

Hospitality Risks: Keeping Pace with Emerging Exposures

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The hospitality industry faces a unique set of risk management challenges as it strives to provide the services and amenities that guests demand for their travels and vacations. For hotels, motels, resorts and casinos, the risks encompass everything from slip- and-fall incidents to food-borne illness, transportation liabilities and cyber threats. Some risks are heightened by the typically high turnover of employees and large numbers of part-time workers within the industry.

New risks are always appearing and, as regulations and trends change, even familiar exposures may present new challenges. It is important that owners and managers of hospitality properties keep current with emerging liability trends and develop risk management strategies to address them. That should include seeking expert advice when necessary and reviewing their primary and excess insurance coverage, particularly since liability awards and settlements can reach well into the millions of dollars in cases involving bodily injuries to guests and others.

The emerging exposures in the industry include food safety, indoor air quality, bed bugs, liquor liability, transportation, access for disabled guests, cyber security threats and even the use of premises for manufacturing illegal drugs. By taking the appropriate steps, hospitality companies can make sure that their risk management strategy keeps pace with these evolving challenges.

Food-Borne Illness

Food safety remains one of the biggest risks for the industry, but the growing trend of multinational food sourcing has made it an even greater challenge. A study of food-borne illnesses over a 10-year period showed that restaurants pose twice the risk of such incidents

as homes, according to the Center for Science in the Public Interest.¹ Among the common infections are salmonella, campylobacter from contaminated chicken, vibrio from raw shellfish and E. coli. While salmonella infections have been decreasing, campylobacter and vibrio infections are on the rise, and progress in reducing E. coli has stalled, according to the Centers for Disease Control and Prevention.²

Norovirus remains a leading cause of illnesses from contaminated food. The virus can be spread when food comes into contact with infected people or contaminated surfaces. Food can also be contaminated at the source, for instance oysters taken from contaminated water or fruit and vegetables contaminated in the field.³ A norovirus outbreak can lead to significant expense because the property may have to be shut down to undergo extensive cleaning. Business interruption costs and possible bodily injury claims also have to be considered along with workers' compensation claims from sickened employees.

Restaurant personnel should, of course, be thoroughly trained in food handling, sanitation and health safety procedures, but risk management best practices extend to the sourcing of food products. In a global marketplace, some products may come from areas where controls aren't as stringent as they are domestically. Thorough review of food vendors' quality controls will ensure that the food they provide is as safe as possible. Vendors should have adequate insurance that provides coverage for the establishment as an additional insured. It is also important to document health and safety procedures as well as training, primarily to improve food safety but also to support the defense in case of a claim. Because even one food safety incident can jeopardize a restaurant's business, facilities that serve food need to consider

the potential impact to their reputation and make sure that they have access to the resource they will need in the event of an incident, such as food testing and crisis communications experts.

Legionella and Carbon Monoxide

Among indoor air quality problems, bacteria and carbon monoxide pose significant challenges. Many of the amenities that help to attract guests and keep them comfortable can harbor legionella pneumophila, the bacteria that causes the potentially fatal

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To prevent the spread of the bacteria, maintenance of heating and cooling systems, water systems, spa and pool areas should be conducted by a vendor experienced in testing for legionella.



Vendors should have all required licenses and adequate insurance that provides additional insured coverage. For outdoor misters, testing should include the piping and plumbing. Property owners and managers should note that vendors may not perform tests for legionella unless they are specifically asked and should monitor them to make sure that they do provide the testing they've been hired to perform.

Carbon monoxide also is a growing concern. USA Today reported in 2013 that eight people had died and 170 others had been treated for carbon monoxide poisoning in hotels over the prior three-year period.⁶ In 2014, a New York state restaurant manager died and 19 people were sickened by carbon monoxide that came from a leaky flue in the restaurant's heating system.⁷ The danger is heightened by the fact that carbon monoxide may accumulate in rooms that are some distance from the source and injure guests and staff. Besides death, carbon monoxide poisoning may lead to other bodily injuries, such as brain damage.

While requirements for carbon monoxide monitors vary by state, the trend is toward requiring hard-wired alarms. Whatever the local requirements, companies should consider installing hard-wired devices to protect guests and to reduce potential liability.

Liquor Liability

Establishments that serve liquor face a host of potentially expensive and damaging exposures involving alcohol. It is essential that employees who serve alcohol have the appropriate licenses and training. Still, a frequently overlooked risk is that the staff may become complacent over time and less rigorous in applying the appropriate procedures. In addition, new risks can arise with drink fads. Earlier this year, a Florida woman filed a lawsuit alleging that she suffered internal injuries after a caterer served a cocktail containing liquid nitrogen to create a smoky effect.⁸

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The potential liabilities extend beyond the property itself. It's not enough to stop serving a customer if the staff is concerned about their level of intoxication. Hotels, for instance, may want to consider measures to escort guests who have been drinking back to their rooms safely. Bars and restaurants have to keep in mind the varying state liability standards for patrons who drive after drinking. Under the dram shop laws in 30 states, establishments that serve liquor may be held liable for serving alcohol to intoxicated individuals who later cause injuries or death. Twenty-two of those states limit the liability to cases where the individual was visibly intoxicated or under the legal drinking age.⁹ In some states, the serving establishment may be held liable even if the customer was not visibly intoxicated.

To address these concerns, comprehensive training is crucial for all staff who serve liquor, particularly because some may be part time or transient employees. That training should meet the best practices for the industry and be thoroughly documented. In some states, evidence of such training may be considered as a mitigating factor in some instances. In addition to dealing with individuals, it is important for hotels and restaurants to develop procedures for maintaining control over liquor service at group events, such as weddings and parties. This may include checking the identification of all guests and providing wristbands or other means of identifying guests who may legally drink.

