

Hotels and Restaurants; Prime Real Estate for Slip and Fall Accidents

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Slip and falls are the number one cause of accidents in hotels, restaurants and public buildings according to the Bureau of Labor Statistics. Injuries from a seemingly incidental fall here or trip there are estimated to cost some \$70 billion annually according to the National Safety Council.

In fact, the Centers for Disease Control has determined over one million people each year are injured in slip and fall accidents and unbelievably more than 70 percent of these slip and fall injuries occur on flat level surfaces. And it's not just hotel or restaurant guests that are impacted: the National Safety Council estimated compensation and medical costs associated with just employee slip and falls is approximately \$7 billion annually.

We've all seen people trip, and yes sometimes if it's someone we know, a little stumble can even be a bit funny but really these kinds of accidents are no laughing matter. OSHA has reported slips, trips and falls are 15% of all accidental deaths and are second only to motor vehicle accidents as the cause of death and account for over 17,000 deaths each year.

The most common causes of slip and falls are obvious, and it would seem because of this, easy fixes, but those don't always happen. We will take a closer look at some of the most common causes for slip and fall accidents and steps that can be taken toward preventing them in the future.

Common causes of slip and fall accidents (and how to help avoid them in the first place)

First, it's important to examine some of the most common causes (direct and indirect) of slip and fall accidents. Direct causes are such things as spilled liquids, food, cracked or broken tiles, worn mats, cracked or broken sidewalks, uneven steps, ice and snow, potholes, and physical obstacles. Indirect causes include inadequate or dim lighting, and missing handrails or guardrails, among other things. Some of the most common causes include:

Wet Floors. Food or beverages, rain, snow, and ice can be deposited on the floor or tracked into buildings. In reviewing housekeeping, maintenance, and cleaning policies, floors should be cleaned during non-peak hours and the premises inspected on a consistent and routine basis. Audits should be conducted, and performance tracked and retained. Cleaning/Checklists should be filled out and retained for a sufficient period of time. Caution/warning signs need to be placed in close proximity to the actual spill or wet area. These signs should be sufficient in number and placed in a timely manner so as to provide adequate warning.

Ice and Snow. A business is responsible for the sidewalks, parking lots and landscaping on their property. Walkways may include areas outside the sidewalks immediately surrounding the building. In most cases, the law does not require a business owner to remove snow and ice off the property. However, if the

weather causes an unusually heavy accumulation of snow on the roof, and that snow then melts and drips off onto the sidewalk and freezes on the ground, the business owner could be held responsible for an injury resulting from the ice created by the melting and refreezing. Regular inspections of the property, gutters and downspouts will help identify potential problems.

Misplaced Physical Objects. Misplaced mats, furniture, door stops, moldings, fallen merchandise, power cords or wiring can all be the source of a slip and fall injury. A number of hotels and/or restaurants have made it the responsibility of the surveillance teams to monitor various areas of the property and notify the proper internal group to address any perceived problems.

Congested Means of Ingress and Egress. Business owners must ensure adequate means for patrons to enter and exit the building or premises without severe congestion. Heavy amounts of congestion through obstructed areas could cause a business owner to become liable for injuries stemming from the congestion. To address these concerns building maintenance coordinates with the event planners in scheduling on-going maintenance so as to have minimal impact on visitors.

Inadequate Lighting. Dim or inadequate lighting can result in liability by hiding hazards such as steps, curbs, potholes or uneven pavement (and it can also invite criminals to assault or steal from patrons).

And a Note about Sidewalks. In some jurisdictions, the property owner is responsible for maintaining the sidewalk adjacent to its property. In other jurisdictions, the business owner and governmental entity share the responsibility for maintaining the sidewalk.

Preventative steps can help avoid slip and fall accidents

In addition to safety training, take time to survey a property – note potential hazards and take immediate action to eliminate these hazards. These steps include:

Maintaining floors, sidewalks, aisles, and walkways at regular intervals and documenting the inspections.

Provide regular training for employees regarding safety measures and protocols with immediate reporting.

Create safety protocols and instruct employees in slip and fall safety – create and retain incident reports. Instruct employees on procedures for assisting customers who have fallen – emergency assistance police and rescue.

Conduct regular maintenance of outdoor areas including sidewalks, play areas, and parking lots and, monitor and repair landscaping, potholes, and lane markings, and remove any obstacles.

