

A man with a beard, wearing a yellow hard hat and a dark suit, is looking down at a clipboard he is holding. He is in a factory or industrial setting, with blurred workers in the background. The text is overlaid on the image.

# ***BLUEPRINT FOR*** **BUSINESS SAFETY AND SECURITY**

**A Guide to Protecting  
Your Business**

**William F. Blake,  
MS, CPP, CFE**

# **BLUEPRINT FOR BUSINESS SAFETY AND SECURITY**

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*By*

**WILLIAM F. BLAKE, MS, CPP, CFE**



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## PREFACE

The average small- to medium-sized business owner is frequently unaware of safety and security issues that affect their business. When a person suffers a loss or injury while on the business property, there is an expectation by the staff member or customer that they are safe and secure from harm. As a result, a claim of negligent security can be made and very expensive civil litigation can ensue. It is reported that the average no contest civil litigation negligent security case settles for about \$600,000 plus attorney's fees and expenses. This cost does not include damage to the reputation of the business and the business owner.

The harm may be the result of an employee's assault on a customer when an appropriate background investigation could have revealed that the employee had a criminal record for violence. It could also result from the failure of a security device or system due to inadequate maintenance. A problem could arise when an employee's spouse arrives at the business and seriously assaults the employee.

*Blueprint for Business Safety and Security* outlines some of these issues and discusses some reasonable and appropriate measures to take in order to reduce the potential for negligent security claims. The primary objective is to assist the business owner to maintain a reputation as a safe location to work and conduct business. It will also be of interest to private investigators, attorneys, security professionals, law enforcement personnel, and students of security.

W.F.B.



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# **BLUEPRINT FOR BUSINESS SAFETY AND SECURITY**



## Chapter 1

### INTRODUCTION

**M**any factors influence the success of a business and its financial viability. The reputation of the business owner and the business is the greatest asset of the business owner. Some will say that their most important asset is their employees or their business product or service. However, the best staff and product or service is only as good as the individuals associated with providing the product or service to the customer. The safety and security of the business environment is an essential element of your reputation. If customers are concerned for their safety and security while at your facility, they will defer to similar businesses which they believe are a safety facility.

#### **What Are the Potential Costs of Negligence Security Claims?**

The most significant non-financial cost to the business owner will be the impact on their personal and business reputations. Negligent security claims may indicate to the business' customers that the business owner is not concerned with the safety and security of those individuals on his property. Additionally, there are several potential financial costs that may be included in the plaintiff's litigation action:

1. Medical expenses. Hospital stays, surgeries, doctor visits, medication, rehabilitation therapies, and other medical costs may be a significant part of the damages.
2. Lost income. This includes wages, bonuses, benefits, and income from self-employment, and other income that the plaintiff is unable to earn because of injuries.
3. Out-of-pocket costs. Any bill that the plaintiff has due because of his injuries may be compensable. This could include things

such as childcare, cleaning help, and transportation costs made necessary by the plaintiff's injury.

4. Pain and suffering. The plaintiff's physical pain and emotional suffering may be significant and may be compensated.

### **What Factors Influence the Safety and Security of My Business?**

Every jurisdiction has a prescribed requirement for the safety and security of a business environment. It may be referred to by different names, but it is primarily an outline of premises liability and negligent security.

Premises negligent security claims arise when someone suffers an injury or loss in violation of the theory that an individual should be reasonably safe in their business, residential, or recreational environment. An owner or occupier of property cannot guarantee that injury or loss will not occur but ignoring evidence of potential injury or loss can result in a claim of negligence. Compensation for such loss due to negligence can only be assessed when there is appropriate warning to the owner or occupier of property to the probable danger and the owner fails to take reasonable measures to contain or reduce the danger.

Cases of negligence are based on the delicate balance between the rights of an individual to be safe and secure and the rights of a business owner to make a profit. A balance is created by the theory that an owner or occupier of property is not an insurer of the safety of others. The apparent tilt of the balance in favor of the business owner is offset by a requirement that the owner know the probability of injury or loss to occur. The owner must then take reasonable measures to reduce the potential for harm.

