



Opening Up Stairwells for Physical Activity

An Analysis of the National Tort Liability Landscape for Stairwell Use

Executive Summary

INTRODUCTION

Obesity and physical inactivity in America have reached crisis proportions. As Americans seek to improve their health and well-being, increased attention is being given to that simple staple of urban life – the stairwell. Research shows that regular use of stairwells can help reduce a number of common but serious health problems, as well as overall mortality rates. The U.S. Centers for Disease Control and Prevention encourage stair walking, and companies such as Kaiser Permanente have embraced it as an easy way to improve employee health.

Many property owners and managers limit access to stairwells, however, reserving them for use as an emergency exit in case of fire or other disasters. Concern about potential liability in case of accidents or other injuries is often cited as the reason for discouraging use of stairwells. To explore whether liability fears justify restricting stairwell use, Public Health Law & Policy researched potential liability issues related to the use of stairwells in commercial buildings. This executive summary and the accompanying memo address: (1) the general legal principles that govern negligence claims for injuries that occur in stairwells, (2) specific legal issues arising from injuries on stairwells due to accidents, criminal acts, fire and other disasters, or medical emergencies, and (3) the effect of stairwell accessibility on overall building risk management.

Every situation carries some risk of liability. However, we conclude that opening up stairwells does not appear to present a significant increase in liability risk. Of the many potential liability risks associated with owning or managing a building, stairwells do not appear to pose greater hazards than other common areas. Tort law already requires that stairwells be kept safe and well maintained in order to accommodate building users during emergencies. If building owners, managers, and tenants abide by this requirement as well as adopting security measures in higher crime areas, they can avoid acting negligently or incurring liability under most circumstances involving stair use.

At the same time, there are many benefits of increased stairwell use for overall risk management, including the potential for improved health and reduced absenteeism of employees, reduced exposure to liability for elevator-related injuries, fewer fire and emergency related injuries, lower electricity costs, and improved stairwell maintenance reducing the likelihood of accidents.

I. HOW DOES LIABILITY WORK?

Understanding liability as it relates to stairwell use requires an understanding of some general legal principles. State law controls whether someone can be compensated for injuries or property damage caused by another, and so the likelihood of liability in a given situation can vary from state to state. However, as a general matter, and specifically when considering liability for injuries that occur on

property (premises liability), these principles apply: the person in charge of the property has a legal responsibility to take reasonable precautions to ensure that property used by others is kept in a reasonably safe condition. This long-established rule applies to all areas of a building that are used by others, including stairwells.

Who May be Liable for an Injury in a Building Stairwell?

While liability laws vary by state, generally a defendant will only be subject to liability if it was responsible for or had control over a stairwell. Depending upon who had or might have had control over or responsibility for the stairwell in a particular case, potential defendants include the property owner, the property manager, the commercial tenant, or an independent contractor, such as a repair company. If more than one entity had responsibility for or control over the stairwell, then more than one entity may potentially be liable.

Liability Protections for Government

Federal, state, and local governments enjoy sovereign or governmental immunities from certain lawsuits because they are governments. These immunities substantially reduce, but do not eliminate, liability risk. When immunity applies, the government will not be held liable even if it has been negligent. The federal government's immunity generally applies when the challenged government action involves a "discretionary" function, but does not apply when the action was not discretionary. The decision to open stairwells to improve health would likely be considered to be a discretionary decision, and thus be immune, but maintenance (or lack of maintenance) of a stairwell would likely not be considered discretionary. State and local governments also have partial immunity, although the extent of the immunities varies considerably among the states. As government agencies or officials consider opening stairwells for use, it is worth understanding that although immunity doesn't guarantee that a successful lawsuit won't occur, it does provide government decisions with considerable protection from liability.

Injuries to Employees

For employees who are injured while working, state workers' compensation statutes are usually the exclusive remedy against an employer. As a result, an employee who is injured on a staircase while on the job cannot, as a general rule, sue his or her employer for tort damages, even if the employer would otherwise be liable under tort law. (Instead, the employee can seek workers' compensation benefits from the employer.) If the employee's injury was caused by someone else's negligence (e.g., a repair company), the employer or its insurer may be able to successfully obtain reimbursement from the negligent party for any workers' compensation benefits paid to the employee. Because injuries on the job are already a known hazard, and since it does not appear that stairwell use is likely to significantly increase such injuries, employers covered by workers' compensation statutes are unlikely to encounter additional risks in this arena by opening up stairwells.

