’s] rape of [the plaintiff civilian] was . . . such a departure from the officer’s duty simply to provide an intoxicated passenger a courtesy ride home, that it falls outside the scope of his employment”).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment multiple times; this consistent refusal indicates an unwillingness to change position.</p>

Kansas		
The Kansas Supreme Court has not considered a sexual harassment vicarious liability claim.		Unclear.
Kentucky		
Motive to Serve. Am. Gen. Life & Accident Ins. Co. v. Hall, 74 S.W.3d 688, 692 (Ky. 2002) (holding, where a supervisor sexually harassed a subordinate, that harassment fell outside the scope of employment because the perpetrator was motivated “solely by a desire to satisfy [his] own sexual proclivities”).		State high court has refused to impose vicarious liability for sexual harassment at least once. There is no evidence that currently suggests a willingness to change position.
Louisiana		
Mix of Motive to Serve and Enterprise Risk Baumeister v. Plunkett, 673 So. 2d 994, 996-7, 1000 (La. 1996) (applying factors similar to Enterprise Risk and Motive to Serve and declining to hold employer liable for sexual assault of a nursing supervisor against a subordinate despite asserting that “[a] blanket rule holding all sexual attacks outside the scope of employment as a matter of law . . . would draw an unprincipled distinction between such assaults and other types of crime . . .” (internal citations omitted) (quoting Stropes ex rel. Taylor v. Heritage House Child.’s Ctr. of Shelbyville, Inc., 547 N.E.2d 244 (Ind. 1989))).		Employer can theoretically be liable, but the <i>Baumeister</i> court found the employer not liable for a sexual assault by a supervisor against a subordinate.
Maine		
Second Restatement Test Dragomir v. Spring Harbor Hosp., 970 A.2d 310, 314 (Me. 2009) (applying the Second Restatement and finding a hospital not liable where a social worker began a sexual relationship with a patient and later pleaded guilty to sexual assault).	Considered but did not adopt the exception and indicated that its interpretation of the exception, if adopted, would be limited. Mahar v. StoneWood Transp., 823 A.2d 540, 546 (Me. 2003) (concluding the exception “is limited in its application to cases within the apparent authority of the employee, or when the employee’s conduct involves misrepresentation or deceit” but noting	Unclear. <i>Dragomir</i> did not result in liability, but the court emphasized that most of the sexual interactions at issue occurred “off premises” and so not “within the authorized time and space limits of [the plaintiff’s] treatment,” so the court may have reached a different finding on other facts. 970 A.2d at 314.

	that Maine has not adopted the exception).	
Maryland		
<p>Motive to Serve</p> <p>Balt. City Police Dep't v. Potts, 227 A.3d 186, 210 (Md. 2020) (applying a motive-to-serve test and noting that "it is evident that where an officer sexually assaults a suspect in custody, the officer does not act within the scope of employment").</p>		<p>Unclear, but the court has indicated it would not hold an employer vicariously liable for sexual harassment.</p> <p><i>Potts</i> was decided on a different issue, but the dicta indicates that the court would be resistant to vicarious liability.</p>
Massachusetts		
<p>Motive to Serve</p> <p>Doe v. Purity Supreme, Inc., 664 N.E.2d 815, 820 (Mass. 1996) (holding, where an assistant manager sexually assaulted a subordinate, that misconduct "was not motivated by a purpose to serve the employer").</p> <p>Worcester Ins. Co. v. Fells Acres Day Sch., Inc., 558 N.E.2d 958, 967 (Mass. 1990) (holding, where employees at a day-care center sexually molested children, that abuse fell outside the scope of employment).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment multiple times; this consistent refusal indicates an unwillingness to change position.</p>
Michigan		
<p>Motive to Serve</p> <p>Hamed v. Wayne County., 803 N.W.2d 237, 241–45 (Mich. 2011) (holding, where a deputy sheriff sexually assaulted an arrestee, that assault was not within the scope of employment, that "action[] intended solely to further the employee's individual interests[] cannot be fairly characterized as falling within the scope of employment . . ." but "an employer can be held liable for its employee's conduct if 'the employer knew or should have known of the employee's propensities and criminal record . . .'" (emphasis omitted).</p>	<p>Declined to adopt the exception.</p> <p>Zsigo v. Hurley Med. Ctr., 716 N.W.2d 220 (Mich. 2006) (declining to adopt the exception and holding hospital not liable for sexual assault of patient by nursing assistant).</p>	<p>Employer cannot be liable unless employer "knew or should have known of the employee's propensities and criminal record." <i>Hamed</i>, 803 N.W.2d at 245.</p>
Minnesota		
<p>Enterprise Risk.</p> <p>Fahrendorff <i>ex rel.</i> Fahrendorff v. North Homes, Inc., 597 N.W.2d 905,</p>	<p>Has not adopted the exception.</p> <p>Frieler v. Carlson Mktg. Grp., 751 N.W.2d 558, 581 (Minn. 2008) (Page, J.,</p>	<p>Employer can be liable.</p>

