

Occupational safety and health administration law general essay

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Question 1

How is Federal Governmental agencies involved in regulating the hospitality industry? Discuss with examples.

Introduction

The hospitality industry is regulated by a variety of federal, state, and local governmental entities. Hospitality managers must fill out forms and paperwork, obtain operating licenses, maintain their property to specified codes and standards, provide a safe working environment, and open up their facilities for periodic inspection. With thousands of federal, state, and local agencies, departments, offices, and individuals regulating business today, it is simply not possible for a hospitality manager to be knowledgeable about all the requirements that may apply to his or her operation. It is possible to be aware of the major entities responsible for regulation and the process for responding to an inquiry or complaint from a regulatory entity. Understand how to resolve conflicting regulations and stay abreast of changes in regulations that affect your segment of the industry.

Internal Revenue Service (IRS)

The internal revenue service is a division of the United States department of treasury. The stated mission of the IRS is to " provide America's taxpayers to-quality service by helping them understand and meet their tax responsibilities, and by applying the tax law with integrity and fairness to all." Although is it unlikely that the agency responsible for collecting taxes will be popular in any country, the right of the IRS to charge an individual with a criminal act makes it deserving of a manager's thoughtful attention. In the hospitality industry, managers perform two separate roles when interacting with the IRS. A manager is both a taxpayer to the federal government and a tax collector for the federal government. The IRS requires business to file quarterly income tax returns and make payments on the

profits earned from business operations. Taxes must be filed on or before the last day of the month following the end of each calendar quarter. File an Income and Tax Statement with the Social Security Administration on or before the last day of February. The IRS ensures that businesses pay their taxes through periodic examinations of their financial accounts and tax records. These examinations are called audits. A hospitality manager must respond if the IRS notifies him or her of a forthcoming audit. The manager should also consult a certified public accountant or an attorney that specializes in tax audits as soon as possible to ensure that the appropriate documents are prepared and in order. For example, the IRS considers tips and gratuities given to employers by guests of the business as taxable income. As such, this income must be reported to the IRS, and taxes, if due, must be paid on that income. In addition, employers are responsible for assisting the IRS in this reporting process by collecting tip-reporting forms from employees and forwarding the information to the IRS.

Occupational Safety and Health Administration (OSHA)

OSHA is an agency in the Department of Labor. It was created in 1970 after the passage of the Occupation Safety and Health Act. The purpose of the act was "to assure, so far as possible, every working man and woman in the nation safe and healthful working conditions." Despite criticism from many in business, OSHA has taken an aggressive role in protecting workers' rights. All businesses, including hospitality operations, must comply with the extensive safety practices, equipment specifications, and employee communication procedures mandate by OSHA. Specifically, businesses are required to provide a safe workplace for employees by maintaining facilities

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and providing protective clothing, in accordance with OSHA safety and health standards. Purchase equipment that meets OSHA specifications of health and safety. Establish safety checklists and training programs for employees, especially for those who will operate equipment that may cause injury. By the way OSHA monitors workplace safety with a large staff of inspectors called compliance officers. Compliance officers visit workplaces during regular business hours and perform unannounced inspections to ensure that employers are operating in compliance with all OSHA health and safety regulations. One example of the type of information OSHA requires to be posted or provided is the material safety data sheet. A material safety data sheet is a manufacturer's statement detailing the potential hazards and proper methods of using a chemical or toxic substance. The material safety data sheet is intended to inform workers about the hazards of the materials they work with so that they can protect themselves and respond to emergency situations. The law states that employees must have access to material safety data sheet and be assisted in reading and understanding them. OSHA inspectors are responsible for ensuring that material safety data sheet are placed in areas accessible to workers.

Environmental Protection Agency (EPA)

The EPA is an independent agency of the federal government. Established in 1970, the EPA's mission is to " permit coordinated and effective government action on behalf of the environment." In the hospitality industry, the EPA serves as a regulator of pesticides as well as water and air pollution. Care must be taken when discharging waste particularly toxic waste such as pesticides or cleaning chemicals from laundry areas. In 1996, new

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amendments were added to the Safe Drinking Water Act of 1974, which is a federal law that empowers the EPA to set standards for drinking water quality and to oversee the states, towns, and water suppliers that implement and enforce those standards. The EPA also monitors indoor air-quality issues. Many EPA directives are carried out or implemented by state and local governments, such as state recycling laws and municipal ordinances for trash disposal. Thus, while you, as a hospitality manager, may have little contact with the federal agency, it is important to be fully aware of your state and local laws in these areas.

Food and Drug Administration (FDA)

The FDA plays an important role in the hospitality industry. It is responsible for ensuring the proper labeling of food and the safety of food. As a food service manager, you will encounter the work of the FDA whenever you purchase food that has a mandatory FDA nutrition label. In addition, the FDA's Model Food Service Sanitation Ordinance is used by many state and community health departments as a basis for their own foodservice inspection programs. Foodservice operators also need to be aware of the FDA's precise definitions governing the use of nutritional and health-related terms. A restaurant that prints phrases such as " low-calorie", " light" or " cholesterol-free" in their menus must make sure that the recipes for those dishes meet the FDA's requirements for those statements.

