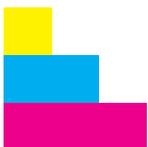


UNLOCKING OFFICE STAIRWELLS

A Resource for Property Owners, Building Managers, and Tenants



ChangeLab Solutions
Law & policy innovation for the common good.



Obesity in America has reached crisis proportions: about a third of adults nationwide are obese,¹ and many find it a challenge to get recommended amounts of physical activity each day.² As people look for ways to incorporate exercise into their daily routines, office workers are starting to focus on that simple staple of urban life: the stairwell.

Research shows that using the stairs regularly can help reduce an individual's risk of heart disease, stroke, and osteoporosis³ - and according to the Centers for Disease Control and Prevention, taking the stairs burns almost five times more calories than riding an elevator.⁴ Companies are beginning to promote the idea as an easy way to help improve employee health, reduce absenteeism, and even save money.⁵ Increased stairwell use also means fewer elevator trips, which conserves energy and reduces wear and tear on elevators while also scaling back the risk of elevator-related injuries. Meanwhile, encouraging regular use of the stairwells can help in a fire or other disaster, as employees become more familiar with emergency exits and stairwells become better maintained.

This fact sheet explores some of the risks and benefits associated with unlocking stairwells for physical activity. For a more in-depth legal analysis, see www.changelabsolutions.org.





WHY OPEN THE STAIRWELLS?

Healthier Employees. Consistent use of stairwells increases regular physical activity, which helps reduce a number of common but serious health problems, including obesity, high blood pressure, heart disease, stroke, and osteoporosis.⁶ Healthy employees miss fewer days of work and ultimately save employers money.⁷

Fewer Elevator-Related Injuries. As more people use the stairs, fewer people use the elevator, reducing the number of elevator-related injuries and corresponding liability.⁸

Fewer Disaster-Related Injuries. Employees who are familiar with stairwells and emergency exits may be less likely to suffer injury or death in case of fire or other emergencies. Better stairwell access can also assist rescue efforts⁹ and limit injuries to first responders.¹⁰

Lower Costs. To the extent that increased use of stairwells reduces the number of elevator trips, demand for electricity eases, along with elevator wear and tear.¹¹

Improved Stairwell Maintenance. With stairwells open for regular use, those taking the stairs can help spot burnt-out light bulbs, debris, loose railings, and other potential problems.¹²

Despite the many benefits of opening stairwells for physical activity, sometimes fear of liability leads people to keep them locked for regular use. But keep in mind:

- Stairwells are unlikely to pose any greater risk of liability than other common areas in a building.
- Granting access to stairwells does not lead to increased liability in cases involving fires, disasters, or medical emergencies, and in some cases it may even reduce exposure to liability.¹³
- Federal and state immunity laws may shield public entities from liability in case of injury.^{14, 15}
- Employers are typically protected from liability arising out of injuries to their employees due to workers' compensation laws.¹⁶
- Making small investments in infrastructure can have a great impact on reducing exposure to liability.





WHERE'S THE RISK?

Stairwell injuries can occur, but property owners, building managers, and tenants can minimize their risk and potentially avoid liability altogether.

- **Accidental injuries** typically involve a hazardous condition (such as inadequate lighting or debris) or a design defect (such as faulty hand railings). To limit liability, those overseeing a building should adhere to standard building codes and regulations, regularly maintain stairwells, fix any problems promptly, and ensure that stairwells are reasonably well lit - which they should be doing anyway in case of an emergency.¹⁷
- **Injuries arising from criminal acts** are uncommon in office building settings, and taking small precautions can significantly reduce exposure to liability. If a building is located in a high-crime area, for instance, security measures could include having a guard monitor exterior entrances, keeping doors to the outside locked, or limiting access to and from stairwells to those who have been issued keys, I.D. cards, or security codes.¹⁸
- **Injuries arising from disasters or medical emergencies** don't generally expose property owners or managers to additional liability. Owners are already required to maintain their properties in a reasonably safe condition in case of a fire or other disaster. Some also may worry about getting sued in the event that someone suffers a heart attack while taking the stairs, but people take that risk when they decide to use the stairs, and liability would only become an issue if there was some underlying problem like a faulty railing that the owner or manager failed to fix. Also, mere encouragement to use the stairs is unlikely to pose any additional risk of liability.