Maintain records of maintenance including actions to remove and repair conditions. Make sure governmental inspections are all passed and maintain proof of passing scores.

Conduct regular safety surveillance of mats, carpeted floors, lighting, litter, fallen merchandise, and uneven or buckled flooring.

Maintain proper liability insurance with periodic policy reviews.

Improve safety through constant monitoring, setting benchmarks, and examining policies and procedures.

Beyond these day-to-day safety procedures and protocols, staff training, and monitoring/inspections to ensure the safety of your grounds, there are some “big picture” planning principles that can be implemented. For example, it’s important to measure (and record) the slip resistance of all floor surfaces (both wet and dry) on the property.

A number of hotel, restaurant and resort companies have started to address slip and fall concerns by conducting floor slip resistance testing, which establishes baseline benchmarks using a tribometer set to ASTM requirements in order to establish both dry and wet coefficients of friction for inside and outside walking surfaces. They then monitor the findings and conduct routine audits to ensure compliance with standards (and promptly take any corrective action as required). It is critically important to establish this baseline, in case of future claims geared toward improper flooring.

Also, when considering the installation of new flooring, take the opportunity at the initial design and material selection stage to ensure that appropriate design and materials are used, with safety top-of-mind. With respect to existing floors, if your internal floor slip resistance testing demonstrates a below standard coefficient of friction, steps will need to be taken to replace or apply various treatments to bring the flooring up to standard. Implementing a science-based, measurable, benchmarked, and audited program can go a long way in limiting liability and capturing value for your organization.

What to do if a slip and fall accident occurs

Unfortunately, even when all of the necessary safety precautions are in place, slip and fall accidents can still happen. Hotel or restaurant owners and operators need to understand it starts at the top. Safety is a culture and that means from the CEO on down. It is every single employees’ duty to improve safety. Training staff is critically important in building a culture of safety. Part of this training includes (periodically conducting drills on these slip and fall protocols) to make sure everyone is prepared and trained for what to do in the event an incident occurs, as the likely first responders to slip and fall incidents:

Offer assistance – immediately call for medical attention, police, and other first-responders, as appropriate.

Gather documentation – prepare a comprehensive incident report, including witness statements and contact information, and a statement from the injured party.

Secure video surveillance footage and/or take photographs of the scene and the claimant (if they allow you).

Report the incident to risk management, legal and the insurance carrier.

Follow-up with claimant within 24 hours. Let them know of your concern, and find out if they sought medical attention. Also have a corporate representative contact them within a few days, and maintain records of all contact (and outcomes). If the area of the fall is defective, make sure building operations and risk management are aware of the hazard so that it can be repaired as soon as possible.

Preserve evidence, i.e. a mat, floor tile, etc. DO NOT conceal evidence. It can result in additional damages from a separate cause of action for spoliation of evidence.

Monitor for and keep record of social media postings by the claimant/plaintiff.

Slip and falls may still happen, so what's next?

Even with the best of intentions, and with industry leading policies and procedures, proper vigilance and pro-active maintenance and repair, slip and fall accidents will still occur. For property owners in the hospitality industry, it is crucial to develop world class legal protocols designed to limit liability and manage slip and falls when they do happen.

All strategies begin with an initial assessment or audit. Where are we experiencing incidents? How often are they occurring? What can we learn about each incident? After collecting this data the next step is to establish benchmarks. Benchmarks should be established by specific measurement where practical. Gathering data from insurance carriers or brokers and other similar players within the industry are helpful in evaluating how your business compares to others in the same industry. Then implementing a program of constant monitoring followed up by auditing those results will create a culture of safety that will produce measurable cost savings. This culture of safety may involve creating custom models designed to address specific concerns or more broad applications to address systemic problems.

In the final analysis, creating a culture of safety will produce a significant reduction in litigation costs. Even though slip and falls may be a cost of doing business in the profitable and visible hospitality industry, the safety of guests, staff and other visitors does not have to take a back seat to profit.

David Willis, a trial attorney with more than 25 years of litigation experience, focuses his national practice in the defense of corporations in the areas of complex tort, commercial, and employment law. He represents both public and private corporations in the areas of hospitality, specifically the food and beverage industry, franchise, health care, transportation, and environmental law. David has extensive multi-jurisdictional trial experience and has tried to verdict over 50 cases in state and federal courts.

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