

The Negligence Continuum



ORDINARY NEGLIGENCE

Someone [recreation provider in this context] fails to use reasonable care when they do something that a reasonably careful person would not do or fails to do something that a reasonably careful person would do under similar circumstances. UCJI 20.02

GROSS NEGLIGENCE

Gross negligence is negligence that is materially greater than the mere absence of reasonable care under the circumstances. Gross negligence is characterized by conscious indifference to or reckless disregard of the rights of others. UCJI 36.05.

NEGLIGENCE PER SE

Negligence Per Se is when a person (1) violates a statute, ordinance, regulation or rule, (2) the person harmed is of the group intended to be protected, and (3) the harm is the type of harm the law is intended to prevent, unless the alleged negligent person was acting with reasonable care under the circumstances. UCJI 20.04

CRIMINAL NEGLIGENCE

A person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. ORS 161.085 (10)

IMPACTED BY HB 3140

NOT IMPACTED BY HB 3140

Negligence Examples



ORDINARY NEGLIGENCE

A 40-year-old who drops a 30 lb. kettlebell and breaks his tow, now claims the gym is at fault because everyone lifting weights at the facility should be required to wear lifting gloves and sues for damages.

GROSS NEGLIGENCE

Raft operator sends out guides they know have been drinking, and patron dies after being thrown from raft.

Bungy jumping operator allows jumpers to use gear they know is defective and jumper is injured.

NEGLIGENCE PER SE

A childcare center leaves a 2-year-old child unattended for 30 minutes, and the child is injured.

A coach allows a teenager to play in a high school game, after the teen has been struck in the head and shows obvious signs of concussion.

CRIMINAL NEGLIGENCE

A chemical plant supervisor ignores repeated warnings about a faulty ventilation system. The systemic failures in safety procedures led to the release of 24,000 pounds of toxic gas. The gas exposure kills four workers and spreads into the surrounding community, endangering public health.

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