

## November 2014 – your duties as Occupier



When you have visitors or contractors on your premises are you discharging your common law duty of care and statutory duties under the Occupiers' Liability Act 1957?

There are two areas to consider:

### Negligence at common law

For any claim to be successful against an occupier, the claimant must be able to demonstrate:

- that they are owed a duty of care
- that the duty of care was breached
- that the breach caused loss/damage
- that the loss/damage was reasonably foreseeable

### Occupiers' Liability Act 1957

- The common law duty of care, as outlined above, is incorporated into statute and applies to occupiers of premises
- Section 2(1) – an occupier of premises owes the same duty of care, as described above, to all visitors except where he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise
- Section 2(2) – the duty of care to take such care as in all circumstances is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there

The fact that it is a common law duty of care means that it is applied to all lawful visitors. Note that the duty is to make the visitor safe and not the premises safe. This is a very important distinction.

The Act specifically states that an occupier must be prepared for the fact that children may be less careful than adults. This means that there should be a higher duty of care placed on the occupier when children enter the premises.

As an Occupier, what do you need to consider?

- Ensure all visitors are provided with relevant information on hazards they may face
- Brief all visitors on emergency arrangements, means of escape and muster locations
- Log the presence of visitors 'in' and 'out' of the premises
- Provide all relevant information to visitors carrying out activities on the premises
- Where appropriate, ensure suitable communication and coordination of activities between visitors and between visitors and staff
- Keep abreast of relevant standards and practices and monitor work to ensure it is being carried out as planned

- It is important for occupiers to be aware of all current health and safety legislation, standards and guidance to ensure that risks are adequately dealt with to minimise the potential for liability to be established
- Ignorance is no excuse, so it is wise to be familiar with the benchmark level of care expected to be provided to visitors attending your premises.

What about Trespassers?

#### Occupiers' Liability Act 1984

The 1984 Act deals with individuals other than visitors and is taken to mean trespassers. A duty of care has to be established in this case and occurs when the following three factors are met:

- That the occupier is aware of the danger
- That the occupier knows that the other person will be near the danger or that they have reasonable grounds to believe that it is the case
- That the occupier ought reasonably to think about providing some protection to the other person

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

Brian Cable is a Director of elnet consulting ltd