HOW DOES LIABILITY WORK?

As a general rule, the law requires that anyone in charge of property (see "Who's Responsible?") take "reasonable" precautions to keep it safe.¹⁹ If someone is injured on the property, those responsible could be held liable, but only if the injured person can show all four of the following factors:

1. The responsible party owed a duty to exercise reasonable or ordinary care to the injured person;
2. The responsible party failed to exercise such care (i.e. acted carelessly);
3. The failure caused an injury that was reasonably foreseeable; and
4. The injured person incurred damages (i.e. a loss) as a result of the injury.



WHO'S RESPONSIBLE?

The risk is low, but in case of injury in an office building stairwell, who might ultimately be held responsible?

- **Onsite Owners.** Generally, whoever occupies the premises is expected to maintain the property in a “reasonably” safe condition.²⁰ Under most circumstances, this duty cannot be transferred to a tenant or other onsite party.²¹
- **Offsite Owners.** Unlike onsite owners, the duties of an offsite property owner are typically governed by the terms of the rental lease. A commercial property owner who does not occupy space within the building could be held responsible in the event of an injury, but only if the terms of the lease explicitly said so.²²
- **Tenants.** Like offsite owners, the duties of a tenant are often governed by the terms of the rental lease. If the lease provides that the offsite owner or another entity is responsible for the building’s common areas and stairwells, the tenant may not be responsible, unless the tenant knew or had reason to know of a hazard (e.g., a loose handrail) and failed to take any action to remedy it.²³

WHAT ABOUT EMPLOYERS?

For employees who are injured on the job, state workers’ compensation laws are generally the only remedy against an employer.²⁴ Thus, even though employees can be compensated for injuries through workers’ compensation, employees injured in a stairwell at work cannot, as a general rule, successfully sue their employer for damages even if the employer was somehow negligent.²⁵

AND WHAT ABOUT PUBLIC AGENCIES?

Federal, state, and local governments enjoy various forms of immunity depending on the context. The basic purpose of governmental immunity is to protect governments and their employees from liability arising out of government operations. When considering opening up stairwells for regular use, government agencies should keep in mind that immunity may offer protection from certain claims that could arise from a stairwell-related injury.





CONCLUSION

When opening stairwells to create opportunities for physical activity, it is important to consider the benefits as well as the risks. As long as those in charge of the property take reasonable, commonsense precautions (which they need to take for common use areas generally), they should not face any greater liability in opening stairwells for regular use. In fact, they may even lower their liability risks, and everyone involved - employers, property owners, building managers, and tenants alike - are likely to see significant health and economic gains.