The legal questions arising from an injury or loss are the domain of the attorneys for the plaintiff and defendant, as well as the responsible owner or manager:

1. Did the defendant owe a legal duty to the plaintiff?
2. Did the defendant actually know about a danger on the property, or as a person using reasonable care, should the defendant have known about it?
3. Did the defendant fail to use reasonable care to protect against the danger on the property?
4. Was the defendant's failure to use reasonable care the direct cause of the plaintiff's injury, damage, or loss?

The interpretation of these questions as they apply to a specific set of circumstances is frequently in dispute. Determining injury or loss is normally not a difficult issue. The more complex issues are:

1. Did the business owners know, or should they have known, there was a probability that a specific type incident would occur?
2. Were the measures taken to protect individuals on the property, if any, reasonable in nature and adequate in quantity to counter the probability of a specific incident occurring?
3. Did the injury or loss occur as a direct result of the business owner's failure to take reasonable and appropriate measures to safeguard the injured party?

How to reduce the potential for this type of loss is not an exact science but a problem area that can be critically analyzed by owners and managers to identify reasonable and appropriate countermeasures. The process of analysis for identifying appropriate safety and security measures is also used by the plaintiff's attorney to develop information to prosecute their litigation. An understanding of the analysis process is as much a tool for loss prevention as it is for prosecution or defense of litigation. An understanding of the legal concepts involved and the identification of appropriate measures to provide adequate safety and security will contribute to profit levels.

The definitions of *probability* and *reasonableness* are not difficult concepts. A problem arises when the plaintiff in litigation alleges a business owner unreasonably placed the pursuit of profit ahead of providing a safe and secure environment in which to work, live, shop, or engage in recreation. While numerous facts have an impact on the definition of duty to protect business customers, the analysis strategy is relatively simple and can frequently be accomplished without large financial expenditures. The development of relevant information can be easily accomplished by the business owner. The legal implications must be interpreted by an attorney.

An understanding of the methods for evaluating risks and identifying reasonable security measures for reducing of premises liability can be a significant loss prevention tool. The costs of liability prevention measures are significantly less than the average settlement costs.

The business question to be answered by the property owner or manager is: *Do I spend the money now to identify problem areas and appro-*

*priate countermeasures, or do I take my chances if litigation is initiated?* This cannot be a strict financial decision. Losses due to morale problems, reduced sales, and poor public relations because of the fear of injury or loss may be substantial but cannot be quantified in financial terms.

Loss prevention measures and techniques should be an important management tool. Concentrating on increasing sales, occupancy rates, or other income indicators and underestimating the value of cost control measures will require a greater increase in gross income to achieve an acceptable net income level. The cost of potential litigation prevention is one of the intangible balancing factors between income and expenses.

Whether a review of safety and security measures is undertaken for purposes of loss prevention or litigation, it is important to know the laws and how they are evaluated, and how an appropriate expert in safety and security can contribute to preventing premises security claims, the various safety and security issues to be identified contribute to your objectives. A professional security expert who is knowledgeable of the pertinent laws and viable cost-effective security countermeasures should be one of the central figures in premises security prevention and litigation. It is estimated that the costs for non-contested settlement is \$600,000 plus attorney fees and expenses.

### **What Are the Legal Elements of a Premises Security Claim?**

Lawsuits against businesses for inadequate security may be brought under various legal theories, depending on the facts of a particular case and the creativity of the lawyers. Although premises liability law varies from state to state, the general legal analysis used by practitioners is consistent. Common theories include breach of contract, promissory estoppel, deceptive trade practices, and negligence. The most common theory is premises liability. As with other negligent theories, practitioners apply the tort law concepts of duty, foreseeability, reasonableness and causation.

**DUTY AND REASONABLENESS.** The duty owed by an owner or occupier of a business to individuals depends on the relationship of the parties. Historically, the extent of the owner or occupier's liability rested upon whether the individual was a *trespasser*, a *licensee*, or an *invitee*. A trespasser is someone who enters upon the premises without consent or a privilege to do so.<sup>1</sup> A licensee is someone who enters the

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1. Restatement (Second) of Torts, 329