by Michael Gentile, J.D.

To what classes of individuals may a hotel refuse to rent guestrooms to?

In a recent edition of the Columbia, Mo. *Daily Tribune*, a story appeared about a man from Moberly, Mo. who tried to rent a room in the city in which he resided while the wood floors in his home were being refinished. He was told at two hotels, both national chains operating in his home town, that each had a policy of not renting rooms to local residents. Each hotel had a policy that hotel guests must live at least 30 miles away to rent a room. The article cites a Columbia, Mo. police officer who states that local refusal policies are common and are used by hotels to prevent criminal activity from taking place in hotels.

But the incident raises a broader question as to what policies and restrictions hotels can place on various groups of individuals to prevent them from renting rooms, merely based upon the fact that they are members of a particular class of people. This becomes important because a policy that prevents a class of persons from access to a lodging property may serve to deprive the individuals in that class of their civil rights or constitutional rights, exposing the property to liability under state and/or federal laws.

Treatment vs. impact

To understand how this might operate, it is appropriate to discuss the difference between policies that treat groups differently versus policies that impact groups differently. This is known as “disparate treatment” as opposed to “disparate impact”. For example, no property would likely have a policy that refused to rent rooms to African-Americans, or Hispanics or Caucasians for that matter. That policy, on its face, would treat the people in those groups differently and be considered both discriminatory, and, as we will momentarily discuss, illegal.

But suppose a property instituted a policy of renting rooms only to people 5 feet 6 inches and shorter in an effort to reduce wear and tear on furniture and bedding. While this policy may look neutral on its face (except as it relates to tall people), the policy operates to have a discriminatory effect on a particular class of people who tend to be taller than 5’6", namely men. In essence, this basically neutral policy serves to restrict access to rooms at this property to most men while allowing access to most women, discriminating based upon gender and having a disparate impact on men.

While this is merely an example, most policies of this type can be analyzed from many perspectives. To be upheld, a policy will be examined based upon who implemented it, what class of persons it impacts, and what purpose the policy is designed to accomplish. Therefore, the justification for the policy, as in the Moberly case, becomes critical in upholding the legal validity of the policy.

Legal protections

The constitutional requirement that applies to these types of cases is the Equal Protection Clause of the 14th Amendment of the Constitution of the United States. That clause states, “No state shall…deny to any person within its jurisdiction the equal protection of the laws”. Essentially, this means that all people and classes of people should be treated equally under the law. A body of law has developed over time to establish a variety of tests that courts will use to determine if a rule or policy impacts classes differently, and if it does, is the purpose behind that policy sufficient to allow it to stand?

But the 14th Amendment only applies when the government or “state” makes a rule or policy. It does not restrict discriminatory actions by private parties, including hotel proprietors. For that, we must look to federal legislation designed to afford the protection of the 14th Amendment to persons who are affected by the actions of private citizens. The Civil Rights Act of 1964 was enacted as a comprehensive legislative plan to eliminate and to create disincentives (penalties) to discriminate. Title II of the Act specifically relates to discrimination based upon *race*, *color*, *religion*, or *national origin* in places of public accommodation affecting interstate commerce. One of the categories defining such places is,

> "…any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence."

Based upon that definition, Title II applies to just about every type of lodging facility except boarding houses and Bed & Breakfasts with fewer than six rooms.

Affected classes

As one can see from the language of this statute, it only prevents discrimination based upon race, color, religion or national origin. Interestingly, Title II does not prohibit discrimination based upon gender. Why then, would we need to be concerned with the previous example of a policy that discriminated against men? The answer is because most states have gone a step further by enacting antidiscrimination statutes that prohibit discrimination based upon gender, sexual orientation, age (18+), disability, personal appearance, marital and familial status in their states. There is, therefore, some level of law that could be used to evaluate the validity of virtually any policy with respect to renting or not renting a hotel room in the United States.

This article has highlighted the laws that exist to prevent policies that may unlawfully discriminate in the hotel room rental process. In the next issue of TRC we will examine how a valid policy can be developed and the legal tests used to analyze those policies. ✧

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