<p>910–11 (Minn. 1999) (holding, where a crisis-shelter counselor sexually assaulted a teenage resident, that the shelter could be vicariously liable because “an employer may be held liable for even the intentional misconduct of its employees when (1) ‘the source of the attack is related to the duties of the employee,’ and (2) ‘the assault occurs within work-related limits of time and place’” (quoting <i>Lange v. Nat’l Biscuit Co.</i>, 211 N.W.2d 783, 786 (Minn. 1973))).</p> <p><i>Marston v. Minneapolis Clinic of Psychiatry & Neurology, Ltd.</i>, 329 N. W. 2d 306, 310–11 (Minn. 1983) (concluding, where a doctor made sexual overtures to his patients that “the employee’s motivation should not be a consideration for imposition of vicarious liability”).</p>	<p>dissenting) (noting that Minnesota has “never adopted” the exception).</p>	
Mississippi		
<p>Motive to Serve.</p> <p><i>Doe v. Salvation Army</i>, 835 So. 2d 76, 82 (Miss. 2003) (concluding that a camp counselor’s sexual assault of a camper did not benefit the camp).</p>		<p>Unclear, but the court has indicated resistance to vicarious liability.</p> <p><i>Salvation Army</i> was decided on a different issue, and the court’s comment about scope-of-employment was dicta, but it still indicates that the court would be resistant to vicarious liability.</p>
Missouri		
<p>Motive to Serve</p> <p><i>Gibson v. Brewer</i>, 952 S.W.2d 239, 246 (Mo. 1997) (holding that “intentional sexual misconduct . . . [is] not within the scope of employment of a priest”).</p> <p><i>Smothers v. Welch & Co. House Furnishing Co.</i>, 274 S.W. 678, 679 (Mo. 1925) (holding, where a furniture-store merchant sexually assaulted a customer, that the employee “was not acting within the scope of his employment and in furtherance of his employer’s business”).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment multiple times; this consistent refusal indicates an unwillingness to change position.</p>
Montana		
<p><i>L.B. v. United States</i>, 515 P.3d 818, 823, 828 (Mont. 2022) (“[L]aw-enforcement officers do not, as a matter of law, act outside the scope of their</p>		<p>Mixed results.</p>

<p>employment when they use their authority as on-duty officers to sexually assault a person they are investigating for a crime. The test of an employer's liability is whether the act complained of arose out of and was committed in prosecution of the task the officer was performing for his employer.”).</p> <p>Maguire v. Montana, 835 P.2d 755, 757 (Mont. 1992) (holding, where an employee at a disability treatment center sexually assaulted and impregnated an autistic patient, that the “rape was outside the scope of [perpetrator’s] employment”).</p>		
Nebraska		
<p>The Nebraska Supreme Court has not considered a sexual harassment vicarious liability claim.</p>		Unclear.
Nevada		
<p>Enterprise Risk</p> <p>Nevada codified the Enterprise Risk test. NEV. REV. STAT. ANN. § 41.745(1) (2023).</p> <p>Wood v. Safeway, Inc., 121 P.3d 1026 (Nev. 2005) (finding no vicarious liability where a Safeway maintenance employee sexually assaulted a mentally disabled co-employee).</p> <p>Anderson v. Mandalay Corp., 358 P.3d 242, 246 (Nev. 2015) (allowing the jury to make a determination because a hotel employee sexually assaulting a guest was foreseeable).</p>		Mixed results.
New Hampshire		
<p>The New Hampshire Supreme Court has not considered a sexual harassment vicarious liability claim.</p>		Unclear.
New Jersey		
<p>Second Restatement Test</p> <p>Carter v. Reynolds, 815 A.2d 460, 465 (N.J. 2003) (applying the Second Restatement test).</p> <p>Davis v. Devereux Found., 37 A.3d 469, 491 (N.J. 2012) (holding that a non-sexual, physical assault fell outside the</p>	<p>Adopted with limitations.</p> <p>Hardwicke v. Am. Boychoir Sch., 902 A.2d 900, 904, 920 (N.J. 2006) (adopting the exception where a music teacher sexually abused a student).</p>	Employer can be liable.

