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Watch Your Step

Richard Arlington

Avoid slip-and-fall claims by being prepared

As an expert witness for slip-and-fall lawsuits due to snow and ice, I see case after case that could have been entirely avoided if the property manager and snow contractor had addressed simple issues.

Ask yourself the following: Who is responsible for a thaw refreeze slip and fall? Should you check on the property for ice as the sun goes down and temperatures begin to fall? Where should the snow be piled? When snow and ice thaw, how will the water flow? These are questions that restaurant facility owners or managers must be able to answer and carefully plan for.

Go Beyond the Obvious

When you discuss expectations for snow management, don't solely rely on the specifications or the scope of work. You must dig deeper than that. Determine the level of responsibility you want to achieve. Educate yourself and your staff on potential snow and ice management issues. For example, every employee should know that if the air temperature is 40 degrees but the ground is 15 degrees, water will still freeze on the parking lot or sidewalk.

Too often owners and managers think the contract will save them from liability in the event of a lawsuit. Although this is the case sometimes, if a major incident occurs, you will still have to defend yourself and may be found liable for the whole incident or a portion of it.

Restaurant owners and facility managers should be aware of and look out for common pitfalls in service contracts that pertain to risk and liability. For example, what does a property that is "free of ice and snow" really mean? What is a "slip-free parking lot" and how does one achieve true "bare pavement"?

Most of the slip-and-fall cases I review happen days after a snow event. Remember, too, that juries are comprised of 12 people who probably will not know anything about the snow and ice industry or property management.

Thaw and refreeze is a serious issue that restaurant facilities face throughout the winter months. How are you positioned to deal with this risk? Have you educated your site-level staff about this potential hazard? Did your vendor sign a liability awareness acknowledgement? We all deal with budget restrictions and do not want to pay vendors just to come check the property, but who is responsible for the risk liability?

Consider Every Angle

Every case is different, and you will have to prove your position in court. Just relying on the contract will not work in all cases. You will need to provide evidence that you addressed a potential issue and have the document trail to prove it. I always recommend a Property Level Risk Assessment Check List that both the site team and the vendor go through prior to each snow season.

As a restaurant property owner or manager, you could be held to a higher level of awareness. Managers could have or should have known of the danger of most complaints I review. It is the "should have" part that will get you in trouble. As a professional, you must know the risk associated with snow and ice before, during and days after an event. The responsibility is on you to show that it was addressed in a reasonable manner.

Now the question is, what will the jury consider reasonable?

Case in Point

In a 2007 case in North Dakota, a local snow contractor won a bid to provide snow management for a shopping plaza's parking lot and sidewalks. The contractor was also tasked with installing holiday lighting on the plaza's overhang on the building's façade.

Snow would often accumulate on the garland along the overhang. At night, heat from the holiday lights would melt the snow, which dripped onto the sidewalk. The sidewalks had no heating element, so the melted snow would immediately freeze. The snow and ice contract included an ice watch program that required the vendor to check the parking lot for ice. The program did not require the vendor to check sidewalks.

One day, a customer walking toward a store slipped as he made the transition from the roadway onto the sidewalk. He banged his head when he fell, and died 24 hours later from his injury. Both the property owner/manager and the vendor were found negligent.

As a restaurant owner or manager, be cognizant of the fact that you don't always need a weather event to get you in trouble. Inconspicuous factors, such as holiday lights, parking lot lights, lit business signs and even buildings themselves all produce heat.

During the Request for Proposal process, it is the wording of the scope of work, not the actual level of expectation, that often causes confusion. Restaurant site teams should be fully aware of the scope of work and hold the vendor to that level of service.

If the vendor can prove that the site-level team held them to a higher standard than the scope of work, you as the owner or facility manager also will be held to a higher level of responsibility in the event of a slip-and- fall incident due to snow or ice. Remember, it works both ways.

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