

HOSPITALITY LAW

Route to:

Helping the Lodging Industry Face Today's Legal Challenges

April 2006

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Choking incident prompts criticism of emergency procedures

Restaurant owner called 911, was not required to render aid

Although restaurants are not obligated to perform medical procedures on patrons who experience life-threatening symptoms, they are required to respond appropriately in an emergency. Restaurants should train staff to immediately call 911 if they observe a patron in distress. As demonstrated by this case, responding promptly to a diner in distress can shield a restaurant from liability for a choking incident. *Campbell v. Eitak, Inc.*, No. 965MDA2005 (Pa. Super. Ct. 02/10/06).

Christopher Campbell visited Katana, a Japanese restaurant in Wilkes-Barre, Pa. After one bite of his chicken teriyaki, a piece of food became lodged in Campbell's throat. Campbell notified an employee that he was having trouble breathing and asked her to call 911. The restaurant owner suggested that Campbell try to dislodge the food by drinking some water. When that didn't work, the owner called 911. The emergency medical technicians administered oxygen and transported Campbell to the hospital. While surgically removing the chicken from Campbell's

throat, doctors detected a tear in his esophagus, which required surgical repair.

Campbell sued the restaurant's owner, Eitak Inc., for negligence, alleging that it failed to have policies and procedures for responding to a choking emergency. Campbell contended that Eitak should have trained its personnel to perform the Heimlich maneuver and to administer appropriate first aid.

Concluding that the restaurant owner's response to the choking incident was proper, the Pennsylvania Superior Court said Campbell could not take his claim to trial. "A restaurant... meets its legal duty to a customer in distress when it summons medical assistance within a reasonable time," the court said.

Noting that there were no Pennsylvania court decisions or statutes addressing the issue of the duty owed by a restaurant to a choking patron, the court relied on appellate court decisions from Nevada and Wyoming to determine whether Eitak's response was appropriate.

The Nevada Supreme Court determined that restaurant employees reacted reasonably to a
(See **CHOKING** on page 4)

Discharge upon return from medical leave sparks FMLA claim

Employer was not obligated to reinstate worker with restrictions

An employee's right to keep his job under the Family and Medical Leave Act is not absolute. An employer is not obligated to restore an employee to his previous position after protected leave if it can show that the employee is unable to perform his previous job duties due to restrictions not related to a work injury. A Texas restaurant justified its decision to discharge an employee upon his return from FMLA leave by demonstrating that he could not perform the lifting requirements of the job. *Johnson v. Houston's Restaurant, Inc.*, No. 05-20230 (5th Cir. 02/17/06).

Benjamin Johnson worked in the kitchen at a Houston's restaurant for 14 years. In July 2001, Johnson slipped and fell at home, injuring his back and neck.

Johnson took unpaid leave from work to acquire medical treatment.

In September 2001, Johnson's physician released him to light-duty work, which restricted him to lifting no more than 20 pounds. Because Johnson's kitchen position required heavy lifting, his supervisor offered him a different position when they met to discuss his return to work. Believing that the lower paying position was less prestigious, Johnson rejected the offer. Johnson's supervisor promptly discharged him.

Johnson sued the restaurant under the FMLA (see *HLaw Glossary* on page 6), alleging that, upon his return to work, his employer refused to reinstate him to the same or equal level job. The 5th U.S. Circuit Court of Appeals said Johnson could not pursue his claim because he failed to show
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'Just because you can't find the bedbugs doesn't mean they're not there.'

By now, you have heard all about them: Oval, wingless insects that hide in the cracks and crevices behind headboards, baseboards, picture frames and loose wallpaper, waiting for an opportunity to feast on their sleeping human prey.

Sound like a nightmare? It was for a Chicago woman who stayed at a Catskills resort last summer. Leslie Fox sued the Nevele Hotel in Ellenville, N.Y., for \$20 million, alleging she suffered 500 bedbug bites during a four-night stay.

What can hotels do to avoid being sued? *Hospitality Law* spoke to Richard Cooper, the technical director of Cooper Pest Solutions in Lawrence, N.J., for some insight.

"The hospitality industry needs to show it is being proactive," Cooper said. Due, in part, to international travel, some of the nicest hotels are affected, Cooper explained. Rather than pretending the problem is isolated to less exclusive properties, hotels need to have a protocol in place for identifying and treating the problem.

There are no monitoring methods for detecting the presence or absence of this type of pest, such as the sticky traps used to catch cockroaches. Visual detection is not the most reliable method in low-level infestations. "Just because you can't find them, doesn't mean they're not there," Cooper said.

Professionals may be best suited to conduct inspections of hotel guest rooms. Hotels can use in-house staff to recognize signs of an infestation, if they are trained properly. Cooper suggests the following:

- Develop a proactive inspection process. When called on to defend your hotel against a

Bedbugs are back!

Tips for bedbug inspectors

1. Visible evidence of bedbugs may include live bugs, shed exoskeletons, fecal deposits of dried blood, or eggs glued to surfaces. Do not expect the fecal stains to be red. After the bugs digest the blood, it appears as a black, tar-like stain.
2. Evidence of bedbugs is less likely to be found along the seams of the mattress due to the constant disruption caused by daily changing of linens. Activity is more likely to be found in areas that are infrequently disturbed, such as behind the headboard, in the bed frame, and on the box spring.
3. Pay particular attention to the four corners of the bedding as well as where labels or handles are attached. Cracks and crevices along with screw holes should be examined on headboards and box springs. ■

lawsuit, it would be preferable to be able to show you tried to do something rather than that you knew the problem existed and sat idle.

- **Conduct routine inspections.** Remove headboards, at least monthly, for routine inspection. When sheets are being changed, check the seams of mattresses and box springs for evidence of live bugs. Do a more intensive inspection when mattresses are rotated (*see box above*).

- **Install hypoallergenic covers for mattresses and box springs.** As long as these covers are not compromised, bedbugs will be restricted to the outside surface of the cover and can't penetrate the mattress itself. It is cheaper to replace the cover than the mattress and box spring if bedbugs are detected.

For more information, visit www.cooperpest.com/bedbugs/bedbugs002.htm. ■

Recognize April as Alcohol Awareness Month

As National Alcohol Awareness Month, April represents an opportune time for employers to educate employees about the problems associated with alcohol use, on and off the job. Employers can participate in several ways:

1. **Inform employees about anonymous online screening tools.** Such tools allow individuals to privately learn how alcohol may be affecting the way they work and live. Examples include *AlcoholScreening.org*, available through Join Together, a program of Boston University's

School of Public Health, and resources on *GetFit.SAMHSA.gov*, a Substance Abuse and Mental Health Services Administration Website.

2. **Disseminate educational materials to employees.** Brochures, posters and fact sheets on alcohol-related issues are available through the National Clearinghouse on Alcohol and Drug Information. Visit *NationalAlcoholScreeningDay.org* to obtain free print ads and door hangers that employers can use to promote awareness of this issue among their workforce.

Source: www.dol.gov. ■