Equal Employment Opportunity Commission (EEOC)

The equal employment opportunity commission enforces laws against discrimination in employment. Sexual harassment, race, age discrimination,

national origin discrimination, pregnancy discrimination, religious discrimination and portions of the Americans with Disabilities Act fall under the jurisdiction of the EEOC. The impact of the EEOC on the daily tasks of the hospitality manager is obvious. Consider, for example, the hotel manager who seeks to schedule a Christian to work on Christmas Day. The hotel is, of course, open. The question that might arise is whether the needs of the manager, who must staff the hotel, should take precedence over those of the worker, who desires a day off on the basis of his or her religious convictions. The EEOC also investigates complaints by employees who think they have been discriminated against. Businesses that are found to have discriminated against employees can be ordered to compensate the employee for damages, such as lost wages, attorney fees, and punitive damages.

Department of Labor (DOL)

The United State Department of Labor was established in 1913 to " foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." Today, the department is charged with preparing the United States workforce for new and better jobs, and for ensuring the adequacy of America's workplaces. It is responsible for the administration and enforcement of more than 180 federal laws, which govern the protection of workers' wages, health and safety, employment, and pension rights; equal employment opportunity; job training; unemployment insurance and workers' compensation programs; collective bargaining; and collecting, analyzing , and publishing labor and economic statistics.

Department of justice (DOJ)

In the United States, the Department of Justice is headed by the United States attorney general. Although the position of attorney general has existed since the founding of the republic, it was not until 1870 that a separate Department of Justice was created, bringing together under the authority of the attorney general the activities of United States marshals, and others. The Justice Department investigates and prosecutes federal crimes, represents the United States of America in court, manages the federal prisons, and enforces the nation's immigration laws.

Conclusion

The federal government can play such a major role in regulating the hospitality industry, it is important to have current and rapid access to the actions taken by each of the federal regulatory agencies. Accessing the Web site addresses provided next to each agency name is a good way to keep up to date on any changes in the law in that particular area.

Question 2

Discuss with examples the various types of legal duties required of a hospitality operator and the consequences of the failure to exercise reasonable care in fulfilling these duties.

Introduction

As a hospitality operator, we have various types of legal duties required and there are consequences of the failure to exercise reasonable care in fulfilling these duties. There involve two types of law, Contract Law and Tort Law.

Contract law is that body of rules that govern contractual agreements

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between persons or merchants. A contract is basically an agreement between parties outlining their duties and responsibilities to one another. In contrast, tort laws govern situations where one person has harmed or injured another person. Tort laws cover violations where the party intentionally harmed the other person, such as in a battery claim.

Contract Law

A contract is an agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between or among them. The elements of a contract are " offer" and " acceptance" by " competent persons" having legal capacity who exchanges " consideration" to create " mutuality of obligation. Proof of some or all of these elements may be done in writing, though contracts may be made entirely orally or by conduct. The remedy for breach of contract can be " damages" in the form of compensation of money or specific performance enforced through an injunction. Both of these remedies award the party at loss the " benefit of the bargain" or expectation damages, which are greater than mere reliance damages, as in promissory estoppel. The parties may be natural persons or juristic persons. A contract is a legally enforceable promise or undertaking that something will or will not occur. The word promise can be used as a legal synonym for contract although care is required as a promise may not have the full standing of a contract, as when it is an agreement without consideration.

Tort Law

A tort, in common law jurisdictions, is a civil wrong. Tort law deals with situations where a person's behaviour has unfairly caused someone else to suffer loss or harm. A tort is not necessarily an illegal act but causes harm. The law allows anyone who is harmed to recover their loss. Tort law is different from criminal law, which deals with situations where a person's actions cause harm to society in general. A claim in tort may be brought by anyone who has suffered loss after suing a civil law suit. Criminal cases tend to be brought by the state, although private prosecutions are possible. Tort law is also differentiated from equity, in which a petitioner complains of a violation of some right. One who commits a tortuous act is called a tortfeasor. The equivalent of tort in civil law jurisdictions is depicting. Tort may be defined as a personal injury; or as " a civil action other than a breach of contract." Torts, including negligence, intentional acts, assault, and more, are also relevant for the hospitality industry. Lodging operators need to be aware of their duties to guests in parking lots. Restaurant operators that serve alcohol should also be aware of their duties to their guests when patrons become belligerent or hostile to each other or to other guests.

