

## Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

### TOPIC: DANGEROUS CONDITION – SIDEWALK CLAIM

The simplest, and maybe the most common dangerous condition claims involve trip and falls on sidewalks. The facts are seemingly unchanging; a person walking down the sidewalk catches their toe on a raised sidewalk panel or broken cement and falls. The raised panel is often caused by a tree root. The claimant, often elderly (they are more prone to shuffling when they walk making it more likely that they will catch their toe), suffer injuries that can be anything from bruises to serious facial injuries.

Taking a quick look at the elements of a dangerous condition:

- “Public property:” the California Streets and Highway Code makes the fronting property owner responsible for maintaining the sidewalk, but the public entity (holding the easement) is responsible for dangerous conditions on the sidewalk, so we have “public property.”
- “Dangerous condition:” a broken sidewalk can create a substantial risk, but might it be a trivial risk?
- “Proximately caused:” it is pretty obvious that a trip over a raised sidewalk caused the fall.
- “Reasonably foreseeable:” again, no one would argue that the trip is not foreseeable.
- “Created by” or “actual or constructive notice:” cement sidewalks are durable; when a panel is raised or the sidewalk broken it usually takes place over time. This triggers constructive notice.

To defend the claim the first thing to look at is who created the condition; we may be able to tender.

The second issue to explore is notice. We need to make sure that the condition had existed long enough that the entity should have reasonably known that it was there. A raised panel almost always triggers constructive notice, but spilled oil or food probably doesn't.

The third thing to look at is whether the condition created a substantial risk of injury. No one expects a sidewalk to be perfectly flat. There is case law that states that a rise or gap of  $\frac{3}{4}$ " is a trivial defect as a matter of law. This makes it essential to establish exactly where the fall occurred.

The fourth thing to look at is comparative negligence. A person has a duty to exercise reasonable care for their own safety. Lighting and shadows often become issues. Ironically the worse the defect is, the greater the duty on the claimant to avoid it. This sort of ties back into the notice issue. If the claimant did not take notice of the defect, then why should the public entity have known of its existence? Some entities, choosing not to force the fronting property owner to make repairs and not having the money to do it themselves, have used orange spray paint to highlight sidewalk defects. This certainly confirms the entity's notice, but also heightens the claimant's comparative negligence.

This same type of analysis can be applied to just about any public property including parking lots or offices.

Next topic: Dangerous Condition – Trees