

Background

In winter conditions the risk of employees and third parties slipping and falling due to ice and snow rises. For example, an East Midlands Health Trust reported a threefold increase in breaks and sprain injuries treated by their casualty departments in December compared with November. It is important to: a) prevent slips and falls, and b) be able to defend any claims that arises from them. Injuries from slips and falls feature prominently in injury statistics and resultant incapacity for several weeks is not uncommon. Indeed, there may be fatal or lifelong consequences.

Scope

This document promotes good practice in relation to preventing claims and defending allegations. It is not designed to be prescriptive; the nature of this topic is that each situation needs to be dealt with according to the individual factors that apply to it.

Liability

If someone injures themselves because of snow and/or ice, then the employer or occupier may be liable to prosecution under the Health and Safety at Work etc. Act 1974 and the supporting regulations. Employers are required so far as is reasonably practicable to ensure the safety and health of employees and others and to conduct suitable and sufficient risk assessments with workplace conditions and means of access/egress being prominent.

Perhaps the most pertinent provision relating to winter conditions is in the Workplace (Health Safety and Welfare) Regulations 1992. Regulation 12 stipulates that surfaces of floors and traffic routes should be free from any hole, slope, or uneven or slippery surface. The Approved Code of Practice that interprets this regulation states that:

'Arrangements should be made to minimise risks from snow and ice. This may involve gritting, snow clearing and closure of some routes, particularly outside stairs, ladders and walkways on roofs.'

Employees and others seeking compensation for injuries may bring a civil action for personal injury claim usually citing both breach of statutory duty and negligence. Parties can also bring an action under the Occupiers Liability Act 1957. The Act enshrines the common duty of care to lawful visitors, which is extended in some circumstances to trespassers by the 1984 Act (in Scotland the Occupiers' Liability (Scotland) Act 1960 imposes similar duties). Most business premises have areas such as car parks and walkways that may be used by visitors. If there is a hazard there that is known to the Occupier they have a duty to take reasonable care to make that hazard safe and/or give reasonable warning of the danger.

There have been arguments that snow and ice should not be cleared, on the basis that they are natural hazards. However the counter argument is that the moment a person or vehicle passes over the snow/ice they alter its condition. Therefore, it is no longer a natural hazard and as it is known to the occupier, they have duty to deal with the hazard.

Duty of care and what is reasonable

The crux of the matter is what is reasonable? There is no definitive response to this. Each case will be considered on its merits and the outcome will be dependant upon the judgment of the court. Successful defence of such claims may hinge on the defendant demonstrating that they have taken reasonable measures to mitigate the risks of slips and falls. To this end some guidance as to what may be considered as reasonable is provided in Table 1 below.

The concept of what is reasonable as opposed to an absolute duty, does allow for practicalities and consideration of costs and benefits. For example, to clear a car park completely of snow during a blizzard is not practical. However when the blizzard abates it would be reasonable for the main walkways to be cleared and salted in icy conditions. It is likely that a busy shopping centre would be expected to apply more resources to snow and ice clearance than a car sales forecourt.

The potential severity of injuries snow and ice related slips and falls has already been alluded to. Those in control of workplaces and premises should recognise that this is a serious issue; any injuries could have serious consequences for the business that extend beyond the economics of insurance claims. Primary consideration should be the prevention of the occurrence of hazards and avoidance of such injuries.

Table 1: Snow and ice removal

Considerations as to what is reasonable include:

- Location in relation to historical incidence of ice and snow.
 - Provision of grit/salt, shovels, clearance personnel.
 - Attention to weather forecasts.
 - Policies, procedures and arrangements for controlling the risks (e.g. reducing size of car park in adverse weather, pre gritting/salting, post gritting/salting, establishing cleared high traffic routes, posting warning signs).
 - Practising the above policies and procedures.
 - Temporary cessation of activities that put persons at increased risk.
 - Ensuring snow removal includes removal of ice surfaces.
 - Attention to 'thaw then freeze' and melt water hazards.
 - Regular recorded inspections of relevant areas.
 - Documented logs of the controls implemented.
 - Attention to pooling water, ice slip hazards at building entrances/exits.
 - Warning persons exiting the premises to be careful (warm and/or worn shoe soles are more prone to slipping)
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Limiting liabilities

In the first instance a business should be clear about its responsibilities. Whilst the Highways Agency and local authorities have responsibility for clearing public highways and pavements, other areas such as car parks and pavements are the responsibility of property owners, landlords* or tenants depending upon what agreements are in place. Businesses should ensure that they recognise which areas they have responsibility for. In the event that someone reports a slip/fall injury, without asking leading questions it should be established exactly where the incident took place.

Wherever possible contemporaneous information should be gathered and recorded as soon as the incident is known. This can be critical for refuting allegations and may be particularly relevant in determining what was reasonable at the time of the incident.

In order to defend allegations that the business has not acted in a reasonable manner they will need to evidence the disciplines of recognising hazards, controlling the degree of risk relating to hazards, monitoring to determine that controls are being effective, plus investigating any incident. It is important that relevant records are retained for a minimum of three years, however, we would recommend a retention period of at least five years. Table 2 lists some of the documents that would be useful in defending injury claims.

As is the case for all injury incidents that occur, there should be early notification to the insurer in order that the cost can be contained, and where appropriate resources such as medical rehabilitation and forensic investigation being deployed promptly.

* *The Defective Premises Act 1972 may have a bearing on this.*

Table 2: Defence of snow or ice related slip fall claims

A non-exhaustive list of documents that would be beneficial in defending a civil claim and establishing that the business has taken reasonably practicable steps could include:

- Snow/ice clearing policy and Risk Assessment.
- Written Instructions to persons clearing snow/ice
- Written warnings to Employees and members of public
- Inspection logs
- Invoices re salt/grit, shovels etc - to show that such products have been purchased to deal with the issue
- Photographs following an accident
- Statements from operatives who undertake the clearing work

Local weather forecast print offs from internet for the date of the accident - to show the extreme weather conditions and low temperatures as a claim may not be made until months or years later.

Businesses should be in no doubt that claimant solicitors will actively pursue personal injury claims caused by slips through ice and snow. There should be clear policies and records if the business is not to be seen as a 'soft touch'.

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