



ALABAMA MUNICIPAL INSURANCE CORPORATION MUNICIPAL WORKERS COMPENSATION FUND, INC.



Loss Control Division

DEVELOPING A SIDEWALK LIABILITY IMPROVEMENT PROGRAM

Guests, citizens and employees alike fall down and sustain injuries. Some injuries are minor. Others, however, are disabling and very costly in claim dollars, public relations, lost work or productivity, etc. Today's litigious environment increases the probability of a lawsuit. Television commercials and newspaper advertisements constantly solicit personal injury clients. Many of these focus specifically on injuries relating to falls on sidewalks.

The term streets, in a legal sense, not only include Alabama streets, but also mean the roadway, the gutters, and the sidewalks. Alabama courts have interpreted statutes as imposing an affirmative duty on a municipality to maintain streets in a reasonably safe condition.

The decision in the City of Florence vs. Stack, 155 So. 2d 324 (1963) concludes:

A municipality's duty with respect to maintenance of its streets for travel is well established in this State. In general terms, the liability of a municipality in a suit of this kind is governed by the duty and the obligation to exercise ordinary and reasonable care to keep its streets and sidewalks in a reasonably safe condition for travel. This imposition does not make the municipality a guarantor of the safe and unharmed travel to the public. The duty is based on the responsibility and accountability of the city to remedy such defects upon receiving actual notice, or after the same has remained for such length of time and under such conditions and circumstances that the law will infer that the defect ought to have been discovered and remedied... It is well settled that persons using a public street have a right to presume, and to act on the presumption, that the way is reasonably safe for ordinary travel, whether by day or night.

SOLUTIONS

Municipalities can reduce the risk of incurring the costs of sidewalk liability claims. Most *slip, trip, and fall* accidents, like many other accidents, are **preventable**. To reduce or control the huge financial burden that sidewalk liability claims create upon your municipal budget, we recommend that you develop a **Sidewalk Liability Improvement Program**.

To develop an effective program:

- ✓ **Develop and Enforce a Sidewalk Repair Ordinance.** The ordinance should give the municipality the legal authorization to require homeowners and companies to comply and indicate who is financially responsible for maintenance and repair. Some communities hold the homeowner responsible for the cost of the repairs and charge an administrative fee.

- ✓ **Establish guidelines or criteria for sidewalk repair or replacement including homeowner repairs.** Develop guidelines for your specific municipality. Review them annually. Samples are available from your AMIC Loss Control Representative.
- ✓ **Develop and follow a long-term replacement plan that identifies the completion cycle for inspection and repairs.** Divide the community into yearly regions. Some communities target two years as a completion cycle. When determining your community's cycle:
 - Consider your available resources and the number of sidewalks that you are able to inspect. Estimate the number of sidewalks that are likely to need repair.
 - Review your past loss history and the condition of your sidewalks.
 - Give priority to areas where more frequent claims arise or where the condition of the sidewalk is worse than others.
 - Review the plan yearly, adjusting it as needed,
- ✓ **Develop and obtain council approval of an implementation plan early in the year.** Your municipality's governing body should approve the funds that will be available, the targeted geographic area, start and completion dates, the bidding process, prioritization of repairs, reporting and follow-up procedures, identification of resources and staff time needed.

Developing and getting approval for the implementation plan will help to keep the project on schedule so that you finish before the winter season.
- ✓ **Assign a responsible individual to be in charge of the project.** The individual should be able to make decisions, solve day-to-day problems, and oversee the inspectors, the contractors and the notification process. This individual should lead the entire project until it is complete.
- ✓ **Make sure that the inspectors have the qualifications to perform their job.** Inspectors should be responsible and know your sidewalk inspection guidelines. They should be familiar with the implementation plan and have good written and oral communication skills. Some communities use their meter readers or hire outside contractors to perform this function. If there is a litigated sidewalk claim, inspectors may need to testify.

- ✓ **Bid out the cement replacement estimate.** To provide flexibility to the community, the bid document should include:
 - Estimated expenditure based on past years' experience,
 - Options for different bids if the quantities change,
 - Scheduled start and completion dates, and
 - Other contractor responsibilities.

