

# DJCOregon

## Oregon's Building Connections

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### Navigating potential liability for products sold, manufactured or installed

A contractor who manufactures, sells or installs products should have an understanding of Oregon's product liability law, including how it could create risk for the business, and the preemptive steps that can be taken to mitigate those potential risks. Following is a brief outline of the law and a look at the issues before contractors.

What is product liability? Basically, it's a body of law in Oregon (and other states have similar laws) that provides for monetary damages to a party who suffers personal injury or property damage as a result of a product manufactured, sold, leased, or - in certain cases - installed in a dangerous condition.

You may have heard of some of the most high-profile product liability cases surrounding cigarettes, asbestos, automobile parts and even breast implants. However, product liability law covers a wide array of products and businesses, including the construction industry. For example, Oregon product liability law has been applied to scaffolding, custom flooring, truss joists and beetle-infested lumber. It has also been applied to

equipment and machinery that could be used on a construction site - sanders and forklifts, for instance.

What kind of business is at risk for liability? In Oregon, the businesses that are at risk for product liability are those that manufacture, distribute, sell or lease products. Those categories may seem relatively straightforward, but the lines are sometimes blurred. One of the most common areas of confusion involves the situation where a contractor sells and installs a product that ultimately causes injury or property damage.

For example, in one Oregon case, a worker in a bakery slipped on an acrylic floor that had been sold and installed by a contractor over a concrete substrate. To apply the floor, the contractor had prepared the concrete surface, applied a low-viscosity prime coat, applied a thicker coat of viscous resin, and then applied acrylic flakes over the surface to accomplish the requested color and non-slip texture. However, the end result was a floor much slipperier than the product samples suggested.

The injured worker sued the contractor for product



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liability based on faulty installation of the floor. The contractor argued that product liability didn't apply to installation of a product; however, the Oregon court disagreed and held that installing the product on site was basically the same as manufacturing the product, for which product liability did indeed apply.

Courts have differentiated this scenario from a scenario where a contractor simply installs a prefabricated product that it neither designed nor sold. In that scenario, there would likely be no exposure for product liability based only on installation of the product (as opposed to the sale, manufacture, distribution or lease of a product).

So what does a business owner need to think about in regard to mitigating the risk of product liability exposure? If a business involves the supply, marketing, sale

or installation of a product, one would be wise to have contracts for goods and services reviewed. There are ways to limit or allocate potential exposure through proper use of indemnity or limitations of liability clauses.

Further, if a business owner becomes aware of any injury or property damage resulting from or potentially connected to the business or its products, contact a lawyer right away so that potential exposure can be mitigated and necessary steps can be taken to protect business interests.

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