
RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

SIDEWALK LIABILITY IMPROVEMENT PROGRAM

Guests, citizens and employees alike fall down and sustain injuries. Often these occur on sidewalks. 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.

Although the Michigan Supreme Court has applied the concept of governmental immunity broadly, it has excluded "highways" and "public buildings." The term highway not only includes Michigan public roads and streets, but also means bridges, sidewalks, crosswalks and culverts on the highway. MCL 691.1402 states that

Each governmental agency having jurisdiction over any highway shall maintain the highway in **reasonable repair** so that it is **reasonably safe** and convenient for public travel. Any person sustaining bodily injury or damage to his property by reason of failure of the governmental agency to keep any highway under its jurisdiction in reasonable repair, and in condition reasonably safe and fit for travel, may recover damages suffered by him from such governmental agency. (Emphasis added.)

Similar law applies to ***dangerous or defective conditions*** within public buildings.



In the past, sidewalk liability claims have been the type of claim that Pool members have submitted most frequently. During the first ten years that the Pool's was in operation, its members were the targets of over 1,000 sidewalk liability claims. These claims totaled more than \$7,000,000 in incurred costs.

Municipalities can reduce the risk of incurring such costs. Most *slip, trip, and fall* accidents, like many other accidents, are **preventable**.

SOLUTIONS

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:

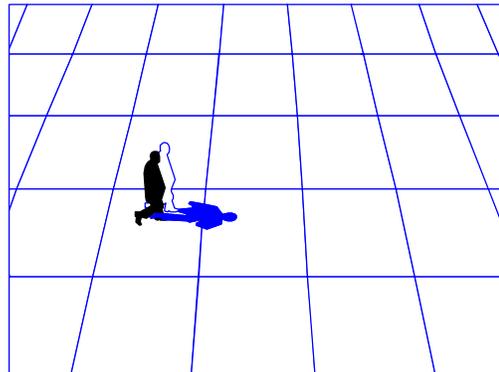
- ✓ **Develop and Enforce a Sidewalk Repair Ordinance.** The ordinance should give the municipality the legal authorization to require homeowners and companies to comply and indicate who is financially responsible for maintenance and repair. Some communities hold the homeowner responsible for the cost of the repairs and charge an administrative fee. Sample ordinances are available for your review through the Michigan Municipal League library.

- ✓ **Establish guidelines or criteria for sidewalk repair or replacement including homeowner repairs.** Develop guidelines for your specific municipality and review them annually.
- ✓ **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. As you determine 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 that generate more frequent claims or where the condition of the sidewalk is degenerating more quickly than in other areas.
 - Review the plan yearly, adjusting it as necessary.
- ✓ **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 for the plan, the targeted geographic area, the start and completion dates, and the bidding process. Additionally the governing body should approve the prioritization of repairs, all reporting and follow-up procedures, as well as the identification of necessary resources and staff time.

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, you should include the following information in the bid document:
 - Estimated expenditures 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 to complete the bidding process on work that remains. 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 and condition of any location on which the contractor has worked. Reports should indicate if the work meets guidelines. If not, the project leader should immediately act.

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

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



Important Telephone Numbers

MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-0626

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



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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 your municipality can complete 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 a 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 MML Risk Management Services at 800/653-2483, or
- Contact the League’s Loss Control Services at 800/482-0626.

NOTE:

This document is not intended to be legal advice or implied to identify all sidewalk liability related exposures. Public agencies are encouraged to contact their attorney for assistance in implementing these or other changes.