

## This Week's Feature

# The Hospitality Industry in the Wake of COVID-19

By Xeris Gregory



In the midst of a worldwide pandemic, fears for the economy and public health are at the forefront. Companies are making difficult decisions regarding furloughing employees to save money or reopening to the public to generate revenue. These difficult decisions also have potential to create liability for businesses that open too soon.

The hospitality industry, a giant in today's world, may be faced with even greater difficulties than those of the ordinary business. From the decision to reopen hotels for emergency purposes, to opening to the general public, to mass layoffs, the hospitality industry must be wary about both long-term survival and about a potential rise in liability.

## The Statistics

The hospitality industry supports nearly 8.3 million jobs; however, with nearly 40 million people in the United States unemployed, the industry is far from immune to economic downturn. To the contrary, hotels are currently experiencing the lowest occupancy rates since 09/11. Hotels have already lost more than \$29 billion in room revenue, eight of ten hotel rooms sit empty, and 2020 is projected to be the worst year on record for hotel occupancy.

## Reopening the Hospitality Industry

Some hotels have remained open despite shelter-in-place orders to the extent that they have provided rooms for essential workers, such as first responders and medical personnel, or for at-risk populations, such as the homeless. Others have been taken over entirely by government entities in larger cities for their exclusive use in providing emergency shelters. However, as the federal government has unveiled guidelines, *Opening Up America Again*, and as state restrictions begin to loosen, members of the hospitality industry must decide where and when to reopen hotels to the public.

Reopening businesses and loosening restrictions in cities nationwide, though, have been met with mixed results. For example, states that have loosened restrictions and allowed businesses to reopen have shown an increase in coronavirus hospitalizations in recent weeks. Thus, the

hospitality industry should be wary about reopening hotels to the public as the coronavirus rages on, lest guests or employees contract the virus on a hotel premises.

## The Potential for Increased Liability

A significant risk posed to the hospitality industry in reopening to the public is the potential for lawsuits arising out of a business's handling of the virus. Hospitality businesses need to prepare for claims brought by guests that will allege that a hotel was negligent in its response to COVID-19. This includes claims that a hotel failed to maintain the premises properly and failed to prevent the presence of the coronavirus, claims that a hotel knew that an employee was infected and didn't take necessary precautions, or claims that a hotel wrongfully quarantined individuals.

Potential claims may be brought by any third party, which includes customers, guests, independent contractors, or employees. Many of these claims arise out of negligence; therefore, a plaintiff will be required to show that (1) the hotel owed the plaintiff a duty of care; (2) the defendant failed to meet the duty of care; (3) the breach in duty caused the plaintiff's harm; and (4) the plaintiff suffered damages as a result. Hotels generally have a duty to protect guests from unreasonable risks of harm, but what is "unreasonable" may depend on the circumstances and any relevant federal or state law. Although it may be hard to prove that a plaintiff contracted the coronavirus on a hotel's premises, the industry must be prepared, nonetheless.

Thus, hotels need to prepare by closely monitoring and following any federal, state, and local mandates for safety. Both state and federal governments have implemented protocols for reopening businesses and maintaining safety and social distancing. While each mandate differs, some protocols include requiring that customers and employees wear masks at all times, taking extra precautions to make sure that the premises are sanitized and free from disease, or requiring ill employees to stay home and quarantine. A hotel that fails to abide by these guidelines runs the risk that the virus will spread among guests and staff and give rise to liability for failing to keep the premises safe.

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Additionally, hotel owners should review contracts to ensure that there is strong indemnification language and insurance coverage. For example, some property insurance policies do not contain provisions for change of use. Accordingly, a hotel that is not open to the general public but remains open for essential workers or vulnerable populations runs the risk that its insurance company will not cover the costs of litigation that arises out of this type of use. Only by maintaining a close watch on emerging guidelines from state and federal officials and implementing safeguards on hotel premises for the safety of the public and employees can hotels minimize legal exposure.

## The Industry's Future

The hospitality industry is faced with a double-edged sword: business owners run the risk of losing too much revenue if they remain closed, or of exposing themselves to liability if hotels reopen to the general public too soon and without proper precautions. Although nobody knows what the future of the industry will look like, many changes in how public health and safety are viewed are likely here

to stay, as are increased safety protocols. Thus, the hotel industry needs to be proactive and adapt to survive the pandemic and return to normal operations. Hotel owners need to be cautious and take preventive measures to ensure health and public safety. Otherwise, hotels are likely among the biggest to lose as liability arises in the wake of coronavirus.

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