

Maintaining a Safe Premises: “New Year’s Resolutions” to Help Ensure That Your Business Will be Safer in 2012¹

With the new year upon us, many are making personal resolutions to lose weight or find a new hobby or get more organized. Why not implement a few business “resolutions” to help ensure that your business will be safer for your employees and customers alike? Maintaining a safe premises will not only decrease the number of claims or lawsuits you may face, but will also help place you in a defensible posture if and when you do find yourself facing a lawsuit.

Below are several resolutions or tips to help ensure that your business will be safer in 2012:

#1 – Establish a program or routine for periodically checking your business for potential hazards. To establish a general premises liability claim, a plaintiff must prove one of three things: that the business owner negligently caused the hazard; that the business owner had actual knowledge of the hazard; or that the hazard existed for long enough that the business owner had “constructive notice” of the hazard. A large percentage of premises liability cases (i.e. slip and fall or trip and fall cases) fall into the third category of “constructive notice.” The plaintiff in such cases must establish that the hazard existed long enough that the business owner should have known about it. If a business owner can establish that an employee checked the area just a few minutes before the alleged incident and, at that time, the floor was clean and clear of debris, the business owner has given him or herself an advantage in defending such a claim (the general idea being that the hazard could not have existed for a long period of time because an employee had checked the area just minutes before and, at that time, the hazard (puddle of water, debris, etc...) was not on the floor. One of the best ways to ensure that you will have such an advantage is to make sure that your employees are checking the floors regularly and routinely. Establish a pattern and practice with your employees. Make sure that they know to check the floors, for instance, every 30 minutes. Or, for larger business, perhaps assign one person to monitor the floors throughout his or her shift. If you establish such a routine, the likelihood that you will have an employee who had checked the area within a reasonable amount of time prior to the customer’s incident, will likely be increased.

#2 – Establish a program or procedure for eliminating or minimizing slipping hazards during rainy weather. As we all know, rain is a common occurrence in Mississippi. Customers will often track in rain water when entering your business. A business owner can minimize the risk of wet floors during rainy weather by implementing a few practices such as placing floor mats at the entrances of the business; utilizing “wet floor signs” to alert customers to the possibility of wet floors; and/or

¹ This article is not intended to be legal advice. The information contained in this article is generalized and may or may not be applicable to all situations. For specific questions, please feel free to contact Shanda Yates, the author of this article, or your attorney. Ms. Yates practices at the law firm of Wells Marble & Hurst, PLLC in Jackson/Ridgeland, Mississippi. Her practice focuses primarily on premises liability defense. She may be contacted via telephone (601.605.6915) or by email (syates@wellsmarble.com).

providing plastic umbrella bags to customers to avoid wet umbrellas from dripping onto the floors of the business.

#3 – Establish a program or procedure for eliminating or minimizing slipping hazards during winter weather. While snow and ice are less common in Mississippi than rain, neither is unheard of during a few months of the year (especially in northern parts of the state). A business should make sure to clear the sidewalks and walkways adjacent to and near the business entrances and exists. While the law does not necessarily require an owner to keep the entire parking lot of the premises clear of snow and ice, if the business is open during winter weather, the owner should make reasonable efforts to keep designated walkways and paths clear of snow and ice. (Again, snow and ice can and will melt as customers enter and exist the store so remember to also utilize those procedures outlined in Resolution #2 above).

#4 – Schedule certain events for times when the business is closed or experiences the least amount of customer traffic. Some functions of a business are necessary, but can often be scheduled to occur at times when customers are least likely to be in the business. For instance, whenever possible, wax and mop the floors when the business is closed or during a time when customer traffic is at a minimum (remember, if the business is open, place “wet floor signs” in any area being mopped or waxed). Likewise, when possible, stock the shelves of the business during times when customer traffic is at its lowest. This will help minimize the chance of customers tripping over boxes in the aisles or of merchandise being stocked falling from a shelf and possibly striking a customer.

#5 – Maintain and/or implement adequate security measures if your business is located in a high crime area. Business owners are being faced with more and more claims or lawsuits involving alleged “inadequate security.” As a backdrop, imagine a scenario where a customer is mugged in the parking lot of your business. If the customer sues, the attorney she hires will most likely argue that the crime occurred because of “inadequate security measures” on the property. While no amount of security can eliminate the potential for any and all criminal activity, a business owner in a high crime area should consider implementing some reasonable security measures to make the business safer for customers. Such measures could include hiring a security guard to patrol the business; installing security cameras; and/or training your employees to watch out for and take appropriate steps to remove loiterers or known troublemakers from the premises.

#6 – Maintain adequate and sufficient lighting inside and outside the business. Inadequate lighting can be the potential source of various problems. For instance, a poorly lit parking lot can give a potential plaintiff fodder for alleging that criminals were attracted to the parking lot. Likewise, a poorly lit interior section of the store may allow a potential plaintiff to allege that he or she did not see a hazard on the floor that may have otherwise been visible if the store had better lighting.

#7 -- Repair sidewalks and walkways as needed. While the law typically will not support a claim involving a customer who trips over a standard curb or a slight variation

in a sidewalk, a business owner should make sure that the sidewalks and concrete areas surrounding the business are free from any major defects or potential hazards.

Each claim will, of course, involve its own unique set of facts and circumstances and the above tips are general in nature. There is no method or secret-formula for eliminating all potential claims or lawsuits. However, application of each of these tips could help you prevent or lower the number of claims or lawsuits you face in 2012. Additionally, in the event you are sued, if you have followed these tips, you will likely find yourself in a more defensible posture.