

## COVID CONCERNS

# What Hotel Owners Need to Know About COVID Liability

Pandemic-inspired Legislation Provides Some Shields for Operators

BY JESSICA GRAY KELLY  
SPECIAL TO BANKER & TRADESMAN



Jessica Gray Kelly

In the spring of 2020, the future landscape for tort claims arising from COVID-19 infections was largely unknown, as there was no modern precedent for the types of duties that would be owed during a global pandemic.

How would courts determine the standard of care when the CDC's guidance for mitigating the spread of the virus changed on a regular basis? Would there be a tidal wave of tort claims against businesses resulting from COVID-19 infections?

Two years later, the tidal wave has not hit. Most states have enacted some form of legislation that shields healthcare and other essential workers from COVID-19 tort liability, except in certain circumstances. Many of those states have extended the liability shield to businesses, including those in the hospitality industry.

## Legislation Shields Businesses

For example, Georgia's COVID-19 Pandemic Business Safety Act protects businesses and property owners, such as hotels and restaurants, from liability for COVID-19 infections unless plaintiffs can prove gross negligence. The act, which currently applies to claims that accrue prior to July 2022, also requires plaintiffs to prove that they did not assume the risk of exposure, transmission or infection of the virus at the business establishment. These burdens make it virtually impossible for plaintiffs to sue based on contracting COVID-19 at the business.

Hotels and restaurants normally have a duty to protect guests and customers from unreasonable risk of physical harm, but what is "unreasonable" will depend on the circumstances. Hotels and restaurants are not guarantors of their guests' and customers' well-being, but they must provide a standard of care that a guest or customer would reasonably expect in terms of safety and services during their visit or stay. They also may have a duty to warn of a known, dangerous condition on the premises, that causes injury. In the case of gross negligence, however, plaintiffs will not only have to show a breach of the standard of care, but also that the establishment demonstrated indifference to an extreme degree of risk or likelihood of serious injury to its employees, guests or patrons.

Cruise ship companies appear to be one of the biggest targets for COVID-19 injury or death lawsuits, perhaps because cruise ships often have large outbreaks making it easier for plaintiffs to pinpoint where they contracted the virus. Claims

against cruise ships often face procedural barriers due to the Death on the High Seas Act and various jurisdictional challenges. Cruise ship companies are now also including assumption of risk of contracting COVID-19 clauses in their ticket agreements.

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While legal standards protect hotel operators from many COVID liability claims, operators need to adhere to industry standards for mitigation and monitor the health of employees.

In *Dome v. Celebrity Cruises Inc.*, however, a federal district court in Florida recently allowed certain negligent misrepresentation claims against the cruise ship company to proceed based on a statement by the captain that "all guests on board remain healthy and happy," even though numerous guests had exhibited symptoms of COVID-19 infections.

claims based on their being infected with COVID-19 by their parents after they got off the ship, were barred from suing Celebrity because the court held that the company did not owe a duty to non-passengers.

In addition to statutes protecting businesses, courts appear to be setting a high bar for plaintiffs seeking to recover based on COVID-19 infections. Assuming hotels and restaurants adhere to the current, generally understood and accepted industry standards regarding COVID-19 protection and mitigation, and monitor the health and well-being of their employees, they should not face liability.

It may be that claims arising from COVID-19 become a part of the cost of doing business, but the hospitality industry should not face significant tort exposure for COVID-19 infections. If the trend in current legislation shielding businesses from COVID liability changes, businesses should consult their legal counsel for advice on the new legal standards.

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## CHANGE ON THE MENU

# COVID Changed Calculations of Hotel Dining Models

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— RUKA at The Godfrey — pulls diners into Downtown Crossing for more than commuting and shopping. While he does run other freestanding restaurants like Yvonne's and Mariel, a lease requiring less capital lets him sleep better at night, he said.

"There's less upfront risk for me [in a hotel deal], that's a significant consideration," Jamison said. "I don't have a \$4 million guillotine hanging over my head every day of the week, so it's a bit safer.

**A bustling food-and-beverage outlet is also a boon for the Omni, whose location across from the Boston Convention and Exhibition Center faces challenges with Boston business travel still slow to rebound.**

Having 1,000 rooms above us at the Omni is a real safety blanket."

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The pandemic was a pivotal time for Justin Urso to get strategic about costs so he could spend more time behind the stove than a calculator. The executive chef at The Dial and Blue Owl Rooftop Bar at Cambridge boutique hotel Sonder 907 Main opened both outlets just after COVID-19 vaccines became widely available.

"Our team works in conjunction with [Sonder] on a lot of property-specific items and can share costs," like those to maintain common areas, Urso said. "That definitely helps. COVID has obviously changed how restaurants look at revenue, because they're already running on tight margins."

Nestled in an urban area between MIT and Harvard, Urso benefits from heavy foot traffic that also informs his approach to menu-planning, he said. Jamaican, Middle Eastern, Indian and Greek flavors are all imbued to "mirror the diversity of the neighborhood."

While Boston and its environs have made huge progress in diversifying the hotel landscape and its culinary offerings, Jamison spilled the beans on his thoughts about Beantown.



The Mandarin Oriental in Boston's Back Bay is host to celebrity chef Gordon Ramsay's newest venture, called Kitchen. It's also Ramsay's first in the United States.

"I think there's an opportunity to create smaller, more lifestyle, high-energy cohesive hotel brands that don't play it too safe — an amazing building, with a rooftop, a performing arts space, nightclub, two or three food outlets and a collaborative process that brings the right people to the table from the very beginning," he said.

Jamison said most hotel blueprints include food and beverage space, but the specifications are already determined by the time operators reach out to restaurateurs about collaborating.

O'Connell said Jamison's suggested approach may just be the secret sauce to kick the city's dining scene up even more.

"Hospitality has proven that they're not the experts in food and beverage operations. When you look at a profit and loss statement, typically a room's profit runs around 73 percent and an F&B outlet runs between 10 and 18 percent," he said. "Which would you rather focus on?"

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