II. PREMISES LIABILITY FOR INJURIES ON STAIRWELLS

Injuries that take place in stairwells can be divided into four groups: (a) accidental injuries, which may result from simple misfortune or from a defective condition of the stairwell; (b) injuries caused by criminal attacks; (c) injuries related to fire or disaster; and (d) injuries involving a medical emergency. Our research reveals that although liability risks exist in the first and second categories (accidents and criminal attacks), they can be substantially reduced as long as building owners, managers, and tenants take fairly basic precautions. In addition, such risks may be counterbalanced when stairwell use is common, because a greater number of stairwell users increases the likelihood someone will detect and report dangerous conditions and suspicious activities. As far as the third and fourth categories (disasters

and medical emergencies), making stairwells accessible for ordinary use is quite unlikely to lead to any liability in these situations.

Accidental Injuries

Building owners and tenants are not required to guarantee the safety of those who enter their property. However, under the law of negligence, they have a legal responsibility to act with reasonable care and take reasonable precautions to reduce the risk of injury on the property, including stairwells. Determining whether an owner or manager has been “reasonable” requires the balancing of various factors and is very dependent on the particular circumstances of each individual case. Because a defendant only needs to be reasonable to avoid liability, there usually will not be liability because of a failure to adopt precautions that are unduly costly or technologically impractical. Although the legal considerations regarding whether an action was reasonable under the circumstances can vary by state, the basic inquiry is strongly guided by a common sense understanding of what a reasonable person would do.

Cases involving accidental injuries on stairs typically involve claims that the plaintiff fell either because of a hazardous condition (such as inadequate lighting or debris) or because of a design defect in the stairs or railings. In cases in which poor lighting, debris, or a similar hazard causes an injury in a stairwell, a plaintiff will have to show both that the hazard created a “dangerous condition,” and that the defendant knew or should have known of the dangerous condition. If an injury occurs shortly after an unexpected problem arises, such as a spill or a burned-out light bulb, a successful lawsuit is unlikely, since it’s not reasonable to expect that the defendant would immediately become aware of the condition.

Cases alleging design defects typically involve stairs with non-standard heights or angles or missing or unstable railings. In such cases, compliance with the local building code and regulations can help establish that a building owner or manager has acted with reasonable care. Failure to comply with these codes makes it easier to prove negligence.

Since negligence liability for stairwell accidents will only be found when the duty to exercise reasonable care is violated, such liability can usually be avoided by (1) taking reasonable steps to regularly maintain stairwells, (2) ensuring that there is a reasonable amount of light for stairwells, (3) fixing problems promptly when they become known, and (4) complying with building codes and regulations.

In stairwell injury cases, the plaintiff’s share of fault is frequently an issue. If a plaintiff is found to be partially at fault for the injury, the defendant’s liability will be reduced or eliminated altogether, depending on the state.

Injuries from Criminal Attacks

Most states recognize that building owners, managers, and tenants may be responsible for failing to take reasonable precautions to protect against “foreseeable” criminal attacks that might occur on their premises. Claims based on a breach of this duty are referred to as *negligent security* claims. Such claims typically arise out of attacks in places like residential apartment complexes, shopping malls, entertainment venues, or parking lots or garages, when the injured plaintiff alleges that the defendant failed to take reasonable security precautions that would have likely prevented the attack. Negligent security claims are a relatively new type of lawsuit and the law in this area is still evolving.

Negligent security claims often turn on whether the plaintiff can prove at least three things. First, the crime at issue must have been reasonably foreseeable by the defendant. Four separate tests are used by different states to determine whether the defendant should have foreseen the crime, demonstrating how challenging courts find this question. Second, the plaintiff must show that the defendant should have provided protective measures, but didn’t. Whether the failure to implement a particular precautionary

measure is deemed unreasonable depends on the relative benefits and costs of adopting the measure, as understood prior to the crime. Third, the plaintiff must show that, if the defendant had put the measure in place, the attack would have been much less likely. This can be challenging to prove, especially where the assailant's identity is unknown or it is unclear how the assailant gained access to the facilities.

The available case law concerning negligent security claims in commercial buildings primarily involve shopping malls, entertainment venues, and parking lots and garages. There are very few reported cases involving incidents on interior stairs in commercial premises. One extensive collection of negligent security cases identified only one case involving an interior stairwell in an office building. Nor have courts imposed any unusual or extra precaution requirements with respect to stairs. Rather, liability for a negligent security claim involving an interior, commercial building stairwell would depend on the same types of case-specific factors utilized in commercial tort cases generally.