<p>scope of employment by relying on a lower court ruling that a sexual assault fell outside the scope of employment).</p>		
<p>New Mexico</p>		
<p>No test specified. Spurlock v. Townes, 368 P.3d 1213, 1216 (N.M. 2016) (“[A]n employee who intentionally injures another individual is generally considered to be acting outside the scope of his or her employment.” (quoting <i>Ocana v. Am. Furniture Co.</i>, 91 P.3d 58 (N.M. 2004)) (internal quotation marks omitted)).</p>	<p>Adopted with limitations. <i>Spurlock</i>, 368 P.3d at 1217 (narrowly adopting the aided-in-accomplishing exception where a corrections officer sexually assaulted three inmates and limiting its adoption to “cases where an employee has by reason of his employment substantial power or authority to control important elements of a vulnerable tort victim’s life or livelihood” (quoting <i>Ayuluk v. Red Oaks Assisted Living, Inc.</i>, 201 P.3d 1183, 1199 (Alaska 2009)) (internal quotation marks omitted)).</p>	<p>Employer can be liable based on the exception only if the perpetrator is a supervisor or has significant authority or power over the victim.</p>
<p>New York</p>		
<p>Motive to Serve. <i>N.X. v. Cabrini Med. Ctr.</i>, 765 N.E.2d 844 (N.Y. 2002) (“A sexual assault perpetrated by a hospital employee is not in furtherance of hospital business . . . having been committed for wholly personal motives.”). <i>Swarna v. Al-Awadi</i>, 622 F.3d 123, 144–145 (2d Cir. 2010) (applying New York law and concluding that “New York courts consistently have held that sexual misconduct and related tortious behavior arise from personal motives and do not further an employer’s business . . .”).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment multiple times; this consistent refusal indicates an unwillingness to change position.</p>
<p>North Carolina</p>		
<p>Motive to Serve. <i>Medlin v. Bass</i>, 398 S.E.2d 460, 464 (N.C. 1990) (“[I]n proceeding to assault [a student] sexually[, the principal] was advancing a completely personal objective. The assault could advance no conceivable purpose of defendant” (internal quotations omitted)).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment at least once. There is no evidence that currently suggests a willingness to change position.</p>
<p>North Dakota</p>		

<p>Second Restatement.</p> <p>Nelson v. Gillette, 571 N.W.2d 332, 341–42 (N.D. 1997) (concluding, where a social worker sexually assaulted a foster child, that because the assault “took place ‘during business hours and at business-related locations,’” scope-of-employment was a question of fact (citation omitted)).</p> <p><i>Nelson</i> marks a clear change in the law from an earlier North Dakota case. <i>Haser v. Pape</i>, 39 N.W.2d 578, 582 (N.D. 1949) (holding sexual assault by a taxi driver against passenger was outside the scope of employment as a matter of law). Given that <i>Haser</i> is such an old case, it is safe to assume that <i>Nelson</i> governs. <i>See, e.g., Grager v. Schudar</i>, 770 N.W.2d 692, 698 (N.D. 2009) (confirming that <i>Nelson</i>’s scope-of-employment test governs in North Dakota).</p>		<p>Employer can be liable.</p>
Ohio		
<p>Motive to Serve</p> <p>Ohio Gov’t Risk Mgmt. Plan v. Harrison, 874 N.E.2d 1155, 1159–60 (Ohio 2007) (applying Motive to Serve but declining “to hold that sexual harassment is conduct that is outside the scope of employment as a matter of law”).</p>	<p>Declined to adopt the aided-in-accomplishing exception for tort claims generally.</p> <p><i>Groob v. KeyBank</i>, 843 N.E.2d 1170, 1180 (Ohio 2006) (concluding that being aided by employment status is insufficient for vicarious liability).</p>	<p>Employer can be liable.</p>
Oklahoma		
<p>Mix of Motive to Serve and Enterprise Risk</p> <p>N.H. v. Presbyterian Church (U.S.A.), 998 P.2d 592, 599–600 (Ok.</p>		<p>State high court has refused to impose vicarious liability for sexual harassment at least once. There is no</p>

