



Law Q&A: Go beyond pool safety requirements to avoid lawsuits

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Q Will compliance with the applicable building and health codes protect my property from liability if there is an incident involving one of the swimming pools?

A Compliance with the applicable building and health codes will make sure that you are not exposed to liability on a Negligence Per Se claim in the event that someone is injured while using one of your pools. However, it is also advisable to make sure your property is in compliance with swimming pool industry standards because the industry standards often go beyond the statutory requirements of the building and health codes.

A Negligence Per Se claim is one where an injured party will contend that a defendant has liability exposure because of a failure to comply with applicable statutes, such as building and health codes. In the typical personal injury lawsuit, the plaintiff has the burden of proof in terms of demonstrating the defendant had a duty, that the defendant breached that duty and that the breach was a causal factor in the plaintiff's injury. In a Negligence Per Se case, once the plaintiff demonstrates the defendant failed to comply with an applicable statute, it creates a presumption that the duty was breached. For example, depending on the size and configuration of the pool(s), the building and/or health codes of most jurisdictions typically require that, at a minimum, the water depth be indicated by signs that are mounted in the pool deck at specified intervals and on the vertical wall in the tile line. Additionally, if there is no lifeguard on duty, then most jurisdictions require a sign advising swimmers of that fact.

However, compliance with such statutory requirements alone may not be sufficient to ward off a lawsuit in the event of a swimming pool-related injury because the Swimming Pool Industry Standards recommend safety precautions that go above and beyond the statutory requirements of the building and/or health codes. For example, the Swimming Pool Industry Standards recommend that pools also have the universal no diving symbol placed in areas where the pool is four feet deep or less and recommend that the depth marking be in metric measurements as well as traditional measurements.

In the event of a serious injury, an experienced plaintiff's attorney will argue that the property had an obligation to meet industry standards as well as the statutory requirements.

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