Negligence

Failure to exercise the care toward others which a reasonable or prudent person would do in the circumstances or taking action which such a reasonable person would not. Negligence is accidental as distinguished from " intentional torts" or from crimes, but a crime can also constitute negligence, such as reckless driving. Negligence can result in all types of accidents causing physical and/or property damage, but can also include

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business errors and miscalculations, such as a sloppy land survey. Lodging operators have a duty of care to their guests. This duty does not insure the guests' safety, but does require the operator to "act prudently and use reasonable care." This means, among other things, that an operator can be held liable if he or she is found negligent. An operator also must ensure that all of the guests' personal information is retained and destroyed according to proper and recommended procedure. Common law held innkeepers liable for any loss of guest property when the guest was on their property. Nearly all states have abrogated that duty, placing limits on an innkeeper's liability, as long as the innkeeper complies with certain requirements. These requirements, usually regulated in the state's innkeeper statute, govern the placement of the law and the size of the text of the displayed statute. Generally, to be protected under the statutes, the innkeeper and his employees cannot be complicit in the theft or the loss of property. Lastly, the innkeeper usually has to provide a safe for the safekeeping of the guests' property.

Duties of Care

In tort law, a duty of care is a legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence. The claimant must be able to show a duty of care imposed by law which the defendant has breached. In turn, breaching a duty may subject an individual to liability. The duty of care may be imposed by operation of law between individuals with no current direct relationship, but eventually become related in some

manner, as defined by common law. Duty of care may be considered a formalization of the social contract, the implicit responsibilities held by individuals towards others within society. It is not a requirement that a duty of care be defined by law, though it will often develop through the jurisprudence of common law. Hospitality operators owe a duty of care to those individuals who enter their establishments. Some duties of care are rather straightforward. For example, a restaurateur has a duty of care to provide food that is safe and wholesome for guests. While hospitality operators are not required to be insurers of their guests' safety, and are generally not held liable for events they could not reasonably foresee, they are required to act prudently and use reasonable care, as defined later in this thread, to fulfil their duties of care. Because of the wide variety of facilities they operate, hospitality managers can encounter a variety of duties of care. Provide a reasonably safe premise, this would include all public space, the interior of guestrooms, dining rooms, and the exterior space that make up the operator's total physical facility. Serve food and beverages fit for consumption, this duty of care is shared with those who supply products to a foodservice operator, and would also include the techniques used by an operator to prepare and serve food or beverages. Serve alcoholic beverages responsibly, because of its extreme importance, this duty of care will be examined separately in following thread, "Your Responsibilities When Serving Food and Beverages."

Standard of Care

In tort law, the standard of care is the degree of prudence and caution required of an individual who is under a duty of care. The requirements of

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the standard are closely dependent on circumstances. Whether the standard of care has been breached is determined by the Trier of fact, and is usually phrased in terms of the reasonable person. It was famously described in *Vaughn v. Menlove* (1837) as whether the individual "proceed with such reasonable caution as a prudent man would have exercised under such circumstances." In certain industries and professions, the standard of care is determined by the standard that would be exercised by the reasonably prudent manufacturer of a product, or the reasonably prudent professional in that line of work. Such a test known as the 'Bolam Test' is used to determine whether a doctor is liable for medical malpractice. The standard of care is important because it determines the level of negligence required to state a valid cause of action. In fulfilling the duties of care just detailed, you must exercise a standard of care appropriate to the given situation. An appropriate standard of care is determined, in part, on the level of services a guest would reasonably expect to find in a hospitality facility. For example, a guest departing on a seven - day cruise of the Pacific would reasonably expect that the ship's staff would include a full - time doctor. The same guest visiting a quick - service restaurant at 11: 00 P. M. would not expect to find a doctor on hand. In both cases, it is possible that a guest could suffer a heart attack and require medical care. The ship's standard of care, however, would include medical treatment, while the restaurants would not. Many disputes involving liability and negligence in the hospitality industry revolve around the question of what an appropriate standard of care should be.

Reasonable Care

It is a simple concept, but whether or not it was used in a given situation is the stuff lawsuits are made of! Essentially, reasonable care is the amount of care that a reasonably prudent person would use in a similar situation. The doctrine of reasonable care places a significant burden on you as a hospitality manager. It requires that you use all of your skill and experience to operate your facility in a manner that would be consistent with that of a reasonable hospitality manager in a similar set of circumstances. It's just one more reason to keep up with changing industry standards and guest expectations.

Breach of Duty

A defendant is liable for negligence when the defendant breaches the duty that the defendant owes to the plaintiff. A defendant breaches such a duty by failing to exercise reasonable care in fulfilling the duty. Unlike the question of whether a duty exists, the issue of whether a defendant breached a duty of care is decided by a jury as a question of fact. Thus, in the example above, a jury would decide whether the defendant exercised

Conclusion

To be a wise hospitality operator, we have to know about contract law and tort law. While we are working as a hospitality operator we actually formed a contract between employer and us. We have to understand every element in the contract. In tort law the most important part is negligence. We own every neighbour a duty of care.