SMALL BUSINESS ADVOCATE

> Premises liability – What your business needs to know

by Ross Dwyer, Esq.

Editor's note: *The following is the first of two stories on premises liability. This month's story contains information on premises liability within a business. Next month we'll examine premises liability as it relates to parking lots, sidewalks, and other areas outside the store.*

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Understanding premises liability law and implementing some straight-forward procedures at your business can go a long way towards guarding against potentially costly premises liability claims.

The law and its application for businesses

California Civil Code Section 1714(a) essentially provides that all property owners are responsible for injuries caused by their lack of ordinary care and skill in managing their property. Businesses are negligent and potentially liable for damages if an injury was caused by their failure to use reasonable care to keep their property in a reasonably safe condition.

A crucial first step in any premises liability claim is determining the cause of the incident. Sorting out who's to blame, however, is not always straight-forward. Businesses should complete as timely an investigation as possible with hard documentation – photos, incident reports etc. – to obtain the facts needed to assess fault.

The initial facts of the incident are vitally important and often decide whether a claim can move forward. Essentially, if the facts demonstrate an injury was caused by a dangerous condition on the premises, the involved business faces a viable claim for damages.

A dangerous condition can be anything – a spilled drink on the floor, a rickety staircase, or even an exposed sharp edge. If a condition creates an unreasonable risk of harm, a business can be liable for injuries it causes.

Liability, however, is not automatic. Dangerous conditions can pop up at any time, and a business might not even know one existed before it caused harm. For this reason, determining whether a business had notice of a dangerous condition at the time it caused injury often makes or breaks a premises liability claim – a business charged with such notice faces a high probability of liability.

Legal "notice" generally has two forms: actual and constructive. Actual notice is straight-forward – a business has it when informed directly of a dangerous condition, or upon observing one.

Constructive notice is trickier. A business will be charged with this notice if it should have known a dangerous condition existed at the time the condition caused injury. Whether a business "should have known" is a fact-driven analysis determined on a case-by-case basis. Generally, however, if a dangerous condition existed long enough for the business to have sufficient time to discover it and take action to protect against the potential harm – i.e. repair the condition, place warning signs etc. – a finding of constructive notice is likely.

What businesses can do

Completing regular inspections of the property and using maintenance/sweep logs are two simple ways a business can protect itself from premises liability.

Regular inspections help uncover dangerous conditions and reduce the chance of an injury in the first place. If an injury does occur and a dangerous condition is to blame, a business wishing to avoid liability should expect to have to prove it didn't have notice. Proving lack of notice without a maintenance/sweep log is often quite difficult.

A properly-documented log – i.e. one showing regular and reasonable inspections were completed with documentation of dangerous conditions and subsequent maintenance – gives businesses good evidence that regular inspections are taking place and that potential dangerous conditions are being timely addressed.

Any business choosing to use maintenance/sweep logs, however, should be diligent about completing them. Problems can arise with incomplete logs showing inspections were only completed sporadically; such logs can provide evidence that a key inspection was missed and that a business should be charged with constructive notice of a dangerous condition.

Another push back against premises liability claims is the "open and obvious" defense. Generally, this defense applies if an individual could be reasonably expected to observe the applicable dangerous condition. The defense comes with exceptions and does not guarantee insulation from liability. Businesses should whenever possible address dangerous conditions, even the obvious ones.

Finally, businesses should keep in mind that an injury can happen anywhere, including locations "off limits" to customers. Even in these forbidden locations, businesses can be held liable for injuries if the cause of the injury was a dangerous condition, and it was foreseeable that an individual would encounter it. ■

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