In The News

Experts Outline the Hotel Industry's Top Legal Hurdles

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Hotel News Now

A recap of Craig Harris' presentation at the 2019 Hospitality Law Conference was featured in Hotel News Now. The conference addressed some of the biggest legal issues facing the hospitality industry today.

As a litigator for many years, Craig Harris, shareholder at Munsch Hardt, said "he's learned from surprise after surprise as companies find themselves facing problems because they weren't proactive in seeking legal counsel. They thought it would be too expensive in the beginning, only to find it was more expensive not to ask the important questions, he said."

The full article can also be viewed below or by clicking here.

Speakers at the 2019 Hospitality Law Conference addressed some of the biggest legal issues facing the hotel industry today.

HOUSTON—The hotel industry faces a number of evolving legal challenges and trends in 2019, and many of them are familiar. In some instances, however, there appears to be some progress toward better solutions.

During the opening sessions of the 2019 Hospitality Law Conference, attorneys working for and within the hotel industry outlined a number of pressing issues hoteliers face today.

Sexual harassment

The way companies have been addressing sexual harassment prevention and training has not been working, said Samuel Lillard, partner at Fisher Phillips. The approach has been too narrow, too legalistic and too focused on telling people how they shouldn't behave as opposed to what they should be doing, he said.

The tweet by Alyssa Milano in 2017 that started the #MeToo movement has led to a steady drumbeat of allegations against corporate executives for inappropriate behavior, he said. The country has seen similar spikes in sexual harassment claims in the past, he said, citing the U.S. Supreme Court's 1986 decision that sexual harassment is a form of sexual discrimination, Anita Hill's testimony in 1991 as part of the confirmation of Supreme Court Justice Clarence Thomas, the 2006 allegations against the Duke University lacrosse team and, most recently, the allegations against Supreme Court Justice Brett Kavanaugh.

In the last 10 years, Title VII filings have increased by 700%, he said. (Title VII of the Civil Rights Act of 1964 prohibits "employment discrimination based on race, color, religion, sex and national origin," according to the U.S. Equal Employment Opportunity Commission.) At the same time, the average jury verdict in these cases has increased to nearly $400,000. Employers are losing in front of juries about 70% of the time, he said.

Sexual harassment is not about sex; instead, it's about power, Lillard said, explaining it's a specific form of workplace bullying. Previous and current approaches in sexual harassment prevention and training have a

common flaw in attempting to denude the workplace of all relationships, both positive and negative. The training used to be about giving a definition of sexual harassment, talking about conduct that crosses the line and watching videos or live enactments of different scenarios.

“What is the better approach?” he asked. “Now we’re proposing that training should include protocols to tell employers and managers how to foster good working relationships in a team setting.”

In turn, employers and managers should teach these protocols to their employees, improving employees’ psychological safety, he said. That means creating an environment in work that allows employees to feel comfortable enough to talk to management when they feel it is important.

This refocuses the issue on group dynamics, Lillard said, which he believes is not difficult but requires a change in how people think. In the modern workplace, most people work as part of a team, so it’s about making employees buy into a team mentality and, through bonding, self-police themselves to prevent and stop harassment and bullying, he said.

Some states require “bystander training,” which tells employees that if they see harassment or similar violation of company policy, they know that they need to say or do something to report it and they learn how to do so, he said.

ADA website lawsuits

The latest developments in making websites compliant with the Americans with Disabilities Act have come from the U.S. Department of Justice and case law, said Jordan Schwartz, partner in the labor and employment group at Conn Maciel Carey. Websites must be ADA accessible for the sight and hearing impaired if they are a nexus between a website and an actual physical space, he said. That means Amazon might not need to be accessible since it’s only a website, but a website for a specific restaurant or hotel needs to be.

Courts have been fairly clear over the past two years or so that even without specific statutory guidance, hotel websites need to be accessible, he said.

It’s possible that if a hotel is sued by a plaintiff for not having a website that is ADA accessible and settles, it could be sued by a different plaintiff on the same grounds even if the hotel has agreed to change the website as part of its settlement with the first plaintiff, he said. In such cases, the courts have said the first case and settlement have nothing to do with the second plaintiff and allow the new case to continue.

“The most important thing is to make it accessible once you agree to do so as soon as possible to ward off potential lawsuits,” he said.

Another area hoteliers are running into problems with website ADA accessibility is providing enough description of accessibility amenities in guestrooms, public areas, pools, fitness areas, business areas and meeting rooms, Schwartz said.

“Does your website identify and describe features in public areas and guestrooms of the hotel in enough detail for someone to individually assess whether the individual can stay in the hotel?” he asked.

For those who aren’t sure if their website is accessible, they should hire an accessibility consultant, but they are expensive, he said. However, they should do so under the advice and direction of counsel, because if they hire a consultant without attorney first, the plaintiff will want to see any communications to the consultant that explain how the website is not accessible, he said. If a company works through an attorney, the analysis will not be discoverable.

Lessons from surprises

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surprise as companies find themselves facing problems because they weren't proactive in seeking legal counsel. They thought it would be too expensive in the beginning, only to find it was more expensive not to ask the important questions, he said.

His firm has a number of restaurant group clients, and many never thought to ask about the definition of having more than 50 employees under the Affordable Care Act. They thought if they had multiple single-purpose entities, the 50-employee threshold for providing health insurance would apply to each individual location, not the group collectively, he said.

"I was asked about it, but it was after going a few years not providing coverage to all their folks," he said.

Often it's not just the clients but the insurance brokers they rely on to figure out their coverage who confuse minimal essential coverage with minimal value, he said. Brokers are useful, but if they don't understand the law or the new government forms to fill out, making a mistake can cost companies millions of dollars.

When it comes to data privacy issues, many companies know to purchase first-party and third-party insurance coverage to cover their legal fees in a data breach related to customer claims, Harris said. However, when state attorneys general offices and the Federal Trade Commission investigate, they find out their broker never told them about buying regulator coverage. These can be years-long investigations, and they can be expensive regardless of whether customers sustained any damages, he said.

A house is only as strong as its foundation, Harris said. While he has worked with a lot of great people in different industries, many don't pay attention to corporate governances.

"Time and time again, I have seen that if you have to fix it on the back end, it's more expensive than keeping up good corporate governance as we go along," he said.

Proper corporate governance makes a difference when selling a business, when the IRS comes for a visit, when seeking private equity investments, when reorganizing and in many other situations, he said.

"I would stress memorializing all major decisions, board meetings and keeping track if which entity owns the assets," he said. "You can fix it on the back end, but it's more expensive than if you had done it as you go along."

The full article can also be viewed here.

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