

Premises Liability

Imagine walking into your local Home Depot, browsing through the miles of wonderful tools, garden supplies, and assorted doodads, when you suddenly find yourself lying on your back on a hard concrete floor. As you force your eyes to come back into focus, you realize that a large drill press decided to leap from its shelf and onto you as you casually walked down the aisle and has knocked you to the ground. Fortunately, you don't seem to have a concussion, no open wounds, or broken limbs and, besides the stiffness in your shoulders and neck, you appear to be able to move and function normally. You go home and appear to make a full recovery.

This is exactly what Jean-Loup Chrétien claims happened in a Webster, Texas, Home Depot and he's looking for Home Depot to cough-up \$15 million in compensation. Who is Jean-Loup Chrétien and why is he asking for millions? Well, he's the French John Glenn according to his lawyers and a brigadier general in the French Air Force. He happened to be in the Houston area for NASA mission specialist training. Not only is he a prominent figure, but his injuries from the 68 pound drill press have made it impossible for him to eject from aircraft at high speeds (including NASA's space shuttle); essentially taking away his livelihood.

While this is an extreme case, it does illustrate why premises liability should be one of the top concerns of a business owner: injuries to the public (or even employees) occurring on your business property can be expensive.

This area of personal injury law has its basis in a couple of legal principles. First, as a business owner you have a duty to prevent foreseeable harm to persons on your property. Second, in order for a business to be held liable, it must have breached this duty and proximately caused the person's injury.

The specific duty a property owner owes to an individual depends upon the status of the individual. The three legally defined categories are: invitee, licensee or trespasser. Most visitors to a business are invitees. An invitee is a person or member of the public invited onto the premises for the purpose directly or indirectly connected to your business. Shoppers in the local grocery store (including their kids) would be considered invitees.

A business owes a couple of duties to an invitee. First, it has a duty to exercise reasonable care so as not to harm the invitee. A common practice in large warehouse stores is to block off aisles prior to using a forklift to obtain materials from the top shelves. Also common is the piercing audible warning and flashing yellow light found on forklifts in use. These are efforts to exercise reasonable care to protect the shopping public as invitees.

The second duty owed to invitees is to act prudently to discover unreasonably dangerous situations and either make them safe or warn invitees. A good example of a common response to this duty is found in the local grocery store. Most grocery stores now have procedures in place that require employees to keep an eye out for hazards to the public.

An employee who finds a broken pickle jar on Aisle 12, has a duty to clean up the pickles and juice and put up a the ubiquitous yellow “wet floor” sign. Thereby making a unreasonably dangerous situation (a pickle-slicked floor) safer and warn customers of the hazard.

The second category (that of licensee) lowers the duty required from a business. A licensee is someone allowed to enter onto the premises only with the consent of the landowner. Now the business only has to use reasonable care so as to not harm the licensee and warn them of any unreasonable dangers known to you but not obvious to the licensee.

Take for example, a “take your daughter to work” day at the local widget assembly plant. The daughters would probably be considered licensees, as the plant is not open to the public and they are present only with permission from the plant owners. The plant would have an obligation to use reasonable care to ensure that the children aren’t harmed by plant operations and would have to warn them about hidden dangers, like the assembly line that starts at any time with little warning. However, unlike the duty owed to invitees, the plant does not have to inspect the premises for unsafe conditions or warn against unsafe conditions that would be known to the licensee.

The third category is a trespasser: someone entering the property without the consent of the business. This category carries the lowest legal duty. For these folks, businesses only have to refrain from conduct that would constitute willful or reckless disregard for the safety of the trespasser. (Even for trespassers, the law isn’t going to allow landowners to set up booby traps.)

I recommend a few steps to keep premise liability issues from appearing on your business doorstep: (1) obtain enough insurance to cover the risk of opening your business up to the public; (2) inspect your premises regularly for problems; (3) make sure to meet all the local building codes; (4) install adequate lighting; (5) clean up spills immediately; (6) instruct employees on how to respond to problems and potentially dangerous conditions (7) fix uneven walkways; and (8) take an proactive approach to finding and fixing potential problems.

This information is intended as general legal advice and may not apply to your particular situation. If you have any legal questions you would like answered in this column or ideas, please forward them to me at erbarrett@justice.com, fax number (214) 722-0025 or by mail at the Law Office of Edward R. Barrett, 4451 FM 2181, Ste. 100, PMB 125, Corinth, Texas 76210.