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Event Contracts and "Bathroom Laws" or Other "Objectionable" Laws—The Legal and Business Implications for Hotels

Using economic tactics to influence policy goes back to the Boston Tea Party in 1773, even before the US was a country. It has also happened many times and for many reasons in the meeting industry, going back as far as the 1970s when groups boycotted states that had not adopted the Equal Rights Amendment to the Constitution. Boycotting businesses or governments with policies with which you disagree has a long and storied history and can have important impacts.

In the highly charged political climate of 2016, the issue is again presenting itself as groups have protested against North Carolina's so called "bathroom law," which many believe is discriminatory against the LGBT community, particularly transgender people. However you may personally feel about this law and other controversial measures that have been proposed or passed, the question becomes, if a law or policy is adopted in a location where a group is planning to have a meeting that the group's attendees find objectionable, what are the implications for the hotel and the group?

A recent article in *Convene Magazine* addresses the issue:
http://www.pcmaconvene.org/design/calculating-the-cost-of-canceling/

Generally, a Group That Does Not Want to Have a Contracted Meeting for "Political" Reasons is Obligated to Pay Cancellation Damages.

Under basic contract law, any time one party to a contract does not perform, it is in breach and owes the other side damages that would put the injured party in the position it would have been in "but for the breach." In the meeting industry, the parties usually agree on liquidated damages that will be paid by the group in the event that it cancels the contract, but even if there is no damage clause, the group will still owe what are known as "actual damages," if the contract is cancelled.

There are two exceptions to the requirement to pay damages:

1. Performance is prevented by unanticipated circumstances beyond a party's control (generally referred to as "Force Majeure" or "Impossibility"), or;
2. The parties to the contract have agreed on contractual terms that allow cancellation without payment. Such terms allow for "termination," meaning that the contract is treated as if it never existed.

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When a new law is passed that a group or its attendees find objectionable, causing it to cancel, the group will likely have to pay cancellation damages, as such a situation does not fall into either exception. While the law may make attendees not want to attend, the hotel is still open and operational and the event could still go forward if the group elected to do so. A general rule is that if performance cannot happen, it is excused as a Force Majeure. If performance could happen, but one party simply no longer wants to perform, it is not a Force Majeure and damages are owed for cancelation.

Similarly, most of the time event contracts do not contain a provision allowing the group to cancel due to what it finds to be an objectionable law or policy, so if a group elected to cancel in such a circumstance, it would owe cancellation damages to the hotel.

While groups might claim that it is unfair to have to pay cancellation damages in this situtation, it is important to look at what such a "protest" cancellation really means. The group has signed a contract to hold an event at a hotel that will generate specific revenues. The hotel is entitled to the benefit of that contract, and has relied on it. When the group demands to cancel without payment due to a new law with which the group disagrees, it is asking the hotel to bear the financial loss of that contract, even though the hotel had nothing to do with the new law. Often the business community is openly against the law and urged elected officials not to adopt it. It is unfair to suggest that the hotel should bear the loss on the event for a reason that has nothing to do with the hotel.

A group having difficulty accepting its obligation to pay under these circumstances should compare the situation to other reasons for cancellation in which a group would expect to pay damages. A group may cancel a contract because of a change in the organization that makes the particular meeting no longer fit its business model; it may cancel because its attendees have indicated that they prefer a different location; it may cancel because the event has outgrown the hotel. In any of these cases, the group would expect to pay damages because it is cancelling for reasons that are not the fault of the hotel. The same is true in a cancellation due to an objectionable law: the group is cancelling due to a reason unrelated to the hotel, and should pay damages as a result.

Hotels Are Not Obligated to Accept Clauses That Allow for Termination for "Political" Reasons.

The adoption of the North Carolina law and other controversial things happening in politics have prompted a great deal of discussion in the meeting industry on how groups might avoid having to pay in the event that they elect to cancel to protest policies with which they object. One solution proposed is to use the second exception referenced above: insert language into event contracts to allow termination (cancellation without payment) for such political issues. Many meeting planners and lawyers who represent groups are suggesting a variety of clauses that might be used.

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Such language is not legally required and poses significant risk for the hotel. Agreeing to such proposals could allow a million-dollar meeting that has been definite on the hotel's books for many years to simply disappear due to something completely unrelated to the hotel. Hotels should be very diligent when reviewing contracts or edits proposed by customers to avoid such language. An example of language recently proposed by a group to add to a contract's Force Majeure clause was as follows:

…regulations or ordinances limiting the rights and protections of vulnerable populations currently not protected under federal law including, but not limited to lesbian, gay, bisexual, transgender persons…

This language is objectionable for a variety of reasons beyond the fact that it does not fall within what the law would consider a Force Majeure, including that it is undefined (what are "vulnerable populations?") and open ended ("including, but not limited to") among others. Such vague language would only lead to legal disputes over when it would and would not apply to excuse performance.

There could be a wide variety of language proposed by customers that would allow the group to cancel without payment, so it is very important to check all clauses and edits word by word to ensure that the group is not allowed to cancel without payment for reasons that simply make the group not want to perform, rather than being unable to perform. Even the addition of only one or two words, like "inadvisable" or "impractical" (as opposed to "impracticable" which is higher legally defined standard") can change a binding contract to one that the customer can terminate for subjective reasons.

Politics and issues come and go, and a state that is the subject of a boycott this year may not be the next. In the meantime, hotels have to keep operating and booking business that is not subject to the whims of political winds. Guarding against contract clauses that could undermine the business which hotels are booking is therefore critical. Of course, when there is any doubt as to the potential meaning or application of a requested clause, a having quick review by legal counsel before contracting is far better than making a mistake that leads to the loss of critical business in the future.

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