The contractor should be responsible for barricading repair areas to prevent injuries and for insurance coverage if such injuries occur.

- ✓ **Inspect sidewalks in the target area as soon as possible in the spring.** This provides adequate time for homeowners to make the repairs themselves and for completion of the bidding process on any remaining work. Monitor inspectors to make sure they are consistent in their evaluations. Have inspectors look at and order work on municipal property early in the season.
- ✓ **Inspect sidewalks after the deadline for homeowner replacement passes to determine if the repair is complete, and, if it is complete, that it is satisfactory.** If the repair is complete and satisfactory, remove the homeowner's name from the list. If the repair is complete but unsatisfactory, re-mark the sidewalk and give the necessary information to the contractor. If the repair is not complete, re-mark the sidewalk and give the necessary information to the contractor.
- ✓ **Maintain good records of the inspection and replacement process.** Inspectors should document inspections daily. Reports should give the address(es) and condition of any location(s) on which the contractor has worked. The report should indicate if the work meets guidelines. If not, the project leader should become involved immediately.

The inspection report is beneficial for billing purposes and can provide documented proof, if litigation should occur, of the community's good faith efforts to reduce hazards. Maintain these records for at least four years. Some communities use computerized meter reading equipment to create their inspection records.

- ✓ **Make sure surrounding areas are in good repair once the contractor completes work in the target area.** This is usually the contractor's responsibility, but the community may wish to inspect the work to make sure the contractor completed it properly.
- ✓ **Solve individual problems as they arise.** Problems include homeowner disputes, poor quality work from contractors, and any hazards identified that are outside the target area.
- ✓ **Evaluate the successes and failures at the end of the year.** Identify changes you need to improve the effectiveness of your program in the upcoming year.

Summary

For additional information on this subject, please refer to the Alabama League of Municipalities' publication "Selected Readings for the Municipal Official."

A sound sidewalk liability improvement program benefits your community and every member of the Alabama Municipal Insurance Corporation. If you have any questions or if we can assist in any other areas of risk management, please contact us.

Alabama Municipal Insurance Corporation 1-334-242-2566

Note: This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public entities are encouraged to review their procedures with an expert or an attorney who is knowledgeable about the topic.

Sidewalk Liability Self Assessment

It is a well known fact that individuals slip, trip, and fall down. When they occur, falls on sidewalks frequently lead to litigation against the communities in which the falls occurred. The basis for these suits is failure to inspect and repair a defect. In order to reduce your exposure to such claims it is a good idea to review your sidewalk maintenance practices, by asking yourself the following questions.

Does your organization:

1. Have and enforce a sidewalk repair ordinance?

Yes ____ No ____

The ordinance should:

- Give the municipality authority to make repairs;
- Assign financial responsibility; and
- Should be reviewed by an attorney.

2. Have established repair criteria?

Yes ____ No ____

The repair criteria should:

- Be reviewed annually;
- Be reasonable and not exceed the community's budget;
- Designate which repairs homeowners may make; and
- Result in making only those repairs that can be completed within the same year.

3. Have a long term replacement plan?

Yes ___ No ___

The plan should:

- Identify the required approval process;
- Assign responsibility for overseeing the project;
- Specify how many years are needed to complete the community; and
- Be reviewed yearly and adjusted when needed.

4. Inspect and repair defective sidewalks in timely manner?

Yes ___ No ___

Consider the following:

- Hire only qualified inspectors.
- Inspect and mark sidewalks early in the year.
- Allow time to meet the notification requirements as specified in the ordinance, and
- Inspect all repairs to ensure quality.

Conclusions

- ❖ If you were able to honestly answer "yes" to all four of the above questions and your organization is following most or all of the suggested practices, then your organization may have reduced its exposure to future employee injury claims. You should congratulate yourself.
- ❖ If you are unable to answer "yes" to one or more of the four questions, your organization may have an obvious exposure to an employee injury claim. Missing components of one or more of the four recommended practices may also indicate a deficiency in your current program. You should take one or more of the following actions:
 - **Correct any deficiency that may exist;**
 - **Contact your attorney for advice;**
 - **Contact AMIC or the Alabama League of Municipalities at 334/262-2566**

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