In consequence, if a building is located in an area where crime is an issue, building owners and managers should consider reasonable security measures for stairwells, along with security for the premises generally. Depending upon the needs of the situation, possible precautions could include having a security guard monitor exterior entrances, locking exterior doors to stairwells and other entrances from the outside, or limiting access from stairwells to interior areas to employees or others provided with keys, electronic I.D. cards, or security codes.

Injuries from Disasters or Medical Emergencies

Making stairwells accessible for ordinary use is quite unlikely to lead to any liability in situations involving disasters or medical emergencies. First, with regard to fires and other disasters, property owners and managers have a duty to take reasonable fire safety and disaster measures as part of their general duty to maintain their properties in a reasonably safe condition. National fire safety standards do not encourage, much less require, the locking of interior stairwells. Accessible stairwells should not increase liability exposure in the event of fire or natural disaster so long as stairwells are reasonably maintained. On the contrary, increased stairwell use may facilitate faster exits during emergencies, and added accessibility may assist firefighters and first responders, thus reducing injuries and potential liability.

Secondly, some property owners or managers may worry that if they allow stairwell use they will be liable if someone suffers a heart attack or stroke while walking up or down the stairs. This is unlikely to be the case. Simply opening up a stairwell for general use is unlikely to be enough to prove negligence. That means that the mere fact that a heart attack or stroke occurred on the stairwell does not, by itself, demonstrate any negligence. Moreover, someone who chooses to take the stairs assumes the risk that overexertion may cause an injury. Note, however, that if such an incident occurs to an employee, workers' compensation benefits may be available. No court opinions involving recovery for medical emergencies related to stair use have been identified, and liability for such a scenario appears unlikely.

Liability for Encouraging Use of Stairs

Research has shown that people are more likely to use the stairs and receive related health benefits if they are encouraged to do so, for example through motivational signs. Property owners and managers may be concerned, however, that such encouragement could, in the event of a stairwell injury, be used to establish liability for the injury. This is unlikely. Whether premises liability exists will depend on whether there is any underlying negligence that caused the injury, *not* whether there was encouragement to use the stairs. Further, encouragement is just a form of invitation, and does not impose any kind of requirement. Encouragement to use the stairs should not, as a general rule, create any additional premises liability for property owners, managers or tenants.

III. EFFECT OF STAIRWELL ACCESSIBILITY ON OVERALL RISK MANAGEMENT

While increasing stairwell access and use may involve some additional risks, these risks are likely to be minimal, and may well be outweighed by potentially overlooked benefits.

The concern associated with increased stairwell use is a potential increase in stairwell-related injuries. As long as basic stairwell safety and maintenance practices are followed – practices that are already key to good risk management for emergency use of stairwells – accidental injuries will likely be rare and negligence will be avoided, minimizing any liability risk. If the building is located in an area where crime is an issue, security concerns should be addressed through reasonable security precautions. There is no indication that stairwell access leads to increased tort liability in cases involving fires, natural disasters, or medical emergencies.

In contrast, there are many benefits of increased stairwell use on overall risk management. They can include: (1) improved health and reduced absenteeism of employees, (2) reduced exposure to liability for elevator-related injuries, (3) reduced fire and emergency related injuries, (4) reduced electricity costs, and (5) improved stairwell maintenance leading to reduced exposure for stairwell accidents during emergencies.

Some of these benefits have been confirmed in practice. In 2009, Kaiser Permanente began promoting stairwell use among roughly 55,000 employees in 35 to 40 Kaiser hospitals and medical office buildings throughout Southern California. Employees have enjoyed the Stairwell to Health program, which encourages stairwell use, and Kaiser has not experienced any increase in stairwell accidents. Rather, Kaiser believes that stairwell use is a factor which, along with other wellness initiatives, has led to improved employee health overall.

Our review of the case law shows that accessible stairwells do not appear to pose a greater risk of liability than other common areas within a building. By acting responsibly to maintain stairwells in reasonably safe conditions, risk of liability can be minimized. Such maintenance is already required as part of a responsible risk management program, given the need to avoid injuries during emergency uses of stairwells. Kaiser's experience supports the reality that the risks of stairwell use are likely to be minimal. Every activity has some risk associated with it, but our review of the law indicates that, so long as reasonable care is taken, opening stairwells for use by employees or the public is not likely to lead to any significant increase in risk for building owners, managers, or tenants.

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