



Risktopics

Snow and ice removal plans for public places

Introduction

When snow and ice accumulate on walking surfaces, the potential for slip and fall accidents and associated risk of liability greatly increases. The property owner/manager must make a reasonable effort to reduce the potential for injury to visitors, customers, guests and patrons. This is particularly important for public places, such as hotels, shopping centers, supermarkets, office complexes and apartments. In order for these establishments to control this exposure, it is prudent to have an effective snow and ice removal plan in place.

Legal considerations

If someone slips and falls on ice or snow, there is no automatic liability associated with such a fall. The case law in many states generally precludes any duty to someone falling due to natural accumulation of snow or ice. Generally, a negligence claim is present in case of a fall on an unnatural or man-made accumulation of snow or ice. The property owner/manager or other person with knowledge of the property condition prior to the winter storm event is responsible for taking reasonable measures to resolve the condition or face potential liability. What is considered unnatural accumulation is determined by the courts based on facts presented in each case.

In some states where there is no "natural accumulation rule," premises owners/managers are expected to take reasonable steps to clear snow and ice and mitigate the slippery conditions in reasonable time after the snowfall stops. Whether it is natural or unnatural accumulation for establishing legal liability, a clean parking lot, walkways and entrances are more welcoming to your customers and visitors. In addition to potential legal liability risks to customers, guests or visitors, a business also has an obligation to provide a safe place to work for their employees. This makes it necessary to ensure that parking lots, walkways, entrances and sidewalks are cleaned promptly to reduce worker injuries from falls.

Examples of unnatural accumulation

Although specific cases will differ based on the facts of each case and court determination, here are some general examples of unnatural accumulation based on case law in several states.

- Slippery walking surfaces due to melting and refreezing of snow from piles of snow after shoveling and plowing
- Falling snow from awnings, trees or roofs on to walkways or sidewalks

- Freezing of water runoff from roof downspouts or gutters
- Puddles and refreezing of snow and ice on walking surfaces
- Icy conditions (black ice) on well-traveled paths with foot or vehicular traffic
- Plowing and piling of snow causing hazardous conditions, such as visibility obstruction

Management considerations

In order to help mitigate liability risks for snow and ice falls or for courtesies to customers and visitors to your premises, business and premises owners/managers should have a snow and ice removal plan. This is particularly important for businesses that have customers, invited guests and other visitors coming on your premises. Snow removal is also important for reducing employee falls. You may decide to use a contractor for snow removal or use in-house resources and personnel to accomplish this. If you decide to undertake this task in-house, ensure that you have adequate personnel, procedures, supplies and equipment in place. Snow removal may be necessary at early hours before opening of business and several times during the day and night. In either case, planning is essential.

In addition, the plan should include procedures for handling incidents and claims, including need for immediate medical assistance and claims notification, documentation and prompt investigation.

Snow removal should focus on walkways, parking, entrances and other high pedestrian traffic areas. In addition to snow removal, care must be taken to ensure good walking conditions by proper salting and to mitigate slippery conditions from refreezing of snow. Consider using calcium chloride instead of rock salt. Although more expensive, calcium chloride is more effective at lower temperatures and also less harmful to concrete and landscaping.

Additional considerations should include:

- Development and implementation of a written plan that outlines the responsible person for coordination, contractor selection guidelines, frequency and procedures for snow removal.
- Monitoring of weather information and recording of pertinent data on snow removal log. The log should include details such as estimated snow accumulation, ice build-up, temperature, action taken (e.g. date and time contractor called, plow used, salt applied), inspection notes and any unusual conditions. Fluctuating temperature can lead to refreezing and hazardous conditions.
- Posting of warnings in high-hazard areas. Remove or provide warnings of "hidden" hazards that could be inadvertently struck by cars or pedestrians if covered by snow (fire hydrants, curbs, grates and debris in walkway).
- High piles of snow can also reduce visibility around corners. Melting of snow from piles adjacent to a walkway can result in refreezing of water on the walkway.
- Consider engineering controls like heated walking surfaces when practical. Relocate downspouts if they discharge water onto walking surfaces.
- Excessive salt and sand used in the treatment can be tracked indoors resulting in possible damage to carpets and floor surfaces and can even cause a potential slip and fall hazard.

Case study

This case involves injuries to a hotel guest in a suburban Minneapolis hotel parking lot. After several inches of snow fell early on a spring day, it was removed from the parking lot. A couple of days later, after a late night check-in, a guest fell on ice while getting out of the car in the parking lot. The fall resulted in serious injuries including a fractured leg. Unable to get in the rear entrance, he finally crawled back 200 feet to the car and drove to the front of the hotel for help. Weather records for the day of the accident indicated a high temperature of 37°F at 3:00 p.m. and the temperature dropping to 28°F by midnight.

This variation in temperature was sufficient to cause a thaw and refreeze in the parking lot area.

The jury found the guest 20 percent liable due to his intoxicated condition. Jurors found the hotel 80 percent liable, awarding the hotel guest \$243,000 for his injuries.

