From Reactive to Proactive

HOW AI CAN ASSIST IN RETAIL & HOSPITALITY RISK MANAGEMENT

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Artificial intelligence is not only transforming the way in which retail and hospitality businesses manage their daily operations, but also the ways in which these industries can manage the risk associated with opening their doors to the public. With proper identification, through the use of AI, retail and hospitality businesses can change their approach from reacting to dangers known to trigger lawsuits to proactively guarding against these threats. But what effect will AI have on litigation in the retail space? Will technology affect traditional evaluations and considerations concerning liability? We will explore what AI tools there are in retail and hospitality and the potential effect they will have in evaluating such claims and litigation.

AI APPLICATIONS IN RETAIL AND HOSPITALITY

Trends in innovative technology typically favor early adopters. Organizations in the retail and hospitality space have seen this come to fruition when leveraging artificial intelligence in areas such as predictive analytics, hazard identification, anomaly detection through behavioral analysis, and proactive maintenance and environmental monitoring. Simply put, AI allows the user to see the litigation inducing hazard before an incident occurs and provides an opportunity to prevent a claim from ever arising. One way in which predictive analytics can be utilized to accomplish this goal is by analyzing past historical incident data such as accident reports, maintenance logs, foot traffic, and environmental conditions. In doing so, Artificial intelligence could provide warnings of specific and applicable threats such as flagging the pool area during rainy days prompting hotel staff to increase checks or deploy mats when data suggests most slip and falls occur during this time. From a retail perspective, last year's Christmas display which caused Grandma to trip (get run over) on Santa's reindeer would be an incident of the past as artificial intelligence would recognize the hazardous layout and instruct against such construction.

Retail and hospitality organizations have also employed AI-driven computer vision to detect real-time hazards before invitees are exposed to them. AI-enabled CCTV cameras can spot dangers such as spills, unattended luggage, and obstructed exits and radio to staff automatically to remove the threat. They can even recognize threats that aren't as apparent such as unstable or overstocked shelving and overcrowded store locations that cannot handle the density threshold. AI-driven computer vision truly can serve as the eye in the sky to see what human-employees might not recognize as a risk.

Predictive maintenance and environmental monitoring are additional areas in which artificial intelligence has been employed to maintain the safety of a business' premises as well as its products. In hotels, elevators with AI-connected devices can monitor the lift, detect unusual vibrations and automatically schedule maintenance before a breakdown ever occurs, saving a potential victim from becoming stuck or injured. Food retailers have utilized these devices in a similar capacity by affixing this product to its kitchen equipment, like its refrigerators, to monitor the equipment for early signs of failure and prevent food spoilage or leakages.

Artificial intelligence can also be utilized to assess threats that walk through a business' door. This is accomplished by AI systems that monitor typical patterns of behavior and flagging anomalies, indicating a

risk. For example, AI has the capability to recognize a guest loitering near restricted areas or a staff member entering unauthorized locations and point out the potential indicator of a security risk. It can also recognize aisle avoidances circumstantiality indicating a risk or notice a surge of patrons to exits to alert an organization of a developing emergency.

IS ARTIFICIAL INTELLIGENCE AN EFFECTIVE TOOL?

Reported data from organizations, such as retail and hospitality businesses, that have implemented artificial intelligence into their everyday practices have yielded strong results in reducing the likelihood of incidents at the owner's property and in turn, diminishing ensuing litigation. Insurance firms closely monitoring the AI boom and its implementation have estimated that predictive risk models reduce incidents at a 15-30% rate by improving hazard awareness and preemptive action. IBM's Maximo, which acts as a tool that anticipates equipment failure and service outages, is said to reduce equipment related incidents by 30-40%.

