



DEVELOPING A SPILL RESPONSE PROGRAM TO REDUCE SLIP AND FALL EXPOSURES

For most entertainment venues, liquid spills and trash on the floor during operating hours is a common occurrence. With thousands of patrons walking around crowded walkways with both food and drinks in their hands, the occurrence of spills is inevitable. While no venue should be responsible for patrons spilling their drinks or dropping trash on the floor, a good floor safety program should be considered to better protect against possible slips and falls, as well as the claims that may result.

DEVELOPING A SPILL RESPONSE PROGRAM

TO REDUCE SLIP AND FALL EXPOSURES

SLIP AND FALL LIABILITY

In most cases, an individual who was injured in a slip and fall incident at a venue must prove that the cause of the incident was the result of a dangerous condition that the venue owner/operator knew about or should have known about. In order to prove this, the following must be demonstrated:

- The venue owner/operator caused or created the dangerous condition; or
- The venue owner/operator had actual notice of the dangerous condition; or
- The venue owner/operator had constructive notice – i.e., the condition was present for a long enough time that the venue owner/operator should have known about it and had time to correct it.

In cases where it is proven that the venue owner/operator had actual notice of a dangerous condition and failed to act appropriately or actually created the dangerous condition, then liability is likely to be established. However, those cases are rare. Most slip and fall cases come down to proving constructive notice as the basis for liability. These cases are far more frequent and much less clear-cut. Spills happen and venue owners/operators can't be everywhere at once. While courts don't expect venues to be perfect, they do expect venues to take reasonable steps to ensure their property is free of dangerous conditions that would cause a person to slip and fall. The bottom line is that the probability that a venue will be held liable increases the longer the hazard is present and the more time that has passed without an employee checking the area and address the hazard.

SPILL RESPONSE PROGRAM

Having written spill response procedures is a critical component to an organization's floor safety program. Spill response procedures should be in place to ensure that spills and other slip and fall exposures are properly addressed within an appropriate time frame. Having written procedures in place with regard to spill response can also go a long way to increase an organization's defensibility in the event a slip and fall incident does occur. A spill response program should encompass of the following components:

- Venue Inspections
- Spill Response Procedures
- Proper Spill Cleaning Procedure

Venue Inspections

Safety inspections are a critical part of the spill response program. Pre-opening inspections are very important as it represents the last chance to make sure the venue is free from obvious hazards before the public is allowed to enter. However, once the venue is open to the public, a plan needs to be in place to make sure that the walking surfaces throughout the facility are constantly monitored.

Documentation, such as restroom checklists and records of cleaning staff deployment (both roving and those assigned to a specific location) are important because it provides objective evidence that areas were looked at and hazardous conditions, if any, were addressed. It also demonstrates that venue owners/operators are safety conscious and exercise reasonable care to ensure that the facility is properly maintained.

Spill Response Procedures

Part of establishing a safety culture is holding all employees accountable for maintaining a safe environment. Every employee should be keenly aware of the organization's policies and procedures as it pertains to dealing with safety hazards such as spills. In fact, the recognition and proper response to spills (as well as other safety hazards) should be a part of each and every employee's job description. The goal is to ensure that no employee walks past a spill without taking the proper measures. If a spill is noted, the proper response procedures should include the following:

- Cleaning and drying the area if practical; or
- Immediately summoning assistance; and
- Guarding and protecting the area until cleaning staff arrive so that no one walks through the spill.

Equipping employees with spill adsorbent pads is a good way for employees to be able to quickly take care of the smaller spills that they may encounter. Employees should also be trained as to the specific procedures to summon assistance for the larger spills that they are unable to clean on their own. To the extent possible, procedures should include summoning assistance without leaving the spill area unattended or unprotected.

Proper Spill Cleaning Procedure

The proper cleaning procedures once a spill is observed is often taken for granted. The all too common method of mopping a spill does little more than spread water, dirt and contaminants across a larger area of the floor and typically does more harm than good. The proper spill cleaning procedures should include the following:

- Warn patrons of the cleaning that is in progress by placing wet floor warning signage in front of and behind the spill area;
- Sweep any up ice and/or debris present;
- Soak up liquid by using the appropriate tools – (mop, absorbent pads, squeegee etc.);
- Scrub floor surface if appropriate to remove grease and other contaminants;
- Dry the floor surface;
- Remove wet floor warning signage once the floor is dry.