Illegal Drugs

Given the growth in methamphetamine use in recent years, motels, in particular, have to be concerned about the very real possibility that criminals will set up mobile meth labs or marijuana growing operations on the premises. The dangers

include having criminals on site using chemicals that pose fire hazards and that may result in toxic contamination to the premises. Recent incidents include a mobile meth lab that set off smoke alarms in a Louisiana casino hotel¹⁰ and an explosion at a Tennessee motel.¹¹

Besides the security threats and the danger of fire and explosion, the risks include toxic vapors that can injure other guests. Cleanup may necessitate gutting the room or a larger portion of the building to remediate potentially toxic substance exposures.

Along with drug-making operations, hotels and motels should be vigilant about drug dealing that may occur in parking lots and lobbies. Such activity raises the danger of violence on site as well as possible damage to the facility's reputation. Where there is concern about potential drug dealing on site, facilities may want to work with local law enforcement.

Bed Bugs

Until a few years ago, bed bugs were mostly remembered in a rhyme to say good night, but they have made a significant comeback in all classes of hotels. While bed bugs had been seen as more of a problem in developing countries, the Center for Disease Control (CDC) reports that they have been spreading in the United States, Canada, United Kingdom and Europe, including in some five-star resorts and hotels. Their presence is not tied to the cleanliness of the establishment, the CDC notes.¹²

A bed bug infestation may require significant remediation and may lead to claims for injuries or resulting mental and emotional distress. As with food-borne illnesses, a large part of the risk is reputational, particularly for a high-end establishment.

Access for the Disabled

One of the most challenging issues for the hospitality industry is complying with regulations that require public access for disabled individuals under the Americans With Disabilities Act. While many of the rules deal with issues such as parking and access to the building, the law now encompasses access to swimming pools. As of this year, establishments with pools that provide public access must install lifts to enable disabled people to use the pool and must have trained staff available to operate the lifts.

Courtesy Transportation

While courtesy shuttles make up an integral part of the service at many resorts, the vehicles and drivers present a variety of risks. Some vans used as courtesy vehicles have been found to be top heavy and subject to tipping over. Three people were hospitalized in New Jersey earlier this year when a hotel shuttle van overturned after colliding with another vehicle.¹⁴ Hotels also may face liability stemming from the shuttle driver's motor vehicle record if it includes violations.

Risk management considerations may vary depending upon whether hotel employees are performing the service or if it is contracted out to third parties. If the service is performed by a vendor, it is crucial to know what measures they take to screen their drivers, what background checks are performed and what the vendor's insurance limits are.

Premises Security

Keeping guests safe remains a very high priority for the industry. In some cases, however, security staff may have been scaled back to reduce costs in a challenging economic environment. Such cuts, however, can lead to increased exposures and heightened liability if a plaintiff is able to show that the reduction in security staff contributed to an unsafe environment.

Property managers should review their current security staffing levels and equipment to make sure that they provide adequate protection for guests. Effective security requires that management have in-depth knowledge of the property and its operations. Cameras in indoor and outside public spaces may be an effective deterrent for crime and may also aid in the defense against injury claims by providing a record of the incident. The security staff should be thoroughly vetted by the company or vendor and provided with adequate training. Security systems, such as cameras, also should be properly maintained.

Risk Transfer and Third-Party Relationships

Whether it is an independent contractor to handle landscaping, valet service or even running the restaurant, many hoteliers use third parties to handle various operations. Many times, however, hotels do not effectively allocate the liability risk associated with those operations to the contractors responsible for running them. A clear, written contract articulating the assumption of responsibility along with proof of adequate insurance coverage is critical when allowing third parties to conduct business on a hotel's premises or on its behalf.

Cyber Security

A rash of major hacking incidents involving national retailers should serve as a reminder that any business that accepts credit cards has an exposure to liability if the security of personal financial information is compromised. These concerns clearly extend to the hospitality industry, where facilities may record not only credit card information but also personal data such as drivers licenses.

The risks include the potential cost of having to notify customers whose data has been exposed and, in some states, providing protection for a specified period of time (for example, credit monitoring services). In addition, the federal government is applying greater scrutiny. A federal court ruled earlier this year that the Federal Trade Commission may proceed with a suit against a hotel chain alleging that data security failures contributed to data breaches in which credit- and debit-card information for hundreds of thousands of consumers was exposed.¹⁵

While new threats are always emerging, hospitality firms should deploy robust data safeguards and procedures to mitigate the cyber exposures. That includes assessing procedures for how the data is collected as well as where and how it is stored. If a third party stores the information, it is crucial to understand their security procedures and to evaluate their insurance coverage.

Protecting Customers; Protecting the Business

To keep their customers safe and protect their own business, hotels, motels, resorts and casinos should carefully review their current and evolving exposures as well as the policies and procedures they have in place to mitigate those risks. Where appropriate, they should seek expert help to develop effective risk management responses.

As part of a proactive risk management strategy, hospitality companies should review their insurance program with their insurance broker to make sure they have the appropriate coverage for all of their risks, which may include liquor liability, pollution, legionella, bed bugs, carbon monoxide, and illegal use of the premises for drug manufacture. Because of the potential reputational damage, the coverages considered should include catastrophe management with crisis public relations assistance. The coverage review should include both primary and excess programs for sufficient limits and suitable terms and conditions. Companies will want to work with a financially strong carrier that understands the industry and its risks, that is experienced in handling hospitality-related claims and has a solid, consistent track record.

The hospitality industry faces a very broad and growing range of risks as it seeks to provide guests with memorable, enjoyable and safe experiences. A robust risk management strategy is an essential part of that goal, serving to protect the customers as well as the business and its reputation.

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