While there are countless examples of singular AI tools vastly reducing litigation-inducing incidents, their effectiveness is multiplicative, not additive, when integrated into a comprehensive safety strategy with multiple complimentary AI systems. In fact, studies have shown that businesses saw a reduction of 40-60% of incidents in the first 12-24 months following the implementation of multiple AI systems. Retail and hospitality businesses, such as big box stores and hotels, have seen up to 40% reduction in slip or trip-and-fall incidents when their AI cameras or computer vision was paired with an automated alert system. Another major hotel brand has also joined in on the technological fun, employing AI tools for predictive maintenance and sentimental analysis. A Deloitte study found that some hotels with these systems were able to reduce maintenance costs by 25-30%, unplanned outages by 70-75%, and extend asset lifespan by 20-30%. AI-powered tools can also enhance customer experience through sentimental analysis providing real-time feedback from guest reviews and social media. It has resulted in a reduction in guest complaints by approximately 15% and increased satisfaction ratings by around 12%.

LEGAL AND ETHICAL CONSIDERATIONS: DOES AI RAISE THE STANDARD OF CARE?

"Standard of Care" is a legal term referring to the degree of care that a prudent and reasonable person would exercise under the applicable situation. As such, the standard of care is not a hard and fast rule. Instead, it serves as a sliding scale or continuum based on the facts of the alleged incident and the precautions taken by the business inviter. Relevant for consideration, the standard of care does not equal optimal care, and businesses are not tasked with defending against all conditions that could cause harm, but only those that are foreseeable.

So how does the implementation of artificial intelligence affect this standard? Although AI's role in business is still in its infancy stages, the probable assumption should be that courts will assess its impact on businesses and increase those businesses' responsibility, ultimately finding organizations liable for incidents where it previously did not. This is because AI tools, such as those previously discussed, enhance a business's ability to foresee and mitigate risks before they occur. If a retail and hospitality business adopts AI tools and fails to effectively use them or act on its insight, a court may see this as falling short of prudence. Moreso the existence of AI systems can be seen as an enhanced risk management tool, holding an organization to a higher standard of care, and evidencing the business as a negligent party if an accident occurs that the court deems foreseeable as a result of having such technology. Consequently, the future evaluation could change from the reasonable person standard to a reasonable person with the assistance of AI standard.

In addition, AI implementation can also introduce a higher burden of responsibility. AI users now must ensure that its systems are continuously maintained and functioning properly and nonperformance of such duties can lead to greater liability if an accident arises which would have been preventable with the tool. These systems also increase transparency allowing for a failure to act to become more easily identified. A Plaintiff complaining of a defective shelving unit could now receive in discovery a log of all the times AI tools alerted management of required maintenance. In all, the decision to implement artificial intelligence is one that has proven to enhance the everyday functioning of retail and hospitality businesses but could also place a greater emphasis on an organization's failure to eradicate litigation inducing hazards due to its improper use or untimely maintenance of the AI tool.

From an ethical perspective, employing artificial intelligence could carry its own complications. As discussed previously, predictive data would be an important component in preventing accidents but when does the tool cross the line? One area of the law that may be implicated are surveillance laws as AI-powered cameras could overstep legal boundaries and cross into an invasion of privacy. Another prevalent ethical consideration is its impact on a business' workforce. As mentioned previously, employee engagement is critical in maximizing the effectiveness of artificial intelligence, however, employees who see the tool less as an asset and more as a threat may be less likely to immerse themselves in the tool and utilize its efficiencies.

CONCLUSION

Artificial intelligence is not the way of the future; it's the way of the present. Retail and hospitality businesses all over the country have implemented AI tools in their organizations and the results speak for themselves. Businesses, with the assistance of AI, have increased their identification of hazards, protected against maintenance costs and equipment failure, and have increased their asset lifespan considerably. On their own, AI tools have made an impact, when integrated into a complementary system employing multiple AI tools the effect is boundless – especially in reducing litigation. However, buyers beware. As technology shifts and improves, courts will expect the same out of the businesses that utilize them. The previous Standard of Care will be eclipsed by a standard requiring the user of AI tools to effectively deploy them or maintain them, and anything less than adhering to a Standard of Care with the use of AI could evidence retail and hospitality businesses as a negligent party.

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