

# Negligent Security Claims Liability Is No Joke

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A man walks into a bar—but not just any bar—your bar, restaurant, hotel, or nightclub. Chances are, this person entered the premises to enjoy the hospitality your business has to offer. In the off-chance that this person ultimately acts to intentionally harm or commit a crime against another person while on your premises, you could be liable for these wrongful acts, even where your business had no actual involvement in committing the act.

Claims for negligent security are no joke. With premises security lawsuits on the rise, understanding the nature of the claims, and how to both prevent and defend against them, will provide a key advantage in maintaining focus on hospitality, rather than liability. While many premises liability claims arise from the more traditional scenarios such as slip and falls, where the claimant is seeking damages from the business owner for the business's alleged wrongdoing, negligent security claims seek damages from business owners for the wrongdoing of an unrelated and often unknown third party.

Historically, common law prevented claims against most businesses for intentional or criminal acts committed on or near a commercial premises by an unknown person. Over the last few decades, jurisdictions have increasingly allowed for victims of crimes or intentional torts to seek damages from the owner of the business where the act occurred. These acts can range from a physical altercation between patrons to a criminal attack committed on the property. Oftentimes, these incidents can arise quickly and without warning.

If a claim is filed against your business, the injured person typically has the burden to prove that your business could have reasonably prevented against the crime or physical assault. Because most

jurisdictions do not allow for the apportionment of fault against the person who actually committed the criminal or violent act in negligence lawsuits, the victim must prove fault against your business in order to prevail. Claimants will attempt to do this by showing that the actions (or inactions) of your business and its employees failed to prevent the incident, which was otherwise foreseeable.

In looking at foreseeability to determine liability of your business, two major factors will be considered. First, the claimant will try and determine whether there have been other, similar incidents committed on your property or on surrounding properties in the past. For example, if there have been known burglaries at your hotel or resort, or frequent bar fights on your premises, claimants caught in similar situations will be able to introduce evidence of the prior events in support of foreseeability. Similarly, if your business is located in an area where similar crimes have occurred in the past, the claimant can likely introduce these instances as evidence in support of their claim.

Jurisdictions vary on the extent of admissibility of similar other occurrences, including degree of similarity, geographic scope and proximity in time. Regardless of your jurisdiction, taking action in light of past events and similar crimes in your area can provide a significant defense when defending against a negligent security claim. These actions may include enhancing security or encouraging employees to engage in ongoing communications with local law enforcement to stay apprised of criminal activity in the area.

When pursuing a claim for negligent security, claimants will also try to establish a lack of adequate internal policies to provide a reasonably safe and secure premises, or alternatively, that

your business had procedures in place but failed to enforce them. With negligent security claims on the rise, it is increasingly important to establish policies for identifying potential security risks. These policies should seek to prevent against reasonably foreseeable violent or criminal actions on the premises such as: identifying high-risk situations in establishments such as bars and nightclubs, where the consumption of alcoholic beverages can lead to altercations; identifying locations on the premises outside of the view of security guards or security cameras where criminals could lurk; providing after-hours access to “side” or “back” entrances to your property; and recognizing times when few employees are staffed on premises or where employees are handling a large amount of money. Identifying risk factors specific to your business will allow for policies that are designed to reasonably protect against incidents, and ultimately, claims for negligent security.

Once the policies have been established, it is equally important to ensure that employees have been trained and that the policies are enforced. Ensuring that employees review and sign-off on the receipt of the policies, and holding routine meetings to discuss policies on safety and security, are easy ways to make certain employees are familiar with, and likely to follow, policies.

In the unfortunate event an incident does arise on your premises involving a criminal or intentional act by an unknown person, it is important that an investigation be conducted quickly to ensure that all information possible is gathered concerning the incident. If a claim or lawsuit is filed, having information on file makes the defense of the claim *exponentially* easier than having to conduct an investigation well after the fact. Because many jurisdictions allow for negligence claims to be filed four or five years after the occurrence of an

incident, it is essential to secure and store key information as quickly as possible.

Items that should be collected to create an incident file include preparing a list of employees on duty at the time of the incident along with their current address and contact phone number; gathering copies of current policies and procedures on safety and security along with any documentation showing that employees on duty received training on the policies; and obtaining written statements of employees and eyewitnesses to the incident, including contact information for anyone providing a statement. Any additional information relevant to the incident should also be included. Having more information than necessary is much better than losing crucial information due to a failure to conduct a thorough investigation. By the time a claim is filed months or years later, employees and witnesses could be lost, and employees who were present may not remember the majority of relevant details surrounding the incident.

Keeping these tips in mind can help your business focus on hospitality, rather than liability, providing enjoyable, yet reasonably safe, environments for your patrons to enjoy their favorite meal at your restaurant, or to kick-back while enjoying all of the amenities your resort has to offer.



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