

Have an AED Program? It's Time to Evaluate a Response Program for Your Workplace!

It is 7 PM; most of your staff has gone home for the day leaving just 5-10 employees, many of which have not been trained to use your automatic external defibrillator (AED). Then it happens, someone in the office collapses in sudden cardiac arrest. Your staff calls 9-1-1, six minutes later the ambulance arrives. The employee does not survive; the family files a lawsuit seeking damages as a result of your staff's inability to provide reasonable emergency care (responding with your AED). Is this a realistic scenario? Yes.

Have you purchased an automatic external defibrillator (AED)? If you have, make sure your program meets acceptable standards to maintain your Good Samaritan protection. If your company has not established an AED program, you need to start thinking about when you will implement one. Benefits are clear and risks controllable when the proper steps are taken to implement an emergency response plan.

At Risk or Not

It's not surprising that owners and their staff are concerned about the legal implications of an AED program at their facility. Companies understandably fear negligence liability suits. In reality, the actual liability risk associated with AED programs is small and very controllable. But concerns are real and even recognized by the American Heart Association as a possible deterrent to the purchase and/or use of AEDs by companies. Documentation provided by legal research has not yet provided evidence of any lawsuits or claims paid by a company due to the improper use of an AED on their premises.

I have become a strong advocate for AED programs as the evidence supporting these programs is powerful and convincing. Over 350,000 deaths from cardiac arrest occur each year in the US; it is THE leading killer in the US (more than AIDS, Breast Cancer, Lung Cancer, Accidents and Stroke). Survival rates for cardiac arrests that occur outside a hospital have historically only been 3-5%. With an AED program in place, survival rates have reached 50-60% or EVEN MORE in some settings. A study evaluating the AED program at O'Hare International Airport showed a 55% survival rate for cardiac arrest victims in the terminal. In Vegas, survival rates in casinos are surpassing 70%. The University of Massachusetts in 2006 revealed a 75% SCA survival rate for their PAD program. It is well documented in the medical literature and elsewhere, that early defibrillation saves lives using AED technology. Clearly the benefits associated with a well prepared AED program will outweigh the risk of liability and as AEDs are becoming more affordable and available it will be hard for any juror to justify that a business is not liable for the lack of having an AED on premises.

What is your Duty?

When a company establishes an AED program and purchases the necessary equipment to provide care to its customers and employees, are they then responsible to ensure that the care is available, sufficient and not negligent? To assess the risk associated with having an AED program, you also need to weigh the risk of not having an AED program.

It is very important to recognize that negligence law does impose a duty upon airlines and other transportation providers, fitness centers, and other business entities to provide reasonable emergency assistance to passengers, guests, and other members of the public who utilize their premises or facilities. And this may include the provision of AEDs for sudden cardiac arrest, especially as early defibrillation becomes more of an accepted standard care and adopted by private business. The courts define what is "reasonable" based upon current standards or industry trends established in similar settings. Businesses that fail to purchase AEDs and implement early defibrillation programs may be at greatest risk. Add to this, an ever increasing public expectation that AEDs are everywhere. Interestingly, OSHA has recently published a technical information bulletin stating: "Employers *should* consider use of AEDs at their worksites to reduce the time to defibrillation with the goal of improving survival." Not a compliance standard, yet it provides further support for what could be considered reasonable care for an employee in cardiac arrest.

Risk Assessment

When considering an AED program for your company, it's important to consult your insurance carrier to determine what is best for your business. Most, if not all, can advise you on the risk associated with an AED program. However, an assessment of establishing an AED program must consider:

If sudden cardiac arrest is untreated, the victim will die. An AED can only help.

AEDs are safe and easy to use, even without any formal training.

Approved training programs are available from nationally accredited organizations (ASHI, AHA, ARC, and NSC).

Good Samaritan laws have become AED specific providing immunity for individuals and businesses.

Legislative Protections

Every state has some form of Good Samaritan Law and each has separately addressed the involvement of voluntary CPR

and AED responders with proper CPR and First Aid training. Some offer more protections than others. California has addressed the specific subject of AEDs in what may be the most comprehensive set of statutes in the country. California's basic Good Samaritan statute has been held to protect those rendering emergency medical care at the scene of a medical emergency. It therefore provides a liability shield for those rendering CPR, AED, First Aid or similar assistance in an emergency situation if certain requirements are met. In addition to the general Good Samaritan Statute, California provides specific protection to those providing and utilizing AEDs.

Individuals who operate an AED in an emergency situation are protected from liability under Civil Code §1714.21(b).

Minimizing the Legal Risk

You cannot eliminate the risk, but you can control it and therefore minimize the potential for a lawsuit. Attention to the following 5 essential elements is critical to maintaining your Good Samaritan protection and minimizing risk. Avoid cutting corners in any of these areas.

An entity that purchases an AED also has immunity under Civil Code §1797.196 if it complies with the following conditions:

1. The AED be maintained and regularly tested.
2. The AED be checked for readiness after each use and at least once every 30 days if the AED has not been used in the preceding 30 days.
3. Any person who uses an AED contacts emergency personnel as soon as possible, and reports any use of the AED to a licensed physician and to the local emergency medical services agency.
4. For every AED unit acquired up to 5 units, no less than 1 employee per AED unit shall complete a training course in CPR and AED use.
5. There is a written plan that describes the procedures to be followed in the event of an emergency that may involve the use of an AED.

The maintenance and readiness checks can be accomplished by simply observing the AED and assuring a blinking green light is present, indicating it is "ready."

Training at least one employee per unit for the first 5 units and one for each 5 units thereafter seems reasonable and easily accomplished, as is having one on site during normal operating hours.

Obviously each entity must decide for itself if the benefits of purchasing an AED outweigh the risks. A simple internet search reveals news stories of "AED saves" appearing daily. There have been reports of litigation in which it was alleged that an AED should have been present and wasn't, but one would be hard pressed to find one in which it was alleged that an AED was used and didn't work properly.

Summary

The liability associated with the implementation of an AED program is minimal. Legal fears should not deter you from considering the benefits of having an AED at your company as long as the 5 essentials for compliance are in place. In fact, companies that carefully adopt and implement a safety program that includes AEDs may well be at lowest risk of liability. Not only does placement of AEDs in public access buildings assure adherence to a reasonable standard of care for employees and the public, but more importantly it's sound public policy, a great public relations opportunity and evidences a commitment to the community at large, that says "We care about you and are willing to invest in the latest medical technology to give you a better chance of survival in case of an emergency."

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Note:

Information provided in this article is not intended as legal advice. While every effort is made to ensure accuracy of information, legal questions surrounding AED use can vary from state to state. If your company needs specific advice, we suggest you contact your insurance carrier or attorney.