

MANAGING RISKS THROUGH EFFECTIVE SIGNAGE

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About CIRMA

CIRMA was established as a Connecticut Conference of Municipalities (CCM) service program—Connecticut’s association of towns and cities. Today, CIRMA is Connecticut’s number-one municipal risk financing and risk management services provider for Connecticut’s public entities. A member-owned and governed agency, CIRMA provides high-quality, tailored insurance for municipalities, school districts, and local public agencies. CIRMA operates competitive Workers’ Compensation and Liability-Auto-Property pools and provides holistic claims services and risk management solutions exclusively to the Connecticut public sector.

Background

For over 40 years, CIRMA has championed Connecticut municipalities in understanding and managing risk with confidence. However, risk cannot always be avoided due to the inherent nature of the vital work that public entity employees do. Cities, towns, public schools, and local public agencies provide spaces and services to their constituents, many of which carry the likelihood that an injury may occur. This is evident in public swimming areas, town ice rinks, public playgrounds, and municipal parking lots. The number one goal of each public and school official is to maintain the safety of their staff and constituents. While this is achieved through holistic and continuing efforts, the effective use of signage can play a vital role in maintaining safety.

When entities provide public spaces and services to their constituents, they have a duty of care to provide safe environments. **“Duty of Care”** is a term used in determining when a person or entity may be liable and can be defined as “a requirement that a person [or entity] act toward others and the public with the watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would use.”¹ Plaintiffs commonly rely on a municipality’s duty of care to satisfy the first prong of a negligence lawsuit brought against a public entity.

¹ <https://dictionary.law.com/Default.aspx?selected=599>



Furthermore, plaintiffs attempt to prove to the courts that the municipality breached its duty of care (second prong), which was the proximate cause of the damage sustained by the plaintiff (third and fourth prongs).

The four (4) elements required to establish an entity's negligence are²:

- **Existence of a duty**
- **The defendant breached that duty**
- **Plaintiff suffered an injury**
- **Proof that the defendant's breach caused the plaintiff's injury**

While compliance with this duty can be complicated by evolving safety standards and budget constraints, reasonable efforts to identify and respond to risk can assist municipalities in defending against liability claims.

This resource is not an all-encompassing playbook for successfully navigating the complexities of public entity liability; however, CIRMA Risk Management aims to address how signage can affect the defensibility of such claims. Accordingly, we will explore the following:

- Why signs are used
- Common misconceptions about proper signage
- How to incorporate best practices in designing and installing signs

Why Signs Are Used

Investigating an accident is a lot like telling a story. Key facts, such as **when** and **where** the incident occurred and **what** was known or **what** should have been known at the time of the incident, help us assess a municipality's liability. However, while signs can contribute to telling this story, they do not always tell the whole story. Thus, they should be used as an entity's last line of defense, not a fix-all solution to eliminate liability.

² <https://www.law.cornell.edu/wex/negligence>

³ <https://www.ue.org/risk-management/enterprise-risk-management/good-signage-good-risk-management/>

⁴ <https://www.justia.com/injury/negligence-theory/assumption-of-risk/>

A sign is a one-way method of communication. "Signs are an important risk management tool, warning of hidden dangers to prevent injuries and reduce liability."³ The purpose of signage is to provide information that the receiver can use to decide. So why should we use signs? By clearly communicating rules, expectations, and known conditions through effective signage, leadership can **help constituents make well-informed decisions** to maintain their safety.

In a **negligence lawsuit**, a plaintiff will illustrate how each of the four elements of the claim was satisfied, beginning with establishing that the defendant had a duty of care. "Signs can help [entities] meet their duty of care to warn of foreseeable risks."³ The defendant, in this case, the public entity, may rely on a defense tactic known as "**assumption of risk.**" In other words, the public entity will claim that the plaintiff knew about the condition that caused the damage and willingly assumed the risk. The posted signage will be used as evidence that the municipality adequately and sufficiently communicated safety information but that the plaintiff knowingly assumed the risk anyway.

