



People Skills

by Michael Gentile, J.D.

When is discrimination not discrimination? When guests violate “house rules”

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We have all seen it before. You are in a restaurant, hotel, retail store or some other place where customer service is rendered. A dispute arises between a customer and an employee. A manager is summoned to intervene. The dispute is not resolved to the satisfaction of the customer. Ultimately, the customer utters the words, “You are treating me this way because I am _____,” (fill in the blank with the name of any protected class of people). The inference from the customer is that they are being discriminated against on the basis of race, color, religion, national origin, gender or any other classification protected by Title II of the Civil Rights Act of 1964 or an applicable state statute intended to prevent discrimination.

The dreaded “D word”

It has become common knowledge that the “D word” — that is...*discrimination* — strikes fear in the hearts of business owners and managers, and hotel proprietors are no different. There is an unbridled perception that if a customer infers discrimination and the legal remedies that goes with it, Management will capitulate and the customer will get whatever he or she wants. But it is important for hotel managers to understand and assert their rights to operate their lodging properties under reasonable house rules that they establish, even in the face of such allegations.

In a previous issue of *The Rooms Chronicle*, (Vol. 15, No. 6, Nov/Dec 2007), we established the applicability of Title II and various state civil rights statutes to hotel and restaurants. Suffice it to say that if you own or operate an establishment that has more than five rooms available to rent to transient guests, then these laws apply. The categories or classes of people who are protected by these statutes were also addressed and are familiar to most people these days, and that list continues to grow.

Reasonable house rules and procedure

But what happens if a person in one of those protected classes is violating a rule of the property? People of every race, color, origin, religion, gender, age, sexual orientation, etc. break rules all the time. Is Management not permitted to enforce their rules against persons in those classes, thereby discriminating against those who must follow such rules? The answer is of course NO. But first, the rules must be reasonable.

Reasonable rules for a lodging property, restaurant or other businesses to which civil rights laws apply could include the following:

- Rules against smoking, including designated non-smoking rooms or areas
- Rules against noise or rowdy behavior
- Dress rules (e.g. “No shirt, no shoes, no service)
- No pets
- Any rule that can be reasonably attributed to the health and safety of those in the establishment

If rules such as those above exist and adequate notice is given, such as through posted signs or language on the receipt or key envelope, then anyone who violates that rule can be refused service or asked to leave the premises, regardless of what class they are in or how loud they scream, “Discrimination.” For example, while a blind person may be legally permitted to house their guide dog with them in their guestroom, a non-visually impaired person cannot assert that they must be allowed to



keep their animal in their guestroom due to religious beliefs. The health, safety and enjoyment of other guests and the property in general would override any alleged religious reasons.

The next key to applying these concepts is the procedure used. It is important to train frontline employees in guest service techniques, especially for situations that may require sensitivity to diverse populations. Staff should also be encouraged to involve Management in particularly contentious situations. When necessary, security personnel or even the local police should be called to resolve a situation peacefully and professionally. Oftentimes, the manner in which a situation is handled goes a long way toward heading off future claims and litigation.

In summary, management of any establishment subject to the coverage of civil rights laws can enforce house rules by meeting the following criteria;

1. The rules must be reasonable, ideally geared toward the health, safety and enjoyment of guests.
2. Adequate notice of all rules must be provided to all guests and customers.
3. Unless exempted by law, house rules should apply to and be enforced uniformly across all guests and not arbitrarily, on a case by case basis.
4. Staff should be trained in the methods of resolving guest disputes and dealing with diverse populations.
5. When necessary, security personnel or law enforcement should be called to intervene.

Retaliatory exclusion

No matter how hard you try and how many safeguards are put into place, there is still someone who will continue to assert that they were discriminated against, to the point where they may actually file a discrimination action and initiate litigation. What if that same person then appears on your property requesting service? Must you accommodate that person at the risk of exposing the business to yet another discrimination suit? The answer here fortunately is NO.

There is a concept in the law known as *retaliatory exclusion*. In essence, if someone has filed a lawsuit against an individual or business based upon a refusal to provide service and then seeks future service, the establishment need not suffer the indignation of having to serve a person they had previously refused. A case in California has determined that a person filing a discrimination case based upon retaliation is not a member of a protected class. The decision in *Gayer v. Guluch, Inc.* contains a quote that sums up this entire topic. The court said, "An exclusion based on a customer's conduct, whether or not the customer is a member of a class, was reasonable as a matter of law."

The key then is to be sure your house rules are reasonable and be sure the exclusion or refusal is based upon conduct related to those rules! ✧

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