



WHAT POTENTIAL LIABILITY DO WE HAVE WITH COVID-19?

Many have asked about potential liability to the Conference which may arise due to transmission or exposure to COVID-19 (communicable disease).

Legal exposure is highly fact-driven so specific questions about real situations would need to be handled on a case-by-case basis. In the past, both Canadian and American courts have recognized a cause of action for negligent or reckless transmission of a disease, but current case law has not yet provided any clear answers as to whether contracting COVID-19 during a flight, private church event, workout in the park, or during a trip to the grocery store constitutes actionable harm. While courts have long recognized a cause of action for negligently transmitting diseases, the case law for transmission of disease *focuses on liability exposure to individuals*. Little case law exists to provide guidance concerning liability exposure to organizations.

This means we are charting new waters with a new disease that has had an unprecedented effect in our society. We will need to think this through without the benefit of how the law has responded clearly in the past.

It is important to understand what liability is and how it is determined. Liability (something you are legally responsible for) becomes a case or lawsuit when someone alleges that your organization did something they should not have or did not take adequate steps to prevent a known risk. The term we face most frequently is negligence.

Negligence has a four-step process that must be proven by a plaintiff to win their case. The four steps are:

- **Duty of care** – an example of a duty of care is to keep our facilities safe from hazards such as wet floors and ripped carpeting which may cause a trip and fall. There is a reasonable expectation to conduct our activities and maintain our facilities to ensure the safety of our members and guests.
- **Breach of duty** – the church failed to maintain a safe environment by not cleaning up the spill or repairing the ripped carpet.
- **The breach must be the cause of the damages** – the wet floor must be the cause of the person slipping and falling and causing injury. It cannot be that they hurt themselves elsewhere and make a claim against you for the possibility that they could hurt themselves on your wet floor. This breach must be the cause of these damages.
- **There must be verifiable damages** – again there should be no case if there is only potential for damages, there must be damages.

What is our duty?

The concept of a “duty” can be expressed by measuring behavior against a fictional “reasonable person” or, in this case, “reasonable church organization.” Because so much about COVID-19 is unknown and much conflicting information has been pushed into the collective consciousness, measuring what is reasonable presents challenges and remains difficult to measure.



Following the local health department legal requirements or recommendations, as well as the guidance of experts from organizations such as the Centers for Disease Control and Prevention (CDC) and World Health Organization (WHO) are important standards. Conference standards should also be followed. Churches and other religious institutions may have a duty to:

- Take reasonable steps to exclude people infected with COVID-19.
- Remediate the premises when the institution becomes aware of exposure to the virus. This can take the form of sanitizing the facility with specific products designed to kill the virus.
- Take steps to require members or other visitors to conform with CDC and local health department recommendations for social distancing, facial coverings, and other steps.
- Screen members and visitors with a health questionnaire or possibly a non-invasive measure of body temperature.
- Warn or inform members and visitors if it becomes known that an infected person visited the institution and possibly exposed others.
- Otherwise follow CDC and local public health authorities' recommendations.

Once a duty is established, liability exposure can attach if a defendant breaches the established duty. The breach must also cause the damage claimed, and there must be actual damages caused by the breach of duty.

Insurance and COVID-19

If a liability claim or lawsuit is presented against a Seventh-day Adventist organization, Adventist Risk Management, Inc. (ARM) will review the facts, the insurance policy, and the law to determine if insurance coverage applies to the loss. Please submit claims by using the [How to File a Claim](#) at our website.

What can you do?

With proper planning and implementation, our Adventist entities can mitigate this risk whether it is covered by insurance or not. Planning and implementing loss control measures serve a dual purpose to prevent claims and improve our defense if a claim is presented. These habits form the foundation of the defense of any claim.

It should be noted that individuals attend church voluntarily. Considering this relationship, ARM does not recommend requiring that attendees sign a waiver or release. Instead, it is better to advise everyone of the risk and the institutional measures taken to mitigate the risk. All organizations should follow the advise of their Division, Union or Conference.

It is critical that any behavioral expectations be clearly communicated and enforced. Measures such as seating restrictions that support social distancing should be announced and published. It may be appropriate to share this information via email or a pre-reopening virtual meeting. When people arrive at the church there should be clear signage about precautions and expectations. Reference to these behavioral expectations should also be announced by greeters, in Sabbath School, and during the announcements during the worship hour.

Please be understanding if a volunteer or member expresses they are not comfortable coming to church under the current circumstances. A concerned person should not feel pressured to attend. In the case of a volunteer, it may present a challenge to find a replacement, but it is necessary.



Resources

Adventist Risk management has a dedicated webpage <https://adventistrisk.org/covid19> that has many resources to assist churches/conferences as they consider re-opening. Some of the key resources include:

- [Q&A about COVID-19 issues](#)
- [How to Maintain a “Closed” Building](#)
- [Working with Children Online](#)
- [Reopening Churches webinar](#)
- [Returning to the Classroom webinar series](#)

The information provided is intended to be helpful, but it does not constitute legal advice and is not a substitute for the advice from a licensed attorney in your area. We strongly encourage you to regularly consult with a local attorney as part of your risk management program. References to insurance coverages are intended to help readers better understand how these coverages might apply. No insurance coverage provided by Adventist Risk Management, Inc., Gencon Insurance Company of Vermont, or Gencon Insurance Company International, is offered or modified in any way through the descriptions conveyed above. Coverage for actual claims will be based on applicable policy documents applied to the individual facts of an actual claim event.

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