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ENDNOTES

1. Flegal KM, Carroll MD, Odgen CL, et al. "Prevalence and Trends in Obesity Among U.S. Adults, 1999-2008." *Journal of the American Medical Association*, 303(3): 235-241, 2010. Available at: <http://jama.ama-assn.org/content/303/3/235.full?ijkey=ijKHq6YbJn3Oo&keytype=ref&siteid=amajnl>.
2. Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion. *Chronic Diseases: The Power to Prevent, The Call to Control*. 2009. Available at: www.cdc.gov/chronicdisease/resources/publications/AAG/chronic.htm.
3. See, e.g., Wellness Council of America. *Welcoa's On-Line Bulletin for Your Family's Safety: Step Up To Better Health . . . Take the Stairs!*. Available at: http://infopoint.welcoa.org/bulletins/pdf/bs_v12_no1.pdf ("Taking the stairs burns more calories per minute than most other forms of physical activity. The average man will use about 150 calories in 10 minutes of stair climbing or about the amount used in a 20 minute brisk walk. Women will use slightly fewer calories . . . Even 2 flights of stairs climbed per day can lead to a 5.94 lb. weight loss over one year"); see also *The Spirit of Providence*. "Wellness Corner - Commit to Cardiovascular Health!" Dec. 2010/Jan. 2011. Available at: www.providence.net/images/uploads/Dec-2010-Spirit.pdf (citing study published in *European Heart Journal* showing that 69 hospital employees who used stairs exclusively for 12 weeks increased their lung capacity 8.6 %, and reduced their body fat by 1.7%, blood pressure by 2.3%, and cholesterol by 3.9%); Simon H. "Stairs as Fitness Tool?" June 15, 2009. Available at: <http://consults.blogs.nytimes.com/2009/06/15/stairs-as-fitness-tool/>; Mansi I, Mansi N, Shaker H, et al. "Stair Design in the United States and Obesity: The Need for Change." *Southern Medical Journal*, 102 (6): 610-614, 2009; Public Health Agency of Canada. *Stairway to Health: Benefits of Stairway to Health Programs*. 2007. Available at: www.phac-aspc.gc.ca/sth-evs/english/benefits-eng.php.
4. Centers for Disease Control and Prevention. *Healthier Worksite Initiative: Motivational Signs*. Atlanta: CDC, 2010. Available at: www.cdc.gov/nccdphp/dnpao/hwi/toolkits/stairwell/motivational_signs.htm.
5. See "Kaiser Permanente Employees Take the Stairwell to Health." *Health Promotion Practitioner*, 19(6): 6-8, 2010 (comments of Andy Gallardo, Director of Fitness, Health Workforce, for Kaiser Permanente) (Southern California Kaiser Permanente "stairway to health" program is designed to increase stairwell usage as an alternative to elevators by positive messaging and making the stairwells more attractive. Tracking data shows that during a promotion period, downstairs usage can double and upstairs usage can increase by up to 20%); see also Kaiser Permanente. "10,000 Steps Program," <http://kp.10k-steps.com> (last visited March 29, 2012) (encouraging walking); Hawkins C, O'Garro M, and Wimsett K. "Engaging employers to develop healthy workplaces: the WorkWell initiative of Steps to a Healthier Washington in Thurston County." *Prev. Chronic Dis.*, 6(2): 2009. Available at: www.cdc.gov/pcd/issues/2009/apr/08_0209.htm.
6. *Supra* note 3.
7. Bray I. *Healthy Employees, Healthy Business: Easy, Affordable Ways to Promote Workplace Wellness*. Berkeley, Nolo Press, 2009.
8. See generally White P. "Liability of Building Owner, Lessee, or Manager for Injury or Death Resulting from Use of Automatic Passenger Elevator." 99 A.L.R.5th 141 (2002, updated weekly); 1 Premises Liability 3d §§ 2:12-2:16; 7 Am. Jur. Trials § 377 (1964, updated 2010) ("Elevator Accident Cases").
9. See National Fire Protection Association. *1 Fire Code* (2009 ed.), §§ 14.4, 14.5.2.7, 14.5.2.7.1.
10. See *McShane v. Chicago Inv. Corp.*, 601 N.E.2d 1238, 1248 (Ill. App. Ct. 1992) ("[P]laintiffs argued that the locked stairwell door on the 25th floor was a safety hazard and that because the door was locked the firefighters were forced to seek other means of investigating the fire. Therefore, the locked stairwell door put all of the subsequent events into motion, thereby causing the injuries to occur.>").
11. See New York City Green Codes Task Force 2010 Report. *New York City: Urban Green Council, New York Chapter of the U.S. Green Building Council, 2010*. Available at: www.scribd.com/seedpower/d/27467487-Full-Proposals.. (last visited March 29, 2012) (recommending use of stairwells to promote health and reduce electrical usage); "Kaiser Permanente Employees Take the Stairwell to Health," *supra* note 5, at 8 (stairwell initiatives likely to reduce electrical usage); Younger M, Morrow-Almeida H, Vindigni S, et al. "The Built Environment, Climate Change, and Health: Opportunities for Co-Benefits." *American Journal of Preventive Medicine*, 35(5): 517-526, 2008 (buildings use energy in their operation, including elevator operation, which could be supplanted by the use of stairs, see Table 1).
12. Public Health Agency of Canada. *Enhanced Risk Management with Stairway to Health*. 2007. Available at: www.phac-aspc.gc.ca/sth-evs/english/risk_management-eng.php.
13. ChangeLab Solutions. *Opening Up Stairwells for Physical Activity: An Analysis of Liability Issues*. 2011. Available at: www.changelabsolutions.org/publications/opening-stairwells-physical-activity.
14. 28 U.S.C. § 2680(a); 1 Dobbs §§ 261-62 at 696-98.

