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Guest Column

Steps for protection outlined in wake of premises liability law

Premium content from Tampa Bay Business Journal by Melisa San Martin

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As a result of the pervasiveness of slip and fall lawsuits, the Legislature in 2010 passed a bill that effectively made it more difficult for customers to sue businesses following a slip and fall accident.

Florida Statute 768.0755 requires a customer to prove that the business being sued had actual or constructive knowledge of the presence of a dangerous substance on the floor before the store can be held responsible for the customer's fall and alleged injuries.

Previously customers did not have to establish that the business had knowledge, or "notice," of the dangerous substance on the floor. The customer could simply allege that he or she fell on a foreign substance and their lawsuit could proceed toward trial.

The element added by the new statute provides businesses with an opportunity to protect themselves from lawsuits by enacting policies and procedures designed with their "notice" defense in mind.

While it may seem daunting at first blush, implementing basic policies will effectively protect your business.

Under Florida law, a business owner's duties include taking ordinary and reasonable care to keep premises safe and warning customers of known dangers. The law does not require perfection, only reasonableness.

Strategy

As a business owner, you are required to keep areas such as aisles, stairs, ramps, walkways, parking lots, sidewalks and driveways clean and clear from dangerous

conditions. According to Florida law, dangerous conditions include dirt and debris, slippery floors, foreign objects and transitory substances.

The best way to prevent against slip and fall accidents is to conscientiously maintain one's premises free from hazards. Since spills or other dangerous conditions are inevitable in operating a business, implementing a sweep and/or inspection policy in conjunction with maintaining written sweep logs/records will offer a means to protect your business against claims.

- **Written inspection/sweep policy:** Develop a straightforward, policy for inspecting the premises during designated times throughout the day. Written instructions can include a format for walking the premises, time intervals, cleaning materials and products, and a documentation method.

Sweeps performed at one- to two-hour intervals are considered reasonable practice. But it's critical that employees are trained to supplement formal inspections with informal inspections. Employees should be conscious of all conditions at all times and take affirmative action to remedy any dangerous/hazardous condition observed while walking the premises and performing their normal job duties.

Employees who fail to comply with the sweep/inspection protocol should be subject to a penalty.

All employees should be trained to identify and correct discovered hazards. For example, once a spill or other hazard is discovered, employees should address it immediately by posting "wet floor signs" or erecting barriers. As soon as practically possible, employees should repair the hazard, clean the spill or remove the foreign object.

- **Sweep/inspection log:** Another effective way to protect your business claims is to incorporate a simple daily log that documents all inspections, safety checks and sweeps performed throughout the day. Such documentation not only details when formal sweeps/inspections are performed, it also helps to identify witnesses, in other words the employee who performed the sweep/inspection. The logs document your company's efforts toward maintaining a safe environment.

Once policies are established, it is critical that all employees are conscientious about completing forms. These logs are discoverable in litigation, and the last thing you want is to provide fuel for the plaintiff's attorney to argue that your employees are not complying with policy.

Compliance can be something as simple as entering one's initials and the corresponding time. Keeping it simple is key, and keep inspection sheets easily accessible.

This column focuses on a few cost efficient methods. Depending resources, additional methods such as the use of a surveillance system capturing evidence suggestive of staged falls could be useful.

Responding to slip and fall incidents is vital. A standard incident report consisting of customer, witness and employee statements can be immensely useful to defense counsel.

Please note, the material in this column is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

[Melisa San Martin](#), an attorney with the Tampa office of Marshall Dennehey Warner Coleman & Goggin, can be reached at 813.898.1800.