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New York City to License Hotels: What You Need to Know

November 4, 2024

On November 4, 2024, Mayor Eric Adams signed into law Int. No. 991-C (the "Act"), which establishes a new licensure requirement for hotels to operate in New York City, requiring new staffing, safety, cleanliness and direct employment standards.

The stated purpose of the Act, referred to as the "Safe Hotels Act," is to ensure safety and security at hotels within the City. The Act faced fierce opposition by industry stakeholders and vociferous support by employees and labor unions. There were several iterations of the Act since it was originally proposed by Councilmember Julie Menin in mid-July; hearings were held by the City Council on October 9 and 23, 2024; and the Act was passed nearly unanimously by the Council on October 23, 2024.

We expect that the commissioner of the Department of Consumer and Worker Protection ("DCWP"), who is charged with overseeing the new licensure requirement, to promulgate rules to enforce the Act, and we will provide further updates in the event they are issued.

The Act will affect hotel operations in a number of ways, as summarized below. In particular, employment-related standards and requirements likely will need to be adjusted for covered hotels, regardless of whether the affected employees are represented by a labor union. For hotels with union-represented employees, operators will need to carefully review their collective bargaining agreements ("CBAs") and other work rules and policies, and any revisions may require collective bargaining with labor unions. Close scrutiny will need to be paid to the terms of any applicable hotel-management agreements, and whether existing ownership structures, employment relationships, and contactor agreements will need to be modified or terminated to comply with the Act. The true impact of the Act—especially with regard to the transfer of hotel licenses—will depend on how it is administered and enforced by the DCWP.

Now that the Act has been signed into law, there could well be legal challenges brought by affected parties.

Requirements for Hotel License

Hotel operators—defined as persons who own, lease or manage a hotel and who are in control of the day-to-day operations of the hotel— must obtain a hotel license from the DCWP to legally operate a hotel in the City, and it is unlawful to operate a hotel without a license. The Act is not clear who must obtain the license for hotels with multiple entities that could satisfy the definition of "hotel operator," and this may be impacted on how the practice develops on that front.

Hotel licenses are valid for two years and the fee is $350.

To obtain a hotel license, a hotel operator must file an application with the commissioner of the DCWP that includes the following:

- Name, address, contact phone number and electronic mail address of the hotel operator;
- Information that the commissioner will require to demonstrate that the hotel operator has adequate procedures and safeguards at the hotel in compliance with the Act, such as related to requirements related to staffing, safety, guest room cleanliness, direct employment, and panic buttons– all of which are explained below; and
- Any other information the commissioner may require (which has yet to be specified).

Notably, the hotel operator may satisfy the requirement to provide the information to the commissioner above if it expressly references those requirements in a CBA. If such information is contained in a CBA, the hotel operator's notification requirement will be satisfied for the longer of the term of the CBA or 10 years from the date of the application, but the hotel must notify the commissioner if the CBA is modified to remove reference to the Act's requirements.

Hotel licenses must be conspicuously displayed in publicly visible areas of the hotel where other such legally required notices are displayed. The commissioner may inspect the hotel to ensure compliance with this requirement.

Limited Transfers of Hotel Licenses

Hotel licenses are not assignable, except for transfers made pursuant to the requirements set forth in New York City Administrative Code 22-510, which establishes procedures for transferring a controlling interest in a hotel and provides protections for displaced hotel service workers. Under such transfers, the successor hotel operator must notify the commissioner of the transfer and provide all information set forth above prior to the expiration of the license.

The limitation on the assignment of a license does not eliminate hotel ownership transactions after the Act's passage. Rather, assuming the hotel operator / owner holds the license, then the purchaser may apply for the assignment of the license, and per the terms of the Act, the hotel license stays in place until notified otherwise. Like other issues in the Act, the manner in which this process will be administered by the commissioner of the DCWP will be critical.

The application process set forth in the Act is as follows:

- Hotel licensees must submit application forms and fees to renew their license;
- While the application is pending, the licensee may operate a hotel until they receive a determination from the commissioner;
- Failure by the commissioner to make a determination prior to expiration of the license shall not be cause to cease operation of a hotel. In other words, as long as the licensee has a pending application, any delay by the commissioner should not interrupt the hotel's lawful operation.

License Revocation

The most significant enforcement mechanism set forth in the Act is the commissioner's authority to deny or revoke a hotel operator's license for failure to comply with the Act's provisions. The risk of revocation or denial that can result in the inability to operate would prove to be a devastating outcome for all stakeholders, and will depend on how the commissioner administers the license process and deals with potential violations.

The Act provides extensive notice requirements and an opportunity to cure a deficiency if the commissioner intends to revoke an existing license:

- The commissioner must first notify the licensee of an anticipated revocation in writing;

- The licensee must be afforded 30 days from notification to cure the stated condition, and the commissioner must notify the licensee of the 30-day period in writing;
- The commissioner shall not revoke the license if the licensee demonstrates that the condition has been corrected during the 30-day period;
- Proof of curing the condition can be made electronically or in person;
- Within 15 days of a determination by the commissioner, the licensee may seek review by the commissioner of the determination that the licensee has failed to submit proof.