Under the Federal Rules of Civil Procedure, assumption of risk is an affirmative defense in the law of torts that a defendant can raise in a negligence action ... In order to use the assumption of risk defense successfully, the defendant must demonstrate the following:

- **The plaintiff had actual knowledge of the risk involved; and**
- **The plaintiff voluntarily accepted the risk, either expressly through agreement or implied by their words or conduct.**⁴

In some instances, signage is required by law, thus taking discretion out of our decision-making process. One example of this is Connecticut’s requirements for public swimming areas, which can be found under **Connecticut Department of Public Health (DPH) Public Health Code Section 19a-36-B61**. By law, public entities are not required to provide lifeguards at public swimming areas; however, if a municipality chooses not to or cannot provide lifeguards at public swimming areas, then “one or more warning signs shall be posted in one or more visible locations. The warning sign shall state ‘Warning – No Lifeguard on Duty’ with letters that are legible and at least four inches high” (**Subsection (6)(A)**). Furthermore, all public swimming areas shall have a sign posted in at least one visible location, with font no less than a half-inch in size, containing the following information:

- (A) Hours of lifeguard coverage, if applicable;
- (B) Emergency phone information indicating whether a phone is available; and
- (C) Location of the nearest first aid unit if one is provided on the premises.⁵

When the law requires a sign to be posted with specific lettering, the municipality does not have discretion—the sign must be posted with the lettering required by law. In other words, the posting of that sign becomes a ministerial act, significantly affecting the defensibility of a liability claim. However, laws do not always dictate when signage is required, which leaves municipalities with the discretion in determining when and where to place signs.

Recommendations for creating and installing signage are included later in this publication. To first understand how to use signage effectively, it is important to review the different types of signs at our disposal⁶ (including, but not limited to):

- Prohibit activities (“No Smoking”)
- Warn of certain hazards, including those that are temporary (“Wet Floor”)

- Mandate certain precautions (“Eye Protection Required”)
- Identify emergency egress routes (illuminated “Exit” sign)
- Encourage safe behavior (“Lock Your Car, Hide Your Valuables”)



⁵ https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/recreation/pdf/19a36B61Regspdf.pdf

⁶ <https://www.ecclesiastical.com/documents/safety-signs-pd3758.pdf>

Common Misconceptions About Proper Signage

The scenarios illustrated in this section do not intend to cover all areas where the effectiveness of signage is limited. For further assistance, consider contacting CIRMA Risk Management directly with questions or concerns.

1. **Misconception Number One:** *If I have a good sign, I do not have to fix a hazardous condition.*

Signage is not a fix-all solution and should not replace regular maintenance. Efforts should be made to regularly identify and address conditions that may cause injury or further damage. Generally, municipalities in Connecticut are not liable for negligent acts or omissions requiring the exercise of judgment or discretion.⁷ However, Connecticut General Statute Section 52-557(n) outlines instances where the municipality may be negligent. The courts have determined that willful, wanton, or reckless misconduct that is more than any mere mistake resulting from inexperience, excitement, or confusion and more than mere thoughtlessness, inadvertence, or inattention may limit immunity. Willful, wanton, or reckless misconduct refers to unreasonable conduct involving an extreme departure from ordinary care in a situation where a high degree of danger is apparent.⁸ Consider developing or reviewing your entity's preventative maintenance plans to identify and treat conditions needing repair.

2. **Misconception Number Two:** *"At your own risk" signage will protect my municipality in all circumstances.*

"At your own risk" signage does not protect you from potential exposures. Again, a sign is not a replacement for regular maintenance. When a constituent accesses a public space, there is an expectation that reasonable efforts have been made to make the environment safe. "If [you have] known

that the playground swing set has been broken for months and you [have not] taken any steps to fix it or tell children not to use it, your use at your own risk disclaimer likely [will not] be much help in court.⁹

"Use at your own risk" signage is vague, and courts may invalidate such agreement if it is unreasonable.¹⁰ Consider utilizing signage that can inform behavior. For instance, consider replacing signage indicating "Park At Your Own Risk" with verbiage stating, "Lock Your Vehicle. Do Not Leave Valuables In Your Car. Report Suspicious Activity To XXX." In this example, the entity is replacing a vague waiver of liability language, which some courts may find unreasonable, with instructions on how vehicle owners can better protect their property.