<p>1999) (“When [ministers molest children], it is not a part of the minister’s duty nor customary within the business of the congregation . . . [The perpetrator] acted for his own personal gratification . . .”).</p>		<p>evidence that currently suggests a willingness to change position.</p>
Oregon		
<p>Novel Test</p> <p>Fearing v. Bucher, 977 P.2d 1163, 1166–67 (Or. 1999) (holding, where a priest sexually abused a child, that “sexual assaults on plaintiff clearly were outside the scope of his employment” but that the “inquiry does not end there. The [employer] still could be found vicariously liable, if acts that were within [the perpetrator’s] scope of employment ‘resulted in the acts which led to injury to plaintiff’ . . . [A] jury could infer that the sexual assaults were the culmination of a progressive series of actions that began with and continued to involve [the perpetrator’s] performance of the ordinary and authorized duties of a priest” (citation omitted)).</p> <p>Minnis v. Or. Mut. Ins. Co., 48 P.3d 137, 143 (Or. 2002) (describing the same test in different terms).</p>		<p>Employer can be liable.</p>
Pennsylvania		
<p>The Pennsylvania Supreme Court has not considered a sexual harassment vicarious liability claim.</p>		<p>Unclear.</p>
Rhode Island		
<p>The Rhode Island Supreme Court has not considered a sexual harassment vicarious liability claim.</p>		<p>Unclear.</p>
South Carolina		
<p>Motive to Serve.</p> <p>The South Carolina Supreme Court has not considered a sexual harassment vicarious liability claim.</p> <p><i>But see</i> Morris v. Mooney, 343 S.E. 2d 442, 443 (S.C. 1986) (holding that</p>		<p>Unclear, but <i>Morris</i> indicates the court would not hold an employer vicariously liable.</p>

<p>consensual adultery falls outside the scope of employment because it is “not reasonably necessary to accomplish any [employment] purpose”).</p>		
South Dakota		
<p>Mix of Motive to Serve and Enterprise Risk Bernie v. Cath. Diocese of Sioux Falls, 821 N.W.2d 232, 237 (S.D. 2012) (applying a two-pronged scope-of-employment test include both motive-to-serve and enterprise-risk and finding that sexual abuse perpetrated by school employees against students was outside the scope of employment).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment at least once. There is no evidence that currently suggests a willingness to change position.</p>
Tennessee		
<p>Novel test applicable to quid-pro quo harassment by supervisors Sanders v. Lanier, 968 S.W.2d 787, 790 (Tenn. 1998) (“[W]hen an employer empowers a supervisor with the ability to take actions that affect the employment status of subordinates, the supervisor’s acts taken or threats made within the actual or apparent scope of authority are imputed to the employer Accordingly, respondeat superior is applicable under a quid pro quo theory [under certain circumstances].” (internal citations omitted)).</p>		<p>Employer can be liable when supervisor perpetrates quid-pro-quo sexual harassment against subordinate; unclear in other contexts.</p>
Texas		
<p>Novel Test GTE Sw. Inc. v. Bruce, 998 S.W.2d 605, 617–18 (Tex. 1999) (stating that an employer is vicariously liable “when the act, although not specifically authorized by the employer, is closely connected with the servant’s authorized duties [The perpetrator’s] acts, although inappropriate, involved conduct within the scope of his position as the employees’ supervisor” (internal citations omitted)).</p>		<p>Employer can be liable.</p>
Utah		

<p>Restatement Test</p> <p>M.J. v. Wisan, 371 P.3d 21, 31, 33 (Utah 2016) (applying a test that mirrors the Second Restatement's and holding employer vicariously liable given perpetrator's "unique role as leader of the [employer] Church, and in light of the unusual, troubling function of plural marriage involving young brides in the [church's] culture").</p> <p>Burton v. Chen, 532 P.3d 1005, 1011 (Utah 2023)(holding that a physician assistant's sexual harassment of a patient was not within the scope of employment because the perpetrator's "acts were [not] the general sort of acts he was hired to perform").</p> <p>J.H v. W. Valley City, 840 P.2d 115, 123 (Utah 1992) (holding that police officer's sexual assault of an adolescent civilian "was not within the general nature of work [he] was hired to perform").</p>		<p>Mixed results, though it seems that most cases would result in non-liability (the facts at issue in <i>Wisan</i> were unique).</p>
<p>Vermont</p>		
<p>Restatement Test</p> <p>Doe v. Forrest, 853 A.2d 48, 54–55 (Vt. 2004) (adopting the Second Restatement test and holding, where a police officer sexually assaulted a civilian, that the assault fell outside the scope of employment as a matter of law).</p>	<p>Adopted inconsistently.</p> <p>Forrest, 853 A.2d at 51–52, 69 (adopting the aided-in-accomplishing exception for a sexual assault perpetrated by a police officer against a civilian).</p> <p>But see Doe v. Newbury Bible Church, 933 A.2d 196, 198–99 (Vt. 2007) (declining to apply the exception to a sexual assault by a pastor against parishioners because a pastor's "power is simply not the same as police power").</p>	<p>Mixed results.</p>
<p>Virginia</p>		
<p>Novel Test.</p> <p>Doe <i>ex rel.</i> Doe v. Baker, 857 S.E.2d 573, 585–87 (Va. 2021) (holding that, "[a]lthough it [was] difficult to conceive that [the sexual assault] stemmed from anything other than a desire for self-gratification . . . [,]" precedent barred resolving issue at</p>		<p>Employer can technically be liable, because scope-of-employment cannot be resolved at the pleading stage, but the Virginia Supreme Court recently expressed doubt that sexual assault could ever occur in the scope of employment.</p>

