

RISK SIMPLIFIED

QUESTIONS

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Not So Attractive Nuisances

By Eric Lucero

For classified staff, the summer can be extremely busy as construction projects begin. These projects create an exposure to liability when visitors, children, and, yes, even trespassers are able to gain access to your construction project.

This liability is especially pointed at children under the Attractive Nuisance Doctrine. An attractive nuisance is an object, structure, or condition that is both dangerous and irresistibly inviting or intriguing to children. Generally, under the attractive nuisance doctrine, public entities can be held responsible if a child is injured by an “artificial condition” (i.e., an attractive nuisance) on the property and all five of the following criteria are met:

1. The public entity knows or should know that children are likely to trespass on the property.
2. The condition on the property has the potential to cause death or serious bodily harm to children.
3. The children involved are too young or inexperienced to understand the risk presented by the condition.
4. The benefit of maintaining the condition or the cost required to remedy the condition is minimal compared with the risk to children.
5. The public entity fails to take reasonable measures to eliminate the danger posed by the condition.

Courts apply these principles on a case-by-case basis, so the same condition considered as an



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attractive nuisance in one case may render an entirely different outcome in another.

It's no wonder that construction sites are one of the most common sources of attractive nuisances. With their brightly colored machines, giant piles of building materials, and an endless number of hiding places, it's easy to see why kids would want to explore a construction site. Common attractive nuisance cases at construction sites have involved:

- Falls through holes in unfinished second story floors, or where guardrails are missing or damaged.
- Injuries sustained while climbing heavy equipment parked on site.
- Injuries caused by unstable piles of materials, such as: lumber, stone, or sheetrock.
- Injuries resulting from falls into trenches, sewer drains, wells, pits, dumpsters, and other confined spaces

This exposure is fairly simple to control, but can easily be overlooked. Here are steps to prevent injuries and litigation while completing your summer construction projects:

- The project should require the contractor to secure the site with fencing and/or other reasonable materials to prevent unauthorized site access
- Conduct periodic documented inspections by both the district and the contractor to ensure that there are no defects to the fencing (especially before weekends and over holidays)
- Periodically conduct documented inspections of the worksite focusing on site access, fall hazards, confined spaces, and material storage hazards. This can also help prevent [Cal/OSHA fines under the multi-employer worksite citation policy](#).

By following these best practices, you can reduce a commonly overlooked risk arising from summer construction projects. For additional assistance, please contact our [Risk Control Department](#).

