

## Manager/Supervisor Risk Management

#57– 5/24/12

A twice weekly e-mail training for YCPARMIA members

### TOPIC: DANGEROUS CONDITION – NOTICE

The last elements of a dangerous condition are often the most important in resisting a dangerous condition claim. The GC states that the public entity is responsible for dangerous conditions created by an employee's negligence or omission, or for dangerous conditions for which the entity had actual or constructive notice a sufficient time before the injury occurred to have taken reasonable measures to protect against the injury. The concept here is that the public entity is not responsible for conditions it did not create and did not know about – but to take it a bit further, it can be responsible for dangerous conditions that it should have known about if it had exercised reasonable care.

The first two possibilities are pretty straight forward. If you create it you own it, and if you know about it, and should have recognized its dangerous character, you have to do something to protect the public. An employee's knowledge of the condition is imputed to the entity on the grounds that it would be considered unreasonable for the employee to not tell the appropriate supervisor of the condition. An example of this would be an employee driving by a missing stop sign. Once the employee notices that the sign is missing the entity "knows" and has to do something about it in a reasonable manner.

The last alternative is "constructive notice," or what the entity "should have known," The GC states that an entity has constructive notice of a dangerous condition only if the claimant proves that the condition had existed long enough and was of such an obvious nature that the public entity exercising due care should have discovered the condition and recognized its dangerous character. There is usually not constructive notice of a missing manhole cover – it could possibly have gone missing moments before the injury -- but a sidewalk panel, raised more than a trivial distance, is probably something that has existed long enough to trigger constructive notice.

Accident histories are often important when looking at dangerous condition claims. Reports of prior similar accidents at the same location can create constructive notice of a potential dangerous condition. An entity's inspection records help or hurt. The inspection report can document that the entity acted reasonably in looking for dangerous conditions, but failure to inspect (especially in violation of an entity policy) can be evidence of unreasonable conduct. Similarly, entity reports can be used to prove constructive notice; for example, police reports documenting ongoing criminal activity on a specified piece of public property might prove constructive notice of a condition that a reasonable public entity would have taken steps to control.

What does this mean for the supervisor? Recognize that your employees in their travel and work are constantly performing what amounts to informal inspections of the entity's property. When they discover a condition that they should recognize as dangerous, they have a duty to work with their employer to take reasonable protective action – there is no Ostrich defense.

Next topic: Dangerous Condition – Defenses and Immunities