

Practice Update

Mind Your T's and C's: COVID-19 Terms and Conditions for Hotels

July 6, 2020

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After many agonizing months of the COVID-19 pandemic causing closures and record-low occupancy rates, hotel owners and operators finally can begin reopening and welcoming back guests. In doing so, they must navigate the complex web of federal, state, and local reopening requirements and guidance. In addition, many hotels and hotel brands have even developed [brand-specific cleanliness initiatives](#). Hotel owners and operators may help minimize risks arising from COVID-19 if they go one step further and revise their terms and conditions for bookings.

Waiver and Limitation of Liability for Guests Who Contract COVID-19

Hotel terms and conditions typically include a broad waiver or limitation of liability for personal injuries sustained by guests at the establishment due to accidents such as trips and falls. Hotel owners and operators should include in their terms and conditions an additional waiver or limitation of liability in the event a guest contracts COVID-19 during or shortly after a stay. The waiver should include a release of all claims related to the virus. Hotels should consider requiring the guest's agreement to this waiver and limitation of liability upfront during booking (possibly even in a click box to ensure it is seen), and again as a condition precedent to check-in. Any advance email

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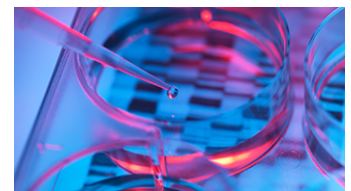
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confirmation to the guest should also reference the terms and conditions.

It is currently unknown whether and to what extent courts may find hotels liable in the event that guests—or even third parties who later interact with guests—contract COVID-19 at or around the time they are staying in the hotel. First and foremost, owners and operators should ensure they are following federal, state, and local guidance on avoiding the spread of COVID-19, including having a COVID-19 plan in place and training employees on safety protocols.

Establishing that they are taking such steps will be the first line of defense to any such claims. Owners and operators seeking additional protection should consider including an express waiver or limitation of liability. Such waivers will likely be scrutinized carefully and may or may not be deemed enforceable depending on the jurisdiction and circumstances; nonetheless, owners and operators should consider them.

Owners' and Operators' Rights to Cancel Stay or Limit Access

The COVID-19 pandemic has subjected the hotel industry to many unknowns. Even though we are months in and reopening is beginning, there are still countless scenarios that could derail the reopening process and cause a hotel to close, limit operations, or remove guests, among other scenarios. Hotels should include in their terms and conditions provisions that permit the owner or operator to:

- Cancel or modify the reservation at any time, including modifying the type of guest room or accommodations requested;
- Close portions of the hotel and amenity spaces at the owner's or operator's discretion;
- Limit or eliminate services otherwise offered by the hotel;
- Require guests to quarantine in place and otherwise comply with all directives of hotel staff

or federal, state, or local officials; and

- Take any other action required by federal, state, or local orders, rules, or requirements.

As with the waiver and limitation of liability, require the guest's agreement to these terms upfront during booking, and again as a condition precedent to check-in.

Additional Layers of Protection for Higher-Risk Activities

There seems to be a consensus at this time that certain activities subject an individual to greater risk of contracting COVID-19 than others. For activities or locations that present a greater risk—such as fitness centers, spas, and salons—consider implementing additional layers of protection. This may include requiring a specific waiver and limitation of liability to enter a gym or receive spa service, or even limiting these types of services only to guests who have already agreed to the hotel's full terms and conditions.

Consider State and Local Law

States and even localities have different laws governing the types of terms and conditions that hotel owners and operators are permitted to include with their reservations. These laws may also control how and when these terms and conditions are conveyed to guests. Consult with legal counsel to avoid running afoul of any of these state and local laws and regulations.

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