



Just in Time for Winter: New Law Further Protects Municipalities from Sidewalk "Slip and Fall" Lawsuits

Foster Swift Municipal Law News

January 6, 2017

PRACTICE AREAS

Municipal & Public Entity Law

Governor Snyder approved a new law on Tuesday that gives municipalities a stronger defense in sidewalk-injury lawsuits. PA 419 of 2016 amends Section 2a of the Governmental Liability for Negligence Act (Act 170 of 1964), which sets forth the extent of a municipality's duties and liability in property and personal injury claims related to sidewalk maintenance.

Under existing law, a plaintiff must prove that, at least 30 days before the occurrence of the relevant injury or damage, the municipality knew or should have known of the existence of a defect in the sidewalk. In such an action, the municipality is presumed to have maintained the sidewalk in reasonable repair. However, prior to enactment of PA 419 of 2016, municipalities were limited in which defenses they could raise against such lawsuits. Under the amended law, municipalities are still responsible for maintaining sidewalks adjacent to municipal, county or state highways in reasonable repair, but they may now utilize *any* defense available with respect to a premises liability claim, including the defense commonly used by private businesses that the sidewalk condition was "open and obvious."

The open and obvious defense shields landowners from liability if an average user with ordinary intelligence would have been able to discover the danger on casual inspection ("open and obvious"). Under the doctrine, landowners must warn of hidden defects, but are not required to protect or warn visitors about open and obvious conditions. Particularly relevant given the state's current wintery conditions, hazards presented by visible ice and snow are generally considered open and obvious under Michigan law, absent special circumstances.

If you have any questions about the amendments to the Governmental Liability for Negligence Act, please contact a Foster Swift municipal attorney.
