

PREMISES LIABILITY

The legal doctrine of negligence, i.e. the committing of an act which a person exercising ordinary care would not do under similar circumstances or the failure to do what a person exercising ordinary care would do under similar circumstances, is the basis for potential liability. Generally, to establish civil liability, the burden of proof would rest on the injured party to demonstrate liability with a “preponderance of the evidence.”

There are four elements that must be established for negligence:

- A duty of care must be owed;
- There was a breach of duty owed;
- The breach of duty was the proximate cause of the accident;
- Injuries and/or damages resulted.

All four elements must be established. If a single element is not established, any claim based on negligence would be dismissed or denied by the Catholic Mutual’s Claims Department.

There are differing degrees of duty owed, depending on the classification of the individual on the premises.

INVITEE

An Invitee includes visitors to the premises, parishioners and guests. A higher degree of care is owed Invitees. The property owner should provide safe passage and a safe environment to an Invitee. Therefore, having cracked sidewalks or slippery floors may be a failure to provide a safe passage.

TRESPASSER

A property owner still owes a duty of care, albeit slight, to a Trespasser. The duty of care is to warn of concealed hazards. For example, a large opening or hole would need to be adequately barricaded with appropriate warning of the impending danger.

Notwithstanding the reasons for the presence of an individual who may be trespassing on your property, if an injury occurs as a result of hazardous conditions, you may be exposed to potential liability. Having buildings and grounds well maintained is the most important step to reducing your exposure.

Approximately 75 percent of the liability claims Catholic Mutual incurs is due to slips, trips and falls. To protect your church/institution, regular inspections should be made with special emphasis on public areas where accidents are most likely to occur, including parking lots, sidewalks, stairways, and entrance/exit areas.

All public areas should be well lit. If you have evening activities, good exterior lighting is also very important. Exterior lighting should be on timers or attached to a photocell.

VOLUNTEERS

In many situations, volunteers are a valuable resource for the church. The supply of eager, well-intentioned volunteers is usually quite plentiful. However, experience shows that use of volunteers can create additional risks and liability exposures for the church.

Due to the inherent injury and liability exposure, we do not recommend using volunteers for projects that require heavy lifting or working from heights (i.e. ladders, scaffolds, roofing projects). Good judgment should be exercised when deciding whether or not to utilize volunteers. Parishes commonly use volunteers because of the prospective financial savings. In reality, the use of volunteers may cost more in the long run due to the cost incurred from the significant number of accidents and injuries that can take place. Additionally, significant expenses can be incurred from improperly completed construction or repair work.

Problems with volunteers include:

- Usually not as qualified or experienced as general contractors or service contractors
- Normally do not have liability coverage to pay for mistakes made or damage caused
- Usually have no warranty on their work

In situations involving extensive plant and equipment repair or renovation, it is extremely important to hire qualified contractors and obtain Certificates of Insurance from them as part of the agreement or scope of work. This certification ensures that individuals working on buildings are covered under the contractor's insurance and protects you from risk of loss if an accident occurs as a result of their negligence.

If volunteers are used, it is essential that they be thoroughly trained in the areas necessary to complete the tasks in a safe fashion. Training should include how to safely operate equipment (i.e. lawn mowers, power equipment); what personal protective equipment is appropriate to wear for the job being completed (i.e. steel-toed shoes, safety glasses); and how to check and maintain equipment in order to ensure proper operation.

Individuals under the age of 18 should not operate power saws or equipment such as a tractor or riding lawnmower. Those over 16 years of age with proper training could be allowed to operate walk-behind mowers, blowers or trimmers.

Catholic Mutual encourages all parishes and institutions to take an active role in evaluating whether or not to utilize volunteers. Please remember that volunteers can be a valuable resource when used wisely, but can also be very costly when they are improperly trained or utilized to perform tasks that may be beyond their capabilities or inherently dangerous. Volunteers are not covered by the Diocese of La Crosse's worker's compensation policy. The protection afforded to volunteers under the Medical Payment coverage is limited to \$5,000.00 and is excess to the individuals own personal health insurance. Also, there are no benefits through the Diocesan insurance program to assist an injured volunteer with lost wages. Accordingly, volunteers should be informed that there are no direct benefits in the event of injury. Therefore, the Diocese is exposed to a potential General Liability claim as a volunteer may sue you for negligence if they are injured while volunteering. Significant damages can arise both financially and emotionally, including pain and suffering, when a severe injury has occurred.

IMPORTANT: Volunteers are **required** to sign the Adult Hold Harmless/Indemnity Agreement Form (*Parish Finance Manual* page Fin.VII.H.3.page 1). This form is used to reduce the potential liability exposure to the Diocese of La Crosse. When volunteers sign the Adult Hold Harmless/Indemnity Agreement Form, they are then acknowledging that they understand that they are assuming all risks inherent to this activity and will not hold the parish and the Diocese responsible for any injury or property damage, which they as individuals may experience. Should any of these individuals choose not to sign the waiver, we would suggest that these individuals **not be allowed** to participate as volunteers.

Also, please remember that volunteers **CANNOT** be paid wages.