

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: DANGEROUS CONDITION -- DEFINITION

The California Government Code defines a “dangerous condition” as “a condition of public property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable to be used.” Again the definition is not really important to remember, but there are some parts to it that can affect the entity’s exposure.

The definition starts with a “condition of public property.” It is usually a public improvement that has become physically damaged, deteriorated, or defective. It may be caused by a faulty design, or bad location. It can even be caused by the criminal or negligent acts of third parties.

The second element of the definition is “substantial risk.” This is a potential defense for a dangerous condition claim. The GC does not require perfection; the public entity is not responsible for conditions that are “minor, trivial or insignificant.” The question of whether the risk is substantial is fact specific. In addition to the unique facts of the accident, it is common to look at the history or absence of prior accidents, and at applicable professional standards and safety codes. In defending these claims we look to see if the defect can be categorized as creating a minor, trivial, or insignificant risk of injury when the property is used with due care (sidewalk claims – a future topic – are the classic example).

The third element in the definition is “such property or adjacent property.” The most common claims obviously deal with conditions on public property, including easements (like sidewalks), but there is also a potential exposure for conditions on adjoining property that make the public property more dangerous. An example would be a low hanging branch from a private tree obstructing a stop sign, or slick water on a sidewalk from a broken private sprinkler.

The fourth element is “used with due care.” Liability requires that the property be dangerous when it is used with due care. Any property can be dangerous if a person is not exercising appropriate care; the GC basically limits liability to conditions that are unsafe even in those circumstances when a person is using due care. Recognize also that the comparative negligence of the claimant – their failure to use due care – is an available defense to limit or avoid damages even when there is a dangerous condition.

The last element is “used in a reasonably foreseeable manner.” The test is one for all foreseeable users, not just the intended users. The best way to understand this is to reverse it – a public entity is probably not responsible for unusual or bizarre uses of public property.

What to take from this? The entity is not responsible for all conditions of their property, only ones that create substantial risk when used by a person exercising reasonable care under the circumstances.

Next topic: Dangerous Condition – applying the definition to the elements