



# Guest Services

by Michael Gentile, J.D.

## Mandatory gratuities pose a potential legal dilemma for hotels

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In April of this year, a class action lawsuit was initiated in the state of Washington against Starwood Hotels & Resorts Worldwide, Inc. for breach of their lodging contract. The suit seeks to certify as plaintiff, a nationwide class of consumers, who as hotel guests, Starwood collected mandatory “bell gratuity” and “housekeeping gratuity” charges. The essence of the breach of contract claim is that certain Starwood hotels imposed these additional mandatory charges above and beyond the per-night room rate agreed upon at the time of reservation. While the legality of the charges and the procedures used are still to be litigated, this article will examine the possibilities of assessing “gratuity” charges in lodging contracts.

### Voluntary or mandatory?

A contract for most hotel rooms begins with an invitation to negotiate, either from a prospective guest who inquires about room availability and price or from the hotel quoting a range of rates. This creates a discussion that may or may not lead to an offer to rent a room. If an offer is made and accepted, a mutual contract is formed and often reduced to writing, which would include the type of room, the dates, and the per-night room rates and applicable taxes. Seldom does such a contract include any charge or gratuity other than the per-night room rate. To go a step further, seldom would an invitation to negotiate from a hotel include the addition of such charges since no one is likely to purchase with such add-ons. What is the hotel to do then if it needs to collect additional revenues for those services? The answer may be more practical than legal.



First let us examine what a “gratuity” is. *Webster’s Dictionary* defines gratuity as something given freely, something voluntarily given in return for a favor or service. Using this definition it would appear to be a contradiction to include these “mandatory” charges in a contract. While the terms may be negotiated freely, the fact that a gratuity is paid is generally predicated upon the level of service provided. To make such a charge a contractual obligation flies in the face of what we have come to expect in any service industry. It is most likely for this reason that gratuities are not included in the lodging contract. The guest determines the fact of and the amount of any gratuity based upon the level of service and then voluntarily provides or withholds it.

### A questionable practice

With this traditional concept of gratuity in mind, the hotel has two choices. The first is to add the gratuity charges at check-out as the Starwood properties did. If charges are added on, the argument, as in the pending Starwood suit, is that the guest had only accepted the offer of the per-night rate and not the additional gratuities. The additions could result in (and this is yet to be legally determined) a breach of the agreed upon lodging contract. At the very least, the guest is likely to feel they have been unwittingly taken advantage of by the hotel. Resultantly, they will be unhappy and most likely will not select that property or brand again.

### Better options

The second choice the hotel has is to either incorporate an amount equal to the additional gratuity charges in the offered per-night room rate, thus resulting in charging a higher room rate, or to charge a mandatory “service charge” (as opposed

to gratuity) with each reservation. Legally, the mandatory service charge should be disclosed at the time the reservation is offered and accepted. Many banquet contracts typically impose a mandatory service charge of 18%-20% on top of the incurred catering charges. But again, this fee is disclosed at the time of the booking.

The obvious disadvantage to either of the latter approaches is that it increases the price of the room and, in the perception of inquiring guests, potentially makes the hotel appear less competitive on price. The impact of this approach can vary depending upon the property. Some hotels may only be adding a couple of dollars to their price. In the Starwood case the charges amounted to \$32.00 or approximately 10% of the per-night room rate.

The benefit to the guest of the second approach is that all charges are disclosed up front and agreed to at the time of reservation. The guest does not get hit with unexpected gratuities or service charges either at the time of check-in or check-out, when it often is too late to secure affordable accommodations from a competitor elsewhere. The guest has agreed to and accepted all charges, and if the stay was otherwise acceptable, that guest is likely to repeat as a customer. In any event, a hotel has to evaluate the competition, their occupancy rate and the wisdom of incorporating additional charges to their per-night room rate. It is this approach that makes this a practical business decision as opposed to a legal one.

## **Conclusion**

The Starwood case bears watching. The result of this case, not so much as a class action suit but on the issue of breach of contract based upon additional gratuity charges could go a long way toward shaping how hotels everywhere quote per-night rates and collect additional charges. Unfortunately, the case was only filed in April and class action suits are very complex. The ultimate disposition, if there is one, could take years. However, the existence of such a case now puts the hotel industry on notice that there could be challenges to the ways hotels collect additional revenues from guests. It becomes imperative then that management incorporates this analysis into its revenue management and pricing strategies. ✧

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