While failure to comply with the terms of the Act can provide a basis for license denial, suspension, revocation or failure to renew, the Act provides that the following shall ***not*** constitute a basis to approve, deny, suspend, revoke, or fail to renew a hotel license:

- Service disruptions (as defined in New York City Admin. Code 20-850), which includes a number of conditions that substantially affect any guest's use of a room or utilization of hotel service, such as construction work that creates excessive noise; conditions that the hotel is aware of, such as bed bugs, lice, rodents, vermin if treated within 24 hours; unavailability for a period of 48 hours or more of a hotel amenity or hotel technology; unavailability for a period of 24 hours or more of any utility, such as gas, water or electricity that affects only the hotel; unavailability of any advertised or legally-required accessible feature in a room or common area; or any strike, lockout or picketing, or other demonstration at or immediately adjacent to the hotel); and
- Any remedied violations of service disruptions, pursuant to New York City Admin. Code 20-851.

Direct Employment

The Act imposes a number of novel direct employment requirements on hotels, which could upend the existing ownership and employment structures that have been in existence at hotels in the City for decades.

For hotels with 100 or more guest rooms, the hotel owner must "directly employ" all "core employees," except a hotel owner may retain a single hotel operator to manage all hotel operations involving core employees at a hotel on the owner's behalf.

- This means that there may be no "intermediary" in the employment relationship – such as a management company, contractor, subcontractor, staffing agency – with

respect to core employees, other than a single manager of all hotel operations.

- Core employees generally include employees whose job classifications relate to housekeeping, front desk, or front service at a hotel (e.g., room attendants, house persons and bell/door staff).
- Core employees do not include laundry/valet, concierge, reservation agents, telephone operators, engineering/maintenance employees, specialty cleaning employees, parking, security, life guards, spa/gym/health club employees, minibar employees, audio/visual employees, employees primarily working in food/beverage.

The prohibition on numerous subcontractor relationships may be particularly challenging for hotels that have utilized multiple contractors for employment of different types of "core employees" for decades.

The prohibition on contracting arrangements does not impact any enforceable agreements between a hotel operator or owner, on the one hand, and a contractor, on the other hand, that were executed prior to the effective date of the Act, provided the agreement terminates on a date certain and does not run in perpetuity.

Although the Act generally takes effect 180 days after it becomes law (*i.e.*, on May 3, 2025), which is the "effective date"), certain existing contracting arrangements are "grandfathered" with respect to the implementation of the contracting prohibition. The contracting prohibition is effective for the following contracting agreements:

- Entered into on or after the effective date of May 3, 2025 – in 180 days;
- Executed prior to the effective date of May 3, 2025 that do not terminate on a date certain – on December 1, 2026;
- Executed prior to the effective date of May 3, 2025 that terminate on a date certain – 30 days after the date on which the contracting agreement terminates or expires.

This new contracting prohibition requires careful analysis of the hotel's existing contractual arrangements, including the terms of the agreements, whether new agreements can be negotiated in the short-term to obtain at least temporary relief from the prohibition, and careful strategic labor-relations planning to ensure compliance with the Act.

Violation of the contracting prohibition constitutes an independent violation of the Act and thus could form the basis for license revocation or denial.

Staffing Requirements

The Act includes a number of important hotel service requirements, which delve significantly into the weeds of hotel operations within the City and could result in additional costs and changes from the status quo.

- Generally, each hotel must maintain "safe conditions for guests and hotel workers."
- Front Desk:
  - At least one employee must provide continuous coverage of a front desk (except during an overnight shift, the hotel may schedule a security guard who is able to assist guests and who has undergone human trafficking recognition training).
  - Staff must be able to confirm the identity of guests checking into the hotel.
- Security Guards: Operators of large hotels (more than 400 guest rooms) must have at least one security guard to provide continuous coverage while any guest room is occupied.
- Cleanliness:
  - Hotels must, generally, maintain cleanliness of guest rooms, sanitary facilities and common areas.
  - Every guest room must have clean towels, sheets, pillowcases prior to occupancy by a new guest.
  - Hotel operators must replace towels, sheets, pillowcases upon request by a guest.
  - Hotels must clean occupied guest rooms and remove trash daily – unless guests affirmatively decline.
  - Hotels may not impose fees or collect charges for daily room cleaning or offer discounts to forgo it.
- Short Duration / Human Trafficking:
  - Hotels may not accept reservations for a duration of less than 4 hours – except airport hotels.
  - Hotels may not permit the premises to be used for human sex trafficking.
  - Hotel operators must provide human trafficking recognition training to all core employees (defined above) within 60 days of employment.
- Panic Buttons: Hotel operators must provide panic buttons to core employees whose duties involve entering occupied guest rooms – at no cost to the employee.

Enforcement

The Act also outlines an enforcement mechanism to protect employees from retaliation for reporting violations of the Act, and sets forth a fine schedule based on the number of violations:

- Prohibition on Retaliation: Hotel operators are prohibited from retaliating against any employee for (i) disclosing a potential violation of the Act, provided there is a good-faith belief that a violation or threat to the public has occurred; (ii) providing testimony or information in connection with an investigation related to a potential violation of the Act; and (iii) objecting or refusing to participate in an activity that subjects the employee to unusually dangerous conditions not part of their job.
- Potential Civil Actions: Anyone alleging a violation of the Act may bring a civil action, and the court may order compensatory, injunctive, and/or declaratory relief, including attorney's fees. The statute of limitations to bring a civil action is 6 months.
- Civil Penalties: The Act provides for civil penalties based on the number of violations: $500 (first violation), $1,000 (second), $2,500 (third), and $5,000 (fourth+).

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