The Minnesota Court of Appeals ruled that because the hotel ". . . invites guests to stay in its hotel and is aware that its guests will park in its lot and walk from the lot to the hotel, ... [it] has a duty as matter of law to its patrons, to provide safe access from its parking lot to its building. It was entirely reasonable for the jury to consider [the hotel's] failure to salt and sand a breach of duty of reasonable care under the circumstances particularly in Minnesota after a substantial snowfall in early spring where the temperature was fluctuating above and below freezing . . ." (Myers v. Winslow R. Chamberlain Co., 443 N.W. 2nd Minn., 1991).

Case study considerations

In reviewing the above case study, the following are some of the questions that can be raised:

- Was the snow/ice accumulation natural or unnatural based on the case law in the state?
- Was there a snow removal plan?
- Is it "reasonable" given the geographic location and past history of snowfall in the area?
- Was the plan followed and actions documented?

Some local ordinances may allow up to 24 hours for removing snow/ice from the sidewalks and in front of the premises. Compliance with such regulations may not diminish the liability for snow/ice related accidents. A violation, on the other hand, is likely to result in statutory fines and may provide evidence of negligence. Either having a plan and not following it or not having any plan at all will have the same adverse impact and will most likely strengthen a negligence allegation.

The determination of what is considered reasonable efforts in snow removal will depend upon specific facts and circumstances. It would be unreasonable to expect parking lots and walkways to be free of snow/ice in the middle of a blizzard. However, it is reasonable to expect a property owner to remove the snow/ice promptly once snow stops falling.

Faced with the responsibility to control snow and ice hazards, the property owner/manager has two options. The first consists of utilizing in-house personnel. There should be adequate staff and proper equipment to implement the plan. Due to the standby nature of snow removal activities, most organizations prefer the second option which is using contractors specializing in snow removal. Even if a business has the capabilities to perform their own snow removal, it may be prudent to have a contractor available on a standby basis for emergency "just in case."

Contractor considerations

Care must be taken when selecting a contractor. Check references from other customers or from other local sources such as Better Bureau of Business. Many contractors perform snow/ice removal during off-season and slow periods in their main business. These can include landscapers, nurseries and even window cleaners. There are also individuals who start their own business by buying a four-wheel drive vehicle and attaching a snowplow. The latter situation should be avoided. The former examples, particularly in the case of landscapers, may be a good choice to perform snow/ice removal. These companies probably already know your property and there may be a cost benefit to combining both services. Service capability that includes regular checks on the location, 24-hours and on-call capabilities would be a big plus. Get quotes from more than one service before selecting one. Again, experience and insurance provisions should play an important part in contractor selection.

When utilizing a snow and ice removal contractor, there are some important contract and insurance considerations. In addition to selecting a contractor based on review of references, expertise, response times, and capabilities, it is important to verify that the contractor has a comprehensive insurance program. There should be statutory Workers' Compensation coverage for contractor's employees. The contractor should have a General Liability coverage that will cover claims for the property damage and/or bodily injuries caused by contractor's employees or their operations. There should be coverage for Products/Completed Operations that is intended to pay for any claims arising out of the completed work (snow removal) by the contractor. Insist on a written contract. If the terms of a contract include hold-harmless and indemnification clauses, ensure that the

contractor also has Contractual Liability coverage. It is important to obtain Certificates of Insurance to verify that the contractor does, in fact, carry all the stipulated insurance coverages and has appropriate limits.

The contract should specify under what condition snow/ice removal begins. For example, contracts can specify 1", 2", or 4" snowfall provisions. Others depend on a phone call requesting specific services and a set price per plowing. Another approach may be to have a "time and material" contract. Most services will include distribution of rock salt or sand but there may be a separate charge. Special provisions may need to be established to control certain situations like water runoff from hillsides.

Summary

The first line of prevention and defense against snow and ice accidents is a well-planned strategy and implementation of a snow removal plan. Whether you have in-house personnel and resources for snow and ice removal or you subcontract it to a contracted service, it is important to have a plan in place. From a post-loss standpoint, having and following an effective plan goes a long way toward fulfilling the obligation owed to your customers, visitors, employees and public. A proactive approach, rather than a reactive one or none at all, is a prudent risk management strategy for preventing and defending snow and ice related falls.

Resources

1. Malecki, Donald S., James H. Donaldson and Ronald C. Horn. *Commercial Liability Risk Management and Insurance*, 2 vols.
2. George Head and Steven Horn, *Essentials of Risk Management*.
3. "Independent Contractor Exposure." Zurich Services Corporation. Risktopic 4-6.001.
4. Better Bureau of Business "Hiring a snow removal contractor"
<http://www.bbb.org/alerts/article.asp?ID=224>

Zurich Services Corporation

1400 American Lane, Schaumburg, Illinois 60196-1056
800 982 5964 www.zurichservices.com

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Risk Engineering



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