



Deliberate Indifference is the standard by which conditions of confinement cases are measured.

Deliberate Indifference requires a showing that there was an excessive risk, knowledge of the risk, and conscious disregard of the risk.

DELIBERATE INDIFFERENCE

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INTRODUCTION

One standard utilized in determining civil rights liability is the “deliberate indifference” standard. Deliberate indifference arises primarily in conditions of confinement cases, brought under a claim for violation of 8th Amendment rights for convicted inmates, and claims for violation of the 14th Amendment by pretrial detainees.

The standard of “deliberate indifference” finds its primary application in conditions of confinement cases. These cases run the gamut from a failure to provide medical care, a failure to protect from violence, and even failure to prevent prison suicide. Thus, it is important to understand what is required for a showing of liability in these cases.

A. What is deliberate indifference?

Although the term “deliberate indifference” has been used as a standard of liability for some time, the first attempt to actually define deliberate indifference came in the Supreme Court case of Farmer v. Brennan, 511 U.S. 825 (1994). There, the court stated :

“. . . a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. . . . “

The Court provides that first there must be an excessive risk to the health and safety of the inmate. Secondly, a prison official must be aware of such a risk. It is not enough to say that the risk was obvious, and that the official should have known. The official must have actual knowledge of the risk. Finally, the official with such knowledge must consciously disregard that risk. Thus, the test is threefold. There is one objective element, requiring that there be a substantial risk of harm to the inmate, and two subjective elements, requiring that an official know of the risk, and that the official consciously disregards such risk.

Actual or constructive knowledge is a sufficient showing.

Mere negligence is not a sufficient showing.

1. Excessive risk of harm

The first part of the test requires that there be an excessive risk of harm. An excessive risk of harm has been articulated to mean an objective, sufficiently serious deprivation of rights suffered. This varies depending on the facts of each particular case. The case of Willis v. Baldwin, 70 F.3d 1074 (9th Cir. 1995) held that exposure to asbestos in a prison was an excessive risk of harm. The earlier Farmer case dealt with a transsexual inmate who had, in the past, been threatened with physical violence by other inmates. Clement v. Gomez 298 F.3d 898 (9th Cir. 2002) held that, when a medical issue which goes untreated could result in further injury or unnecessary and/or wanton infliction of pain, then the failure to treat the medical condition qualifies as an excessive risk of harm.

2. Knowledge of the risk

The next step in determining whether an official has been deliberately indifferent is to determine whether that official had knowledge of the risk of harm to the inmate. While actual knowledge of the risk may be the benchmark for meeting this prong, a Plaintiff may prove knowledge based on the obviousness of the surrounding circumstances. Farmer held that, in adopting this subjective element to show deliberate indifference, a willful failure to know of a risk would not be sufficient to show that an official had no knowledge of the risk.

A Plaintiff may prove knowledge based upon the obviousness of the situation. However, such a showing is not conclusive, and it can be rebutted by a showing of lack of knowledge on the part of the defendant official. Ultimately, it is up to the fact finder to determine whether knowledge exists. See Lolli v. County of Orange, 351 F.3d 410 (9th Cir. 2003), holding that, where a diabetic was clearly suffering from his condition, prison officials should have been aware from the facts presented that the inmate was at a substantial risk of harm.

3. Conscious Disregard

The final prong of the deliberate indifference test requires the court to determine if there has been a conscious disregard to the risk of harm a Plaintiff claims. Conscious disregard requires an official to act or fail to act (whichever may be the case), despite having knowledge of the risk of harm presented. A showing of negligence or even gross negligence, depending on the situation, will not suffice to prove that there was a conscious disregard of a risk. Daniels v. Williams, 474 US 327 (1986) (holding that a negligent act in failing to remove a pillow an inmate slipped on was not a conscious disregard of the inmates safety); McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1992) (holding that officials are culpable if they ignore or fail to respond to an inmates medical needs). There must be some conscious choice to either act in a manner which will negatively affect the inmate, or to not act such that an inmate is left to peril.

CONCLUSION

What is clear about deliberate indifference is that it is important for jail officials to not dismiss every claim made by inmates. It is not required that officials go out of their way to find problems that prisoners may face. However, if an official is made aware of facts that a prisoner may be at a risk, or if an official observes facts which indicate a prisoner is at risk, it is important to be proactive in attending to such risks.

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