

Business Owners: Prevent Accidents & Save Money In Litigation

by DAVID BOBROSKY

I was at a Dodger game this summer with my family. After spending a small fortune on hot dogs, fries, ice cream, soda, etc., we were walking back to our seats when we were stopped by a group of Dodger Stadium employees. About eight employees were in a circle "guarding" a spill of liquid on the ground. The friendly employees prevented me, my kids, and my arms full of food from encountering the spilled liquid and pointed me in a safer direction. They waited there, re-routing many fans, until a crew arrived to clean up the spill. As an attorney who represents people injured in accidents, I truly appreciated the plan the Dodgers have in place to prevent accidental injuries, which in turn prevents litigation.

California Civil Code Section 1714(a) sets forth the basic policy of California law that every person is responsible, not only for the results of his or her intentional acts, but also for any injury to another by his or her lack of ordinary care in the management of his or her property. Consequently, those who own, possess, or control property are subject to a duty to exercise ordinary care to avoid exposing others to an unreasonable risk of harm.

All business owners must use reasonable care to protect their employees, customers, and others from being injured by dangerous conditions on their property. The question is, what is "reasonable?" It really is a case by case analysis. What we do know, is that businesses that have a plan are more successful at preventing accidents, as well as defeating claims in litigation.

A plan should have two main parts:

1. Perform (and document) reasonable inspections to uncover dangerous conditions; and
2. Act reasonably to remedy a dangerous condition, once it is discovered.

Inspections

Business owners, like others who own, control, manage or possess property, have a duty to make reasonable inspections of their premises to uncover dangerous conditions. There is no liability if the dangerous condition could not have been discovered by a reasonable inspection. This includes a condition that could not have been seen by an inspection, or one that did not exist long enough to be discovered by reasonably timed inspections. (If the condition was created by the business owner then notice is imputed to the owner and need not be proven by an injured plaintiff).

In regard to the latter, direct evidence of how long a condition existed is not essential. The fact that a dangerous condition existed that should have been discovered may be proven by circumstantial evidence. As an example, the passage of time without any inspection may lead to a reasonable inference that the condition existed long enough that it should have, and could have, been discovered. The specific length of time that warrants such an inference is not fixed, but depends on the facts of each case.

Thus, a plan of regular inspections is vital to a business owner. In representing injured clients, when we have business owners that testify that they had no plan in place and cannot even identify the last time they performed a routine inspection, it allows the jury to conclude that the condition could have been discovered if routine inspections were performed. When a business owner has a plan of inspections separated by reasonable time intervals,

and proof that the inspections occurred, jurors are given the ability to conclude that the owner did as much as could reasonably have been done to prevent the accident. It cannot be emphasized enough how important this is to a business defending itself against an injury lawsuit.

Fix the Problem Once it is Discovered

Once a problem is discovered, such as spilled liquid, have a plan in place of what employees are to do to fix, or warn, of the problem. What we see often is that an employee discovers a spill, looks at it, and then strolls to the other side of the store to get a mop. When the employee finally returns five minutes later, someone has walked over the spill, slipped, fallen and is on the ground seriously injured.

While not every business has the luxury of having eight employees guard a spill - as the Dodgers do - other reasonable precautions can be taken. Once a dangerous condition is discovered, at least one employee should stay near the condition and prevent anybody from encountering the condition. This is much more effective than just placing a yellow cone near the spill and leaving it unattended. This is especially true in stores where customers are encouraged to look at merchandise on shelves and other places while walking around. When customers are shopping and focused on merchandise on shelves, it is easy to miss a single cone on the ground. While at least one employee is protecting the dangerous condition, another employee should be summoned to retrieve the equipment needed to remedy the dangerous condition. If this type of plan is followed, not only will you look like you acted reasonably in the eyes of the law, you will probably not be in litigation because you will prevent most accidents from occurring.

Final Tips

- Perform inspections in reasonable time intervals. The amount of time that is reasonable varies depending on the business. However, businesses in which merchandise can be spilled or knocked on the ground should have inspections more often than others. Several times per hour is recommended.
- Have this plan in writing, and notify all employees.
- Have proof of inspections when they are performed. For example, have employees sign off on inspection logs, sweep sheets, or other types of maintenance logs. If an accident does occur, save all this information so you can defend yourself if necessary - even if it does not appear the person was injured at the time of the accident! Some injuries, especially soft tissue injuries, legitimately become much worse several hours after the initial trauma.
- When a dangerous condition is discovered, guard the condition with an employee or other means to ensure nobody encounters the condition.

If the steps discussed in this article are taken, you will find yourself in litigation less often as you will be preventing accidents. This should be every business and property owner's main goal - to prevent injury in the first place.

And you thought the Dodgers didn't do anything right this year!

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