

1 **13-413. Liability of employer or co-employee defendant.**

2 _____ (*defendant employer or co-employee*), is responsible only for
3 damages caused to _____ (*plaintiff*) only if _____ (*employer*
4 *or co-employee*) intentionally or willfully injured _____ (*plaintiff*).

5 _____ (*employer or co-employee*) acted intentionally [~~if [he] [she] [it]~~
6 ~~[committed an act] [or] [failed to act] when [he] [she] [it]~~] in [committing an act] [or] [failing to
7 act] if the [employer] [co-employee] knew or should have known, under the conditions existing at
8 the time, that _____ (*plaintiff*) was substantially certain to be injured as a result.

9 _____ (*employer or co-employee*) acted willfully if [~~he] [she] [it]~~] the
10 [employer] [co-employee]:

11 [(1)] 1. intentionally [acted] [or] [failed to act], without just cause or excuse in a
12 way reasonably expected to result in injury to _____ (*plaintiff*); and

13 [(2)] 2. either expected the injury to occur or utterly disregarded the consequences
14 of [~~his] [her] [its]~~] the [act] [or] [failure to act].

15 ~~[DIRECTION FOR USE]~~ USE NOTE

16 This instruction is to be used whenever the plaintiff is suing an employer or co-employee
17 for injuries suffered in the course and scope of employment.

18 [Approved, effective March 21, 2005; as amended by Supreme Court Order No. S-1-RCR-2025-
19 00126, effective for all cases pending or filed on or after December 31, 2025.]

20 **Committee commentary.** — Under *Delgado v. Phelps Dodge Chino*, 2001-NMSC-034, ¶¶ 1, 24,
21 131 N.M. 272, 34 P.3d 1148, an employer or co-employee may be held liable for an on-the-job
22 injury only if the defendant either intentionally or willfully caused the [~~plaintiffs]~~ plaintiff's injury.

23 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]