



Developing a rental policy to protect the hotel that is legal

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In the last edition of *The Rooms Chronicle*, there was a discussion surrounding the ability of hotel management to restrict access to their property to persons living within 30 miles of the property in an attempt to curb the use of a hotel to conduct criminal activity. That premise then gave rise to a discussion about the constitutional and legislative requirements, including Title II of the Civil Rights Act of 1964, which may apply when developing policies for a property that serve to restrict access to rooms to a particular group or class of people.

This article will now examine the analysis a court could go through to determine the legal validity of any policy that limits access. This analysis can be used as a tool by hotel managers to determine the parameters of any policy they seek to institute in order to restrict access to persons seeking to rent a room at their hotel.

By way of review, any policy that restricts access to a hotel that discriminates on its face against a particular group or class of persons, or any policy that appears neutral but operates to discriminate against a group or class may be in violation of the 14th Amendment of the Constitution of the United States, Title II of the Civil Rights Act of 1964 or a variety of other federal and state antidiscrimination provisions. Since it is unlikely that the hotel and the decisions made by its staff will be government or “state” actions, the 14th Amendment will not apply. It is more likely that Title II or other anti-discriminatory legislation would apply.

The first step in the analysis will examine what the policy is and against what class of people does it operate? To illustrate each step, let’s assume the policy in question is the one cited in the previous article about the Columbia, Missouri hotel that would not rent a room to anyone who lived within 30 miles of the property.

Step 1: The policy: No one who lives within 30 miles of the hotel property may rent a room at that property.

Step 2: This policy operates to deny access to a room at that property to anyone who lives within 30 miles of the hotel. On its face, the policy seems to apply to any person regardless of any classification (race, religion, natural origin, etc.) and should not be discriminatory. But what would happen if the population of the area in question was predominantly African-American, or Hispanic, or if there was a concentration of Muslim citizens residing there? It is conceivable then that a case for disparate impact could be made by a person who is a member of one of these groups. Notwithstanding this situation, the policy may still be legally upheld. We must move on to the next step.

Step 3: What is the purpose of the policy? The legal test to determine if a purpose is sufficient to uphold the policy is first predicated upon the class of persons that are impacted. Generally, if a policy has impact based upon race, color, religion or national origin, then the purpose or interest to be preserved must be compelling to the viability of the organization proposing it. If the policy is based upon gender, age, sexual orientation and the like, the purpose must be legitimate to the operation. If the policy is based upon any other category, the policy merely needs to bear a rational relationship, in constitutional cases known as a “rational basis”, to the purpose sought to be achieved. In the case of the policy at hand, the reason given for a policy against renting to local persons is that hotels are often used by locals to conduct criminal activities so as not to risk their own property in these endeavors. Therefore, a policy against renting to local people with domiciles within 30 miles seeks to limit criminal activity at the property, making it safer for all guests. Depending upon the class in which the person contesting the policy is a member, a court will need to determine if that purpose (detering criminal behavior) is compelling to, legitimate to, or bears a rational relationship to the operation of that property.

Step 4: Classifying the connection of the policy to the purpose sought to be achieved requires information. In our example, management could show that the hotel was located in a high crime area or that in the past year a certain number of criminal activities involving local residents have taken place or been alleged by law enforcement to have taken place at the hotel. Based upon this kind of information,



management can assert that the policy is required to assure the safety of guests and staff. It then becomes a balancing test, weighing the various interests of the person complaining about the policy, the lodging property, and any others who may be impacted by the policy.

Step 5: Because the test is one of balancing interests, the analysis does not end here. The last step to consider is what other reasonable alternatives may be available to management to achieve the same purpose other than the policy in question. In the present example it may be reasonable to develop a warning system between law enforcement and individual hotel properties alerting them to persons or activities involved in criminal activities. However, if it poses an undue financial hardship on the hotel, it might also be deemed unreasonable to require a property to hire a significant number of additional security employees to achieve the purpose. But this too is a balancing test.



One may wonder why a lodging property manager would be concerned about the legal analysis a court would use to uphold a rental policy. The answer is simple. When developing a policy that restricts or denies access to anyone, management should engage in the same step by step process before the policy is put in place. If there is a doubt, an attorney familiar with constitutional and discriminatory legislation should be consulted. Then, when the next religious conference or rock concert comes to town and there are concerns about who may be renting rooms, policies are already in place to protect the interests of the lodging property. ✧

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