



HS Broadcast – Icy Paths

I would like to give you some details of an interesting case that went to Tribunal in 2013. Kennedy v Cordia (Services) LLP; this is especially relevant as the depths of winter are upon us.

Tracey Kennedy (K) was a home carer who was visiting an elderly client at the time of the accident. As she made her way from the car to the front door, her feet slipped and she fell, fracturing her wrist.

When the case was heard at the Scottish Court of Session in August 2013 it found that K's employer, Cordia (Services) LLP (C) had been negligent. It also concluded that the firm had breached regulations relating to risk assessment and personal protective equipment (PPE). The particular finding on the subject of PPE was that C ought to have provided non-slip shoe add-ons, such as those known as Yaktrax.

C appealed to the Inner House of the Scottish Court of Session where it successfully argued that the law had been misapplied. The judgment was overturned. However, the case was then referred to the Supreme Court which concluded that C was liable after all.

The Supreme Court examined the company's approach to risk assessment. It found that risk assessments produced in the years preceding the accident had identified the potential for slipping on icy surfaces. Further, as there had been similar accidents, ice could be viewed as an obvious hazard affecting C's home carers in winter.

Please keep in mind that the fact that the hazard was naturally occurring did not absolve C from taking action, in just the same way as employers are

responsible for protecting employees from extremely hot or wet weather when they are at work.

In addition the Supreme Court also reviewed the provision of footwear. As part of their risk assessments staff were advised to wear "appropriate" footwear but no specification was given such as the footwear should be sturdy and have a good grip. Staff training also included a warning about access hazards but, again, specific advice was lacking. The company could have provided non-slip shoe add-ons such as Yaktrax; by not doing this the company was found to be in breach of the PPE 1992 regulations.

The Court decided that C had not only breached the regulations, but was also negligent in common law. Instead of trying to pass responsibility on to employees it should have examined the options for reducing the risk to employees and implemented suitable measures.

Therefore, when drafting risk assessments and looking at "Icy Path" issues please consider non-slip overshoes. They cost less than £20 and evidence suggests they are helpful in reducing the risk of slipping. If you do issue these then it may be a good idea to get staff to sign a piece of paper saying, "I confirm that I have received non-slip overshoes which are to be worn in icy conditions. If these are lost or damaged I will report it to my line manager."

Interestingly, in this case, C said it had rejected the idea of issuing Yaktrax following a trial, but there wasn't any evidence to prove it. Therefore in any situation like this, if you have tried something and you have decided not to go with it then this should be documented carefully with all the evidence included as to why the trial has been rejected