It is important to promptly remove the wet floor warning signage once the floor surface has been cleaned and is completely dry. It was found that most people tend to ignore wet floor signs. A study revealed that 65% of the time people see a wet floor sign, the floor is not wet. This causes most people to become sensitized to their presence, contributing to the hazard. While the law requires property owners to post a warning of a known hazard, the “failure to warn” rule also states that posting warning signs when no such hazard exists, is a bad practice.

LESSONS LEARNED FROM LARGE SLIP AND FALL AWARDS

The following scenarios are based on actual incidents and plaintiff dollar awards and serve as lessons learned to help mitigate similar situations. These scenarios also provide real life examples of how a spill response program, if implemented correctly, would have possibly prevented the incidents that lead to the injuries detailed below.

SCENARIO #1

In 2012, a jury in California sided with a plaintiff who slipped on a puddle of liquid soap and shattered her kneecap at a major wholesale warehouse chain. According to the injured woman’s testimony, multiple employees passed by and ignored the spill.

Jury Verdict

The facility was ordered to pay \$414,000 for the woman’s medical expenses, pain, and suffering.

Lesson Learned

Developing spill response procedures whereby employees are trained to properly identify and respond to spills may have prevented this incident.

SCENARIO #2

A grocery store janitor was mopping the floor and failed to place wet floor caution signs. A patron of the store slipped and fell on the wet floor causing serious back injuries requiring several surgeries.

Settlement Award

\$1.5 million.

Lesson Learned

Had the janitor followed the proper spill cleaning procedures of placing Caution Wet Floor signage in front of and behind the spill while he was cleaning, then the patron would have received the proper warning not to enter the area.

SCENARIO #3

A former college athlete required eight surgeries and permanently damaged his leg when he slipped and fell in water that had accumulated on the restroom floor at large stadium during a concert event.

Jury Verdict

\$2.6 million.

Lesson Learned

Restroom floors can quickly become wet and should be inspected, cleaned and dried on a regular basis during games and events.

SCENARIO #4

An accumulation of a greasy coating on the floor caused a 59 year old woman to slip and fall resulting in a severe injury to her spine. The accident happened at a major fast food restaurant chain in which a federal grand jury found that the facility failed to comply with their own store policy of conducting regular safety inspections of the floors. Evidence produced at the trial showed that the restaurant was insufficiently staffed and that the inspections were not conducted.

Jury Verdict

The facility was ordered to pay a judgment in excess of \$5.5 million.

Lesson Learned

Had a proper pre-opening inspections and/or regular inspections during the store operations been performed, the greasy floor would have been noticed and the proper cleaning of the floor surface could have eliminated the slip and fall exposure.

SCENARIO #5

A truck driver slipped on a grease spill in a grocery store receiving area and ruptured a disc in her spine as well as injuring her shoulder and neck. Evidence obtained from a city report established that there was a grease spill and that the substance was present for at least a week and that it was brought to the attention of the store manager by a city official.

Jury Verdict

The \$15 million verdict is believed to be the largest slip and fall verdict in the country.

Lesson Learned

At a minimum, the store had constructive knowledge (should have known about the hazard) and more than likely had actual knowledge (store manager informed of the situation by a city official.) The fact the spill was present for a week and was not properly addressed demonstrates that the facility did not exercise reasonable care by performing inspections of their facility.

What the above incidents all have in common is that, 1) people were seriously injured, 2) the incidents were preventable, and 3) the venues had difficulty proving that they exercised reasonable care in maintaining a safe environment for their patrons.

CONCLUSION

Slip and fall incidents have historically been a leader in the frequency (total number of incidents) and severity (total cost) of both workers' compensation and general liability claims. Individuals injured in a slip and fall incident at a venue must prove that the cause of the incident was the result of a dangerous condition and that the venue owner/operator knew about (actual knowledge) or should have known about it (constructive knowledge). Most slip and fall cases come down to

constructive knowledge as the basis for liability which makes them more subjective and open to interpretation from the courts and juries. The longer a spill stays on the floor and the more time that passes without someone checking the area increases a venue's chance of being held liable for a slip and fall. Establishing a spill response program that encompasses facility inspections, specific spill response procedures and the proper spill cleaning procedures as a part of a venue's overall safety program is an excellent way to mitigate slip and fall incidents and enhance a venue's defensibility should an incident occur.

If you or your staff have any questions concerning this important Safety Bulletin, please contact us today.



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