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INITIATIVE 124: WHAT IT MEANS FOR SEATTLE HOTELS

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Last November, Seattle voters passed Initiative 124. The act establishes a number of new safety and health standards for hotel employees in the city of Seattle. It also creates significant administrative burdens for Seattle hoteliers. The act's numerous rules and regulations, which became effective in December 2016, have led many in the hotel business to question how their insurance policies will respond to allegations or demands stemming from the new law. Below is an outline of some potential allegations as a result of Initiative 124, and how corresponding insurance policies theoretically may respond.

Initiative 124 creates many new exposures for hotel operators in the city of Seattle.

EXPOSURE: HOTEL GUEST ALLEGES HE OR SHE HAS BEEN WRONGLY ACCUSED UNDER 14.25.040

Hotel owners and operators are now required to protect hotel employees from violent or harassing guests. If an employee alleges, under the threat of perjury, an act of violence, assault, sexual assault, or sexual harassment by a guest, the hotel is required to decline service to the offending guest for a period of three years. The

hotel is also required to maintain documentation of the event for up to five years. Due to the sensitive nature of such allegations, hotel owners are very uneasy about maintaining such a blacklist.

Depending on the wording of the guest/plaintiff's allegation, a hotel may trigger an insurance claim on either its general liability (GL) and/or employment practices liability (EPL) policies if it is alleged to have wrongly accused a hotel guest while complying with Initiative 124.

In this scenario, the guest could make an allegation of libel or slander. A hotel's GL policy will include a provision for "personal and advertising injury". Allegations involving libel and slander could trigger the insurer's duty to defend the client, in this case the hotel operator. If a hotel is found responsible for damages, the company's GL and excess liability policies may respond.

It is also conceivable that a hotel guest may allege discrimination or harassment by being placed on the hotel's list of unacceptable guests. These allegations may be covered under a hotel's EPL policy through a third party liability endorsement. A prudent hotel operator should verify with their insurance broker that

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their EPL policy is endorsed to include third party liability. However, the third party coverage triggers can be more limiting than first party coverages; hotel companies should confirm the scope and adequacy of their third party EPL coverage.

EXPOSURE: HOTEL EMPLOYEE(S) ALLEGES RETALIATION FOR COMPLYING WITH I-124

The enforcement section of Initiative 124, 14.25.150 addresses allegations of retaliation against employees for reporting under the initiative. The law allows employees to bring civil action in King County Superior Court against the hotel owner and, if successful, entitles them to damages, attorney fees, and expenses. The law clearly states that retaliation and “adverse actions” taken against employees for complying with the law is a violation of Initiative 124.

If an employee alleges he or she has been retaliated against for complying with the law, a hotel’s EPL policy could be triggered for defense of the claim. The majority of EPL policies include retaliation as a covered allegation. Nonetheless, it would behoove insured hotels to check that their policy includes retaliation as a specific coverage trigger. Once coverage is triggered for this claim, the insurer provides (or reimburses the insured for the cost of) legal defense for the insured accordingly. If a hotel is ruled to have violated Initiative 124 and is forced to pay damages to a plaintiff, their EPL policy may also pay damages on top of the defense costs.

EXPOSURE: HOTEL EMPLOYEE(S) ALLEGE FAILURE TO COMPLY WITH I-124

Initiative 124 requires numerous actions from hotels in order to comply with the law. A few examples of the requirements include: giving panic buttons to employees providing in-room services, posting signage in each room notifying guests of Initiative 124, maintaining a list

of preferred retention workers after acquisition of a hotel business and hiring from that list for a period of six months after the transfer of ownership, and many others. Similar to the retaliation exposure, the enforcement element of the act (14.25.150) arms employees with the ability to litigate if they claim injury from a hotel’s failure to comply with any element of the act. These are administrative burdens that hoteliers now must navigate and from which exposures are potentially created if mistakes are made in compliance.



If an employee alleges damages from a hotel’s failure to comply with the initiative, hoteliers should look to their EPL policy for coverage. Again, depending on the specific wording of the allegation, the insurance policy may trigger coverage for “workplace wrongful acts.” This term should be defined to include language for a “failure to provide or enforce adequate or consistent corporate policies or procedures” and a “violation of an individual’s civil rights.” Hoteliers should review their policy to determine whether the definition of workplace wrongful acts contemplates this type of claim.

EXPOSURE: OFFICE OF CIVIL RIGHTS (OCR) ALLEGES FAILURE TO COMPLY WITH INITIATIVE 124

The initiative gives the OCR enforcement responsibility. Section 14.25.150.E.1 states that “each workday during which the hotel employer is in violation...the employer

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shall be liable for a penalty, exclusive of any damages which may be awarded or recovered by any employee, of at least \$100 per day per employee, and not more than \$1,000 per day per employee.” This is a significant exposure for hoteliers. For example, if a hotel with 60 employees was found to be in violation of the law for one month and received the maximum penalty, the hotel would be responsible for \$1.8 million penalty.

If the OCR takes action against a hotel, their EPL policy’s duty to defend should be triggered by this action, as most policies cover administrative or regulatory proceedings relating to employment. However, if the

hotel is found to have violated I-124 and must pay the penalty described above, their EPL policies will likely not cover the fine. The majority of EPL policies specifically state that a “loss” is not inclusive of any taxes, fines, or penalties imposed by law.

Initiative 124 creates many new exposures for hotel operators in the city of Seattle. Insurance may respond to some of these exposures, but not others. Take some time to discuss the new law with your broker and understand what may or may not be covered by your insurance policies.