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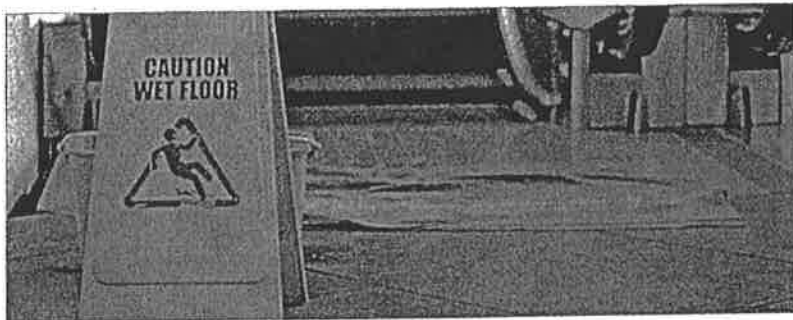
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## Are Formal Floor Inspections Worth It?

### Developing a program to reduce incidents and win summary judgments.

By Stacy D. Fulco, Donna Simms

The primary question on every examiner and in-house attorney's mind when reviewing a new claim is whether there is a potential for summary judgment. The answer to that one question often determines whether to settle or allow the case to go into litigation. Throughout the country, summary judgment typically is warranted if defendants can prove they had no actual or constructive notice of the alleged dangerous conditions. The challenge is to prove there was no constructive notice, and this is where examiners and in-house attorneys often butt heads with company operations and human resources.

Proving there is no constructive notice of a dangerous condition for purposes of a summary judgment motion typically requires direct evidence that an employee was in the area or inspected the area within a reasonable period of time prior to the incident. Most attorneys and examiners agree that the easiest and best way to prove this is by citing a formal inspection policy and proving it was followed by the employees. However, if you ask people in operations, human resources, or finance, they typically will not agree that the formal inspection policy is the way to go.

The most common complaints heard in companies about having formal inspection policies are the following:

- Expense – They are expensive to implement and maintain.
- Development – They are difficult to develop because everyone has their own opinion about what should be included.
- Time – It takes too much time out of an employee's day to complete the inspections.
- Training – It is difficult to train the employees and continue training in the future.
- Compliance – It is difficult to ensure compliance by each property/store.
- Document Production – Once a policy is written, it will be discoverable.

So, is having a formal inspection policy worth it? Let's look at two fictitious companies and decide.

Store A is a grocery store. Before the store opens each day, a formal inspection of the entire store floor takes place, and any areas or displays that have problems or are potentially dangerous are documented and fixed before the store opens. Throughout the day while the store is open, hourly inspections take place throughout the entire store. Once the inspection is completed, the employee initials a form and documents any problems found during the inspection that could not be fixed immediately and need to be corrected. Once the issue is corrected, the form is initialed again.

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The inspection forms are kept in the store for at least a year after the statute of limitations expires. If an incident occurs, a copy of the form is attached to the incident report, and the manager speaks with the employee who performed the last inspection.

Store B is a department store that sells all types of items, including food. There is no formal inspection policy or practice for the store or each department. In general, employees are told to keep an eye out for any spills or floor hazards as they walk around the store or their departments.

If a customer slips, trips, or falls in Store A, the claims professional is given a fully completed incident report, a copy of the inspection report, and a statement from the employee who completed the last inspection with confirmation that the area was clear and safe. If the store completed the inspections on time and according to policy, the store has a strong defense and can respond to the claim with the knowledge that it has a strong summary judgment argument because it can prove it did not have constructive notice of the alleged dangerous condition.

In contrast, if a customer slips, trips, or falls in Store B, the examiner is lucky to get an incident report because typically a company that does not have a formal inspection policy also tends to have very loose procedures for handling incidents. The claims professional will attempt an investigation, but unless there is surveillance footage of the area at issue, there will be no chance to prove there was no constructive notice.

As the above examples show, if your primary goal is reducing the number of customer incidents and increasing your chance of winning summary judgment, having a formal inspection policy is worth it. But let's not ignore the other concerns, because they are real and relevant and must be considered.

Here are our recommendations and thoughts about how to get around the complaints and problems and develop a program that works for your company:

- **Expense** – A formal inspection policy should be part of the overall safety program. If the program is run properly, the expense of the program ultimately should not be an issue because the number of claims would decline and the amount of money spent on claims also would decrease.
- **Development** – There are many companies out there with inspection policies, so there is no reason to start from scratch. See what others are doing and make revisions to fit your company. The risk management and legal department should finalize any policy.
- **Time** – Specific employees must be assigned the task, and it must be part of their normal assigned duties. The inspections ensure the property is clean and safe, and this is an overall benefit to the company, not just risk management.
- **Training** – Most companies have systems in place for training employees when they start, and this should be incorporated into that training. Only certain positions should be responsible for inspections, so not all employees will receive the training.
- **Compliance** – The program must include controls to ensure the policies are being followed, such as having a manager at the proper level in charge. It also can be useful to have internal consequences imposed on a property that does not comply.
- **Document Production** – Keep the policy short and simple and be sure to have it analyzed by litigation defense counsel since they will be the attorneys producing it during discovery.

It is possible that your company will decide a formal inspection policy is not worth it, but the key is to have the discussion and look at all the factors. Also, keep in mind the jurisdictions where you have properties. Ask your outside attorneys what they recommend and if there is something your company could be doing to improve the chances of summary judgment. It may be easier than you think.

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