

A Year In, Pandemic Poses New Legal Questions for Hotels

Employee Vaccinations, Bankruptcies Among Top Challenges



Employers in the hotel industry will need to decide whether they are going to mandate employees be vaccinated against COVID-19. (Getty Images)

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Along with driving down demand, the COVID-19 pandemic has created several new legal challenges for the U.S. hotel industry.

During the “ALIS Law 6x8: Recovery Top of Mind” webinar, several hotel industry and legal experts spoke about the legal and legislative issues hoteliers must now navigate.

Employee Vaccinations

Many hotel companies are grappling with the decision whether to mandate employees receive vaccination against COVID-19 as the vaccines become readily available, said Caroline George, general counsel at Crescent Hotels & Resorts.

“There are obvious positive aspects to the vaccine,” she said. “Associates who are vaccinated may feel more comfortable coming to work, and they’ll be able to work with greater safety, which will promote a more reliable and stable workforce. Customers, too, will likely feel more comfortable knowing that our associates have been vaccinated.”

However, there are a number of potential legal and administrative issues, such as accommodations for pregnant associates, associates with disabilities and those with religious objections, that are cause for concerns about a mandate, she said. A mandatory vaccination policy could also affect company culture or employee morale.

“Recent polls show that only 58% of Americans indicated that they would get vaccinated, so the vaccine can be divisive, and employers have never had to be in this position before.”

Employers should question how effective a mandate would be given the number of potential legal exemptions or number of associates who refuse, she said.

Most employers in the hotel industry will likely encourage employees to get vaccinated, George said, adding that she expects Crescent will take this approach.

“To do so, we’ll really have to provide as much information to our associates as possible, such as the benefits of vaccination and how to get vaccinated,” she said.

Given the evolving attitudes and information available about the vaccines as well as the “bumpy rollout,” providing positive, specific and fact-based information will be critical to encouraging vaccination, she said.

There's still the issue of employees actually getting vaccinated, she said. Forty-five percent of Americans don't have access to transportation, she said. Given that statistic, there could be a large number of hotel employees who don't have means to get to a vaccination site. One possible solution is that several rideshare companies are partnering with cities and pharmacies to provide free rides to vaccination sites, and employers can share that information with employees.

Working With Management Companies

Xenia Hotels & Resorts heard from all its hotels' operators about force majeure, President and Chief Operating Officer Barry Bloom said. Most of them were telling the real estate investment trust that performance tests were not valid over the last year, and Xenia's executives generally didn't disagree.

"The more interesting piece will be to see when and how we and they determine that the event has concluded, and then how performance tests would work in that," he said.

Going forward, the force majeure provision in management agreements will be subject to more intense negotiations than seen in the past, Bloom said.

"There's also a real question around how we ultimately agree on defining what force majeure events are in the future, just because we and our counsel will spend a lot of time looking at and focusing on what actually defines an event," he said.

Over the last year, several of Xenia's hotel operators had to furlough and lay off employees, but they didn't all do it the same way. Some of the management companies, primarily the independent operators, immediately laid off every employee they thought they wouldn't need without severance, Bloom said.

For brand-managed properties, however, the large brands were more concerned about their public image and reputation, "albeit at an owner's expense," he said. The brands offered more generous, but not inappropriate, severance and/or benefits packages.

Every manager had a different view on whether to provide benefits during the furlough, how long to continue those benefits and when to decide about whether to fully lay off the employees, he said.

Advocating for Hoteliers

Over the last year, the American Hotel & Lodging Association has focused on industry pandemic relief efforts in Washington, D.C., said Michelle Tuffin, outside general counsel for AHLA. These efforts have achieved some essential COVID-19 relief that will continue to serve the industry through 2021, she said.

The passing of the CARES Act and its Paycheck Protection Program funding provided critical liquidity to the industry, and the strengthening of the PPP through the PPP Flexibility Act provided loan forgiveness and deferment of payroll taxes, she said. The HOPE Act of 2020 is a bill that would assist commercial mortgage borrowers.

Hotel companies' liquidity and workforce are probably the two most important priorities for the next year, Tuffin said. The pandemic has offered an opportunity for businesses and labor to work collaboratively. AHLA and Unite Here have joined forces to craft hotel worker legislation at the federal level tentatively called the Save Hotel Jobs Act, which would be a U.S. Department of the Treasury-administered grant program.

While the legislation is still being drafted, the concept is that a grant would be calculated as three months of payroll plus fixed costs on a per-property basis with a maximum of individual grants of \$20 million per property minus PPP funds, she said. Recipients would need to demonstrate revenue loss of 40% over a flexible three-month period of the pandemic time frame. There would also be right to recall language as well as COBRA health coverage subsidies.

Bankruptcies

Hotel bankruptcies are on the rise as lenders are losing patience, and that will inevitably lead to more problems, said Alan Tantleff, senior managing director of corporate finance at FTI Consulting. There have already been a few high-profile bankruptcies, such as the Hotel

Williamsburg in Brooklyn, the Marriott Wardman Park in Washington, D.C., and Singapore-based Eagle Hospitality Trust, for which Tantleff is serving as the chief restructuring officer.

“It's certainly healthy to talk about these things to have the industry understand the process so it can begin healing,” he said.

Roughly 20% of all commercial mortgage-backed securities loans are in default, but that figure underestimates the amount of distress because CMBS loans are supposed to be the least risky cash-flowing assets, he said. That doesn't include mezzanine loans, construction loans or bridge loans, so the level of financial distress in the industry is higher than many realize, he said.

Restructuring is a broad term that involves renegotiating debt either outside of court, as most companies do, or through a court process, such as bankruptcy, Tantleff said. Most restructuring deals are private transactions completed outside of court between a group of creditors and the borrower through which they cut a deal. That relief could take the form of covenant waivers, a deferment of interest, a reduction of principal balance, a pledge of additional collateral or any combination of these or others.

“If you look around, you will see that most REITs have already undergone that process as have many hotel companies and many single assets as well,” he said.

Bankruptcy is a transparent process in restructuring conducted under the auspices of the U.S. bankruptcy courts, Tantleff said. Most countries have an organized creditor process with the underlying assumption that time and an orderly process, combined with some oversight, will yield the best results for creditors and other stakeholders.

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