Best Practices in Designing and Installing Signs

Now that we have established that public entities must maintain their public spaces (duty of care) and that signage can assist in satisfying that duty, we will explore some best practices to consider when designing and installing signage in public spaces. Consider creating signage that is **Accessible, Understandable, Informational and Reviewed** regularly by key decision-makers, including the entity's legal counsel.

Signage is Accessible

If a tree falls in the forest and no one is around to hear it, does it make a sound? While that question has been debated in the scientific and philosophical communities for many years, we can state with more certainty that inaccessible signage is ineffective. In other words, if a sign is placed where no one can access it, did it make a difference? The answer is likely, no.

As a best practice, consider placing signage at all accessible entry locations to maximize the possibility of patrons seeing it. When doing this, consider that there may be multiple entrances to the area. One example of this may be a playground located in a park's direct center.

⁷ <https://www.cga.ct.gov/2011/rpt/2011-R-0076.htm>

⁸ <https://cga.ct.gov/2009/rpt/2009-R-0444.htm>

⁹ <https://www.disclaimertemplate.net/use-own-risk-disclaimers/>

¹⁰ <https://www.mwl-law.com/wp-content/uploads/2018/05/EXCULPATORY-AGREEMENTS-AND-LIABILITY-WAIVERS-CHART.pdf>



Often, signage is posted on one side of the play area, typically the side closest to the parking area. Consider that some parents or guardians supervising children on the play equipment may not see the sign if they are entering the area from another walking path or from the ball fields. Furthermore, assess if the signage is noticeable from the designated seating area located close to the playground, as many people may station themselves there to supervise their child.

Signage is Understandable

We have established that the purpose of signage is to provide information so that the receiver can decide.

Signage should be clear, concise, and descriptive.

Imagine driving along a one-way road in an area you have never visited. You have programmed your phone's GPS to provide you with turn-by-turn directions, but poor cell service has rendered the app inoperable. Now you are relying on signage posted along the road and figure that you could stop at the nearest gas station to ask for directions. As you continue to travel, you see a sign with a picture of a gas station pump. Below the picture is a sign that reads, "Gas Station 1 Mile: When You Come to Fork in the Road, Take It." While this quote commonly attributed to late New York Yankee great Yogi Berra generates a laugh during graduation

speeches, you do not understand what you should do at the upcoming fork in the road to arrive at a gas station.

Although the imaginary sign was ultimately deemed unusable, we can apply some best practices from this example to our sign. First and foremost, the first thing that your eyes were drawn to was the picture of the gas station pump. Pictograms often assist in communicating the scope of the sign, especially in communities with diverse backgrounds and possible language barriers. Pictograms are eye-catching, and *good* pictograms can convey a more complete story that may supplement the sign's message. An example of this is a "NO DIVING" pictogram.



11

¹¹ <https://www.vecteezy.com/free-vector/no-diving>

The imaginary sign in our example continued strong, stating that the gas station was one mile away. Again, this language is clear and concise. Too many words may be difficult to understand or prohibit the viewer from reading the entire sign in some instances.

Humans also look for keywords that communicate information quickly. Commonly, our brains are conditioned to look for words like *Danger*, *Caution*, and *Warning*. OSHA Standard **29 CFR 1910.145** should be used as a reference when identifying and communicating known hazards to warn employees or community members who may be exposed to hazards.¹² The OSHA definitions of such signs have been included below:

- **Danger** - Danger signs indicate immediate danger and that special precautions are necessary.



- **Caution** - Caution signs shall be used only to warn against potential hazards or to caution against unsafe practices, such as in instances where proper precaution should be taken.



- **Warning** - Indicates a hazard level between "Danger" and "Caution" and meets the applicable OSHA and ANSI requirements stated in **29 CFR 1910.145**.



As you continue creating new and reviewing existing signage, emphasis should be placed on ensuring that community members understand the sign.