15. For example, see Ariz. Rev. Stat. Ann. §12-820.01; Cal. Gov't Code §820.2; Del. Code Ann. tit. 10 § 4001; Haw. Rev. Stat. §662-15; Kan. Stat. Ann. §75-6104; Nev. Rev. St. §41.032; Tex. Civ. Prac. & Rem. Code Ann. §101.056. For more information and a comprehensive list, see National Conference of State Legislatures. State Sovereign Immunity and Tort Liability. 2010. Available at: www.ncsl.org/default.aspx?tabid=20628.
16. "Workers' compensation as exclusive remedy," 1 Modern Workers Compensation § 102:1 (2011); see also Eskenazi A. "Overview of Workers' Compensation Law," Cal. Civ. Prac. Workers' Compensation § 15:1 (2010). As with any general rule, there are exceptions. See, e.g., Patton v. Simone, 1992 WL 183051, at *5 (Del. Super. Ct. July 16, 1992) (unpublished) (allowing case to go to trial against landowner/employer despite workers' compensation exclusivity).
17. See 62A Am. Jur. 2d Premises Liability § 542 (2010).
18. Steiner R. "Policy Oscillation in California's Law of Premises Liability." 39 McGeorge L. Rev. 131, 132-135, 2008 ("[C]ase law developments in California and other states suggests [sic] that plaintiffs in premises [security] liability cases face a patchwork quilt of case law in which virtually no issue is settled...." (internal quotation marks omitted)); Merriam D. "Homeland Security and Premises Liability." 21 No. 4 Practical Real Estate Lawyer 15, 2005 ("Jurisdictions vary substantially on when a duty is owed [in negligent security cases] and on what is required to adequately discharge that duty....").
19. Hursh R. "Liability of proprietor of store, office, or similar business premises for injury from fall due to defect in stairway." 64 A.L.R.2d 398 § 3[a] (1959, updated weekly) (rule that proprietor of business premises must exercise ordinary care is "well established").
20. Id.
21. See 2 Dobbs D, The Law of Torts § 337 at 920, 923 (2001, updated 2010) (hereinafter Dobbs); Gazo v. City of Stamford, 765 A.2d 505, 512 (Conn. 2001) (commercial property owner equally liable with independent contractor for negligence of contractor). This non-delegation rule can extend to government property owners as well. See, e.g., Miller v. State of New York, 62 N.Y.2d 506, 508, 511 (1984).
22. See, e.g., Nikolaidis v. La Terna Restaurant, 40 A.D.3d 827, 827 (N.Y. App. Div. 2007) (out-of-possession commercial property owner not liable for injuries from fall on staircase "unless the owner has retained control over the premises or is contractually obligated to perform maintenance and repairs"). See also Massachusetts Continuing Legal Education. 2 Massachusetts Tort Law Manual § 17.3.5 (2009) ("Many jurisdictions . . . continue to base liability on control in commercial leases."). See e.g., General Elec. Co. v. Moritz, 257 S.W.3d 211, 215 (Tex. 2008) (owner who relinquishes possession still has duty to warn of concealed defects).
23. Gazo, 765 A.2d at 511 (emphasis in original) (noting that this rule applies in other jurisdictions as well, at 512); 2 Dobbs, supra note 18, § 337 at 923; but cf. Camerlin v. Marshall, 411 Mass. 394, 397 (1991) (holding that, unlike residential landlords, commercial landlords owe a duty of reasonable care only for conditions on premises under their control).
24. Supra note 16.
25. Id.