<p>pleading stage (internal quotations omitted)).</p> <p>Our Lady of Peace, Inc. v. Morgan, 832 S.E.2d 15, 23, 26 (Va. 2019) (concluding that “liability cannot extend to an employer for an unauthorized tortious act by an employee arising wholly from some external, independent, and personal motive” but that because plaintiff had alleged the sexual assault had occurred while the perpetrator was working, her claims survived the pleading stage (internal quotations omitted)).</p> <p>Plummer v. Ctr. Psychiatrists, Ltd., 476 S.E.2d 172, 175 (Va. 1996) (concluding, where a psychologist sexually assaulted a patient during a counseling session, that “at this stage of the proceedings, there simply are not sufficient facts” to hold that perpetrator acted outside the scope of employment).</p>		
Washington		
<p>Motive to Serve</p> <p>Niece v. Elmview Grp. Home, 929 P.2d 420, 426 (Wash. 1997) (adopting the Motive to Serve test).</p> <p>C.J.C. v. Corp. of the Cath. Bishop of Yakima, 985 P.2d 262, 272 (Wash. 1999) (noting that Washington law disfavors “the imposition of respondeat superior or strict liability for an employee’s intentional sexual misconduct”).</p> <p><i>Elmview Grp. Home</i>, 929 P.2d at 429 (“Vicarious liability for intentional or criminal actions of employees [is] incompatible with recent Washington cases . . .”).</p>		<p>State high court has refused to impose vicarious liability for sexual harassment multiple times; this consistent refusal indicates an unwillingness to change position.</p>
West Virginia		
<p>Motive to Serve</p> <p>W. Va. Reg’l Jail & Corr. Facility Auth. v. A.B., 766 S.E. 2d 751, 769, 772 (W. Va. 2014) (holding, in the qualified</p>		<p>Unclear, but the court has indicated resistance to hold employers vicariously liable.</p>

<p>immunity context, that a corrections officer’s seventeen rapes of a prisoner were “manifestly outside the scope of his authority and duties”).</p>		
<p>Wisconsin</p>		
<p style="text-align: center;">Restatement Test</p> <p>The Wisconsin Supreme Court has not considered a sexual harassment vicarious liability claim. But the Seventh Circuit applied Wisconsin law in deciding one such case. <i>Martin v. Milwaukee County</i>, 904 F.3d 544, 553, 550–58 (7th Cir. 2018) (noting that, under Wisconsin law, “[c]onduct is not in the scope if it is different in kind from that authorized, far beyond the authorized time or space, or too little actuated by a purpose to serve the employer” and holding that rapes perpetrated by corrections officer were outside the scope of employment).</p>		<p style="text-align: center;"><i>Martin</i> indicates that an employer cannot be liable, though the Wisconsin Supreme Court has not made a ruling on this issue.</p>
<p>Wyoming</p>		
<p style="text-align: center;">Motive to Serve</p> <p><i>Olson v. Connerly</i>, 457 N.W.2d 479, 484 (Wis. 1990) (upholding a jury verdict because “consideration must be given to whether the employee was actuated, at least in part, by a purpose to serve the employer” and concluding that a defendant physician was not acting within the scope of employment when he sexually harassed a patient was supported).</p>		<p style="text-align: center;">Unclear, but the court upheld a jury verdict of non-liability, so the results are mixed, at best.</p>