¹² <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.145>

Signage is Understandable

Now that we can access a sign that the receiver can understand, we must ensure that the information in the sign helps the receiver decide. We must ask ourselves,

“what decisions do we want the receiver to make?”. While the answers to this question may differ depending on the situation, examples are included in the following table, along with recommended signage language:

What decision do we want the receiver to make?	Recommendation	Example
<i>We want people to use this space when it is safe to do so.</i>	Consider including the hours of operation.	“Park hours are from ... to ...”
<i>We want people to act safely when using this space.</i>	Consider stating the safety rules.*	“No horse playing or rough-housing.” “Adult supervision is recommended.” “Alcohol is prohibited.”
<i>We want people to be assisted when there is an emergency.</i>	Consider posting an emergency call number.	“In case of emergency, call 911.”
<i>We want people to inform us when repairs are required.</i>	Consider posting a regularly monitored phone number that patrons can call to report damages.	“To report incidents, please call ... and leave a message or email ...”

**Additional review of safety rules may be required continuously. Consider engaging the signage review subsection later in this document for more information on who should be involved.*





Signage is Reviewed

The review process is the final, ongoing step to ensuring signage effectively communicates information to the receiver. In reviewing signage, consider two (2) key elements:

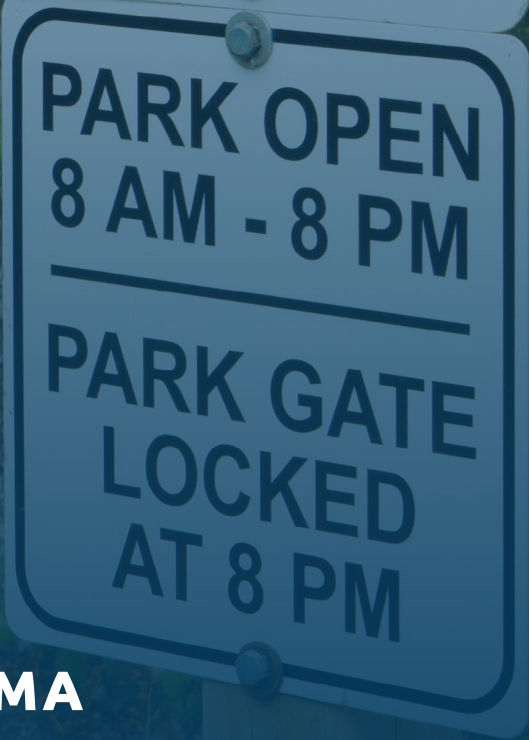
- Who is reviewing the sign?
- How often should we review the sign?

Multiple stakeholders within the public entity may bring varying expertise to the review process; thus, sign reviews should be a team sport. Consider including those with knowledge of the entity's loss history and manner of use, such as supervisors and department heads. While risk management is often a tool used by these executive leaders, consider ensuring that the entity's risk manager is also involved in the process. Risk managers often possess institutional knowledge regarding liability claims that can be valuable in this process.

Signage should be reviewed before installation, as well as regularly after that. Multiple factors may affect how often "regular" reviews are needed. First, consider determining how often such areas are used. For example, if children in your community rarely use a playground, perhaps an annual review of the sign would suffice. In areas used more regularly by constituents, reviews may be more often. Also, consider if conditions have changed to warrant a review, such as a weather event that has impacted the area somehow. For instance, a sign posted at a town park may state that the park is open from sunrise to sundown.

However, a recent weather event significantly damaged the park, causing executive leadership to close the park for cleanup and restoration temporarily. The hours of operation are no longer sunrise to sundown; the park is now closed. Signage now posted at the park may no longer be accurate, causing our signage review team to make a change, including removing the sign and replacing it with the new rules.

CIRMA Risk Management professionals provide value-added resources to the CIRMA Membership. Our team helps you keep our communities safe and running smoothly. We work side-by-side to help you create a safer and more efficient place to deliver quality, uninterrupted services to your constituents. Consider contacting CIRMA Risk Management with questions or concerns about your entity's use of signage. As with any liability topic, CIRMA Risk Management also recommends consulting with your entity's legal counsel before installing any signage to ensure that the sign adequately meets your entity's risk appetite.



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