

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: REASONABLE DEFENSE

This may be a bit technical or boring, but for our purpose it is important that the supervisor understand that an entity does not have to do “everything” to make things safe, they only have to act reasonably. This is where economic reality comes into play. We are looking at two basic situations. The first is the reasonableness in the creation of the condition, and the second is the reasonableness of protective measures taken.

The Government Code creates a statutory defense that allows an entity to escape liability for a dangerous condition if it can show that the “act or omission that created the condition was reasonable.” The GC determines what is reasonable by “weighting the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or of protecting against the risk of injury.”

Financial and political restraints limit what a public entity can do. For example, a weekly inspection of all trees might keep limbs from falling on vehicles, but what public entity has the financial resources to commit to that level of prevention? Similarly the decision, due to financial constraints, to patch a road rather than to repave it might not make the road as safe, but it is arguably a reasonable approach.

The important concept here is that the public entity does not have to make its property 100% safe. The standard it will be held to is to take reasonable protective actions, including “repairing, remedying or correcting a dangerous condition, or warning of a dangerous condition.” Conversely, failure of the entity to take any protective action, after it has notice, is generally not considered reasonable. Similarly, after the entity has knowledge, a delay in responding with protective measures can also be seen as unreasonable depending upon the particular circumstances. The protective actions do not have to be permanent; it might be enough to place warning signs. Orange spray paint on a raised sidewalk panel might be seen as reasonable warning, but if the paint becomes chipped and faded over time because no further action was taken a jury might find the entity failed to act reasonably by delaying a more effective response.

The bottom line is that the supervisor has to be able to explain why they did what they did, or didn’t do to address the dangerous condition. It is not enough to say “this is the way we always do it;” there has to be some weighing of the specific circumstance or factors that are presented by the property’s condition and risk of harm.

Next topic: Subsequent Repair