



NEGLIGENT SECURITY

The Importance of Sound Policies, Procedures and Training Programs

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Safety and security have always been significant issues in the retail and hospitality industry. In recent years, we have seen increasing incidents of crimes, assaults, robberies, and aggressive behavior at retail establishments. This is especially so in the post-pandemic world we now live in. The unfortunate result is that property owners and managers now must be more vigilant than ever in managing their properties to keep their customers safe and secure, placing extra burdens on them. This article will explore the considerations necessary to avoid allegations of negligent security, which we now are seeing much more often. Further, we will discuss how sound policies, procedures and training programs are an important part of managing security.

FORESEEABILITY

A property owner must take reasonable steps to protect customers, employees, guests, and other invitees from potential dangers such as the criminal acts of third parties. In the negligent security context, foreseeability is the key component of the analysis. The property owner and manager must analyze and determine what protections are necessary to provide a reasonable level of safety and security. Therefore, the facts and circumstances surrounding their business are extremely important. This fact-intensive analysis requires each business or property to assess the potential security issues that could arise and place safeguards to protect against them. Those safeguards are found in strong policies and

procedures developed from an assessment of what criminal acts are foreseeable on that property. In developing sound policies and procedures, there are many considerations, including an analysis of the type of business, the location of the business and the physical makeup of the premises where the business operates.

TYPE OF EVALUATION AND ANALYSIS NECESSARY

The type of business is a crucial factor in the analysis. The considerations for a grocery store or convenience store are different than those of a jewelry store, bar or nightclub. The type and level of security necessary for each type of business are dictated by the potential security problems

can arise. For example, bars and nightclubs often require security personnel to police the premises and provide a presence that deters criminal activity. The obvious risks a property owner is protecting against in such situations include unruly patrons, assault and battery. In addition, a jewelry store presents a different kind of risk as they usually contain high-value items that can be a target for criminals. Therefore, it is common to see a security guard presence on the premises. Naturally, a convenience store or grocery store has less risk for intoxicated individuals, so the level of security needed will be different.

The location of the business presents significant considerations that are extremely important when analyzing the level of security needed on the premises. The most obvious consideration will be an analysis of the crimes at the business and in the surrounding area. The types of crimes, the geographical proximity of those crimes and the temporal proximity of those crimes all play a role in determining the level of security necessary. If the business is in a high-crime area, protections such as bulletproof glass, security guards and emergency call buttons directly to the local police may be necessary. The more criminal activity that occurs on the premises and the surrounding area will result in a greater number of security precautions that will be needed on the premises.

The next consideration, the property itself and its configuration, provides the property owner or business operator with the greatest amount of control. Good lighting, working locks and doors, and alarm systems are all standards for secure premises. Most important, however, is the presence of a solid and functional CCTV system where the property is being monitored. Most of the failures seen in negligent security cases deal with the premises themselves. The design of the property is also important. Crimes often occur in areas where there are blind spots or areas of the premises that are not monitored but are accessible. While many experts dispute the effectiveness of cameras as a deterrent effect, missing or non-operating cameras often provide a foundation for finding liability in such cases. Failing to monitor those cameras also makes matters worse. Unattended and unmonitored parking garages are also fertile grounds for crimes.

SOUND POLICIES, PROCEDURES AND TRAINING PROGRAM

After you take all the foregoing into account, the next step is to produce a reasonable plan to provide the level of security

necessary. Such a plan requires sound policies and procedures, as discussed above. This process can span anywhere from operational action items to using experts. To properly operate safe and secure premises, the business owner must consider the special circumstances of the premises and tailor the policies to those needs based on the circumstances specific to that property, such as its location and type of business. The plan must always include risk assessment in the beginning and continuing through the life of the business. Simply developing a plan at the outset is not enough. The business and property must be constantly evaluated. Analysis must be made as to whether the business has evolved into another one, the surrounding area has changed, or the business has seen increased criminal activities, to which the security plan must respond. Security analysis is never stagnant.

Risk assessment includes determining what strategies to implement to provide safe and secure premises. Such strategies include a CCTV system, good lighting, alarms, locks, security guards, etc. In addition, there must be continued analysis on a quarterly, monthly, and daily basis to ensure that those strategies are operating optimally. Many property owners use experts in assessing the needs of properties. Such experts include evaluations performed by security professionals, alarm system experts, CCTV experts, and criminologists. Larger companies tend to have such professionals on staff. However, smaller companies can easily access the same if they feel the need to.

Property owners and managers often overlook other ways to provide secure premises. First, having a clean and organized property gives the public a sign that the property is cared for and handled in a safe manner. Studies have shown that properties that are dilapidated and in an unkempt condition are targets for crime. Therefore, a strong maintenance program can help prevent criminal acts. Secondly, maintaining a close relationship with local law enforcement also reduces the risk of crimes at a business. Encouraging local police to come to the premises, offering the officers simple things like coffee and lunches to build the relationship, and engaging them when they are on the premises will increase the likelihood that they will stop by more often and stay longer. There is a natural deterrent effect of having law enforcement present.

The last part of the analysis is training your staff. While everything we have discussed so far is important, this topic is an essential part of the process. Developing a solid program with sound policies and pro-

cedures can only be done if it is designed and implemented through the training of employees. Training should include a written and/or computer portal program that outlines what needs to be done and how to handle issues such as intoxicated individuals, aggressive customers, robberies, assaults, and batteries. Training should also include on-the-job training where the employees are shown their duties and how to carry them out. Post orders are also important as security personnel can rely on them to show when and where they must be along with what they must do. Holding safety meetings periodically also encourages a safe environment. During the training process, questions must be encouraged and answered. Once training is completed, train some more and continually.

In the unfortunate event when a claim or lawsuit is filed against a business where negligent security is alleged, discovery will include investigations into what strategies were implemented, how they were installed on the premises, and how the staff was trained on them. I understand that this is much easier said than done, especially since the retail world must deal with continual turnover. Managers and other leaders of businesses are often challenged with having to run a profitable business while continually training their employees throughout their employment. Training must be a focus of any business as it will undoubtedly be a focus of any litigation.

CONCLUSION

Claims and lawsuits alleging negligent security will focus on the premises and the business that is being operated at that location. The plaintiffs will dive into what special circumstances the business is presented with and what protections, policies and procedures were implemented to address those concerns. Identifying the concerns, creating reasonable strategies to address them, and then following through with them are essential in refuting any such claim or lawsuit.



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