

Kimball, Tirey & St. John LLP

Legal Alert

Automatic External Defibrillators in Commercial Property

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A recent California Supreme Court case, Michael Verdugo v. Target Corporation has ruled that the common law duty of reasonable care that Target owes to its business patrons does not include an obligation to install "Automatic External Defibrillators" (AED) in their stores. When a 49 year old patron suffered a fatal heart attack, her heirs brought an action against Target on the theory that it had a duty to install AED's in its stores "because of the important potentially life-saving role that an AED may play in the event of sudden cardiac arrest, the size of the Target store in question, the number of customers who patronize the store, and the relatively low cost of an AED device" They argued "Target's common law duty of reasonable care to its patrons included an obligation to obtain an AED". They argued that the common law requires imposition of this duty "for proprietors who have the manpower and the resources to fulfill the requirements of the AED immunity statutes without undue burden."

Target argued that the California legislature had already enacted statutes on this obligation, and the only business that was statutorily required to install an AED was a fitness ("health") studio by a California Health and Safety Code requirement. Target also argued that the statute that applied to AED's specifically did not require a business to install an AED, quoting from California Civil Code Section 1797.196, subdivision (f):

"Nothing in this section or Section 1714.21 of the Civil Code may be construed to require a building owner or a building manager to acquire and have installed an AED in any building." This section was a result of BOMA (Building Owners and Managers Association) California's stellar lobbying efforts.

The position taken by Target was not fully agreed to by the court. "Target maintains that its employees fully satisfied its common law duty of reasonable care by immediately summoning emergency medical personnel upon learning of the patron's collapse, and that at most it might be required to provide simple first aid measures but that it had no duty to acquire an AED in advance of the incident for potential use in the event of such a medical emergency."

The Supreme Court reasoned that even though current statutes did not require AED placements, and/or that these statutes were not pre-emptive of any common law requirements. This did not, in the court's opinion, in and of itself pre-empt a common law duty to have AED's on the premises.

However the court noted that there are extensive requirements involving training of operators, concurrent use of cardio pulmonary resuscitation, placement of the AED, tenant notification, and maintenance of the AED. The overall relative burden such a requirement would impose upon all businesses led the court to conclude that there is no common law duty for a business to install and make readily available AED's. The court stated "In light of the extent of the burden that would be imposed by a requirement to acquire and make available an AED and in the absence of any showing of heightened foreseeability of sudden cardiac arrest or of an increased risk of death, (as might occur in a fitness studio) we conclude that under California law, Target owes no common law duty to its customers to acquire and make available an AED."

The ultimate result, if you or your tenant place an AED in your establishment, is be prepared to comply with the extensive requirements set out by statute in order to be protected from liability. Although a “good Samaritan”, in an emergency, using an AED, uncompensated, not grossly negligent or intentionally acting to cause harm, is for the most part immune from civil liability, a business owner or lessor who installs them does so with some legal risk. Until the legislature acts to minimize liability, making it only apply to either intentional misconduct or gross negligence, no good deed may go unpunished.

For a more in-depth discussion on this topic, Robert Thorn and Jamie Sternberg have prepared an article titled “AED Devices in Commercial Properties” which can be found on our website www.kts-law.com.

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