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## Dodging Liability: Strategies for avoiding costly and consuming injury claims

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High-quality products at competitive prices, promotional offers and exceptional customer service are likely among the top priorities for any retailer or restaurateur. What is not typically on the list is utilizing company resources to defend against premises liability claims.

Potential claims and lawsuits can hinder business operations and shift focus away from a company's objectives. Avoiding costly litigation can be simple, yet many companies fail to implement policies that will save time and resources when faced with a claim.

The following four crucial steps will help alleviate headaches associated with premises liability claims:

### **Implement Risk Management Policies**

Liability claims can arise in many ways, caused by everything from wet floors to debris in walkways to falling merchandise. Stores and restaurants should, at a minimum, have basic policies in place to keep entryways clean and dry, place mats in areas likely to get wet, and conduct periodic inspections throughout the premises.

It is also important to look at potentially dangerous conditions specific to your business. For example, a large home-improvement retailer may need to implement policies aimed at larger merchandise, such as providing assistance in lifting and carrying items or ensuring that heavier merchandise is displayed lower to the ground. Grocery retailers should focus on quickly identifying and cleaning spills, and restaurateurs should be diligent in cleaning walkways due to grease or spills.

Identifying possible causes of injury should be a careful process, and because some threats to customer safety may be hard to predict, it is important to periodically review and update risk management policies to reflect ongoing and newly identified problems that could cause injuries.

### **Educate ... And Re-Educate**

Simply having company-wide policies and procedures in place is not enough. Once policies are carefully drafted, employees should be educated. This should go beyond providing employees with a manual or showing instructional videos during orientation. Educating employees on the importance of policies should be an ongoing process, such as conducting routine meetings to address safety concerns and reinforce policies.

When defending against injury claims, the focus is typically on reasonableness of the company's actions. Being able to show employees were properly trained, and providing the claimant or their attorney with a list of safety meetings held in the weeks or months leading up to the date of the incident helps support a reasonableness defense.

### **Follow the Rules**

Once policies are in place and employees are properly informed, it is important to enforce and apply the policies regularly. If policies dictate that inspections be done throughout the day, ensure they are done. If the premises is to be swept or mopped at certain times or certain cleaning products used, these directives should be followed. Supervisors should ensure that employees are aware of their responsibilities and adhering to applicable policies.

One of the most damaging aspects to the defense of any premises liability claim is a claimant's demonstration that a company violated its own policies. Claims that otherwise have strong defenses can become an uphill battle once the claimant can establish that policies in place were not followed.

### **Document! Document! Document!**

Even when businesses follow the rules, incidents will still likely occur. These occurrences do not necessarily mean policies are inadequate, as tort laws typically require "reasonableness," not absolute perfection. Documenting the steps taken before and after an incident, as well as details concerning the incident itself, become essential in demonstrating reasonableness.

As opposed to a "mom and pop" shop, national companies have hundreds (or thousands) of employees at various locations with varying job duties. The home office may be hundreds of miles away from the location where an incident occurs. Because there will often be multiple policies and employees involved, it is important to have a specific process, consistent across the organization, for investigating incidents, gathering information and maintaining a comprehensive file for any incident.

It is good practice to have a manager or supervisor create an incident report, documenting the location and nature of the incident and any claimed injuries, and a list of employees and witnesses present. Supervisors should be trained on completing incident reports in accordance with company policies and blank report forms should be available at all times. Separate from the incident report, the involved person (if he or she is able) and any witnesses should be required to complete statements, and contact information should be taken. This helps to prevent a claimant from

changing their account of the incident, and protects against lost evidence. Creating incident reports separate from written statements also helps preserve work-product privileges in the event of litigation.

A digital or disposable camera should be available for employees after an incident is reported. Documenting a condition, or lack thereof, is important in defending against a claim. All reports, statements and photographs should be kept together for up to five years, or shorter, depending on a state's specific statute of limitations. Each location's general manager should be aware of the company's policy on where to store such information, either by submitting the entire file to risk management, or maintaining it in-store. The bigger the company, the more potential for relevant documents and information to get lost or separated, which could become detrimental to the defense of a claim down the road. It is not uncommon for claims or lawsuits to be raised years after an incident, and preventing the need for back-tracking will save time and resources.

With the ease and capability to maintain electronic files, there should be little concern over having the space to keep employee files, records of safety meetings and incident files. Retaining these documents will ensure pertinent information is available to defend against any injury claims that may arise.

Following the above guidelines will help to both prevent and defend against liability claims that arise. Well-implemented and documented policies can shorten the lifespan of a claim and assist claims professionals and defense attorneys with sufficient information to defend the matter with little disruption to your business. While every company must tailor these steps to conform with their objectives, utilizing them will help keep your company out of the court room and focused on business as usual.

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