Hospitality Lawyer on California Requirements for Proprietary Security Guards

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JMBM hospitality lawyer Jim Abrams has been practicing law for 40 years, specializing in lodging and hospitality law and in representing and advising trade associations and other non-profit entities. Jim is the author of the book *Laws Pertaining to the California Innkeeper*, which is published by the California Hotel & Lodging Association.

We asked Jim about the California law that governs a hotel’s use of security guards — a area that some hoteliers learn about only after there has been a complaint or a problem with a security guard.

**Q. Which hotels need to know about laws that govern the use of security guards?**

**A.** “Every hotel that has security guards — either contracted for with a third-party private patrol operator or the hotel’s own proprietary, employee security guards — needs to be aware that California law contains a number of requirements that govern a hotel’s use of security guards, also referred to as “private patrol operators,” and “proprietary private security guards.”

**Q. What California agency regulates security guards?**

**A.** “The California Bureau of Security and Investigative Services (BSIS), which is part of the Department of Consumer Affairs, is responsible, among other things, for regulating private patrol operators (e.g., Pinkerton) and the security guards that they hire, as well as proprietary private security guards (PSOs). BSIS’s web site is [www.bsis.ca.gov](http://www.bsis.ca.gov)”

**Q. If my hotel uses a private patrol operator and its security guards, do I need to be sure that the operator and its guards are all registered with BSIS?**

**A.** “Yes, it is your responsibility to make sure they are properly registered with and licensed by BSIS at all times.”

**Q. What if I use my own employees as security guards?**

**A.** “If your hotel uses its own employees as security guards and they meet the definition of PSOs, they need to be registered with BSIS. A PSO is an unarmed individual, (1) who is employed exclusively by a single employer, (2) whose primary duty is to provide security services for that employer, (3) whose services are not contracted to any other entity or
person, (4) who is not exempt pursuant to Section 7582.2 of the Business and Professions Code, and (5) who meets both of the following criteria: (a) he or she is required to wear a distinctive uniform clearly identifying the individual as a security officer, and b) he or she is likely to interact with the public while performing his or her duties.”

Q. Why is it important for hotels to know about laws that regulate security guards?

A. “Failure to meet the requirements can result in substantial liability for the hotel. If the hotel has proprietary private security guards, this can also extend to criminal liability.”

Q. If my hotel hires a third-party private patrol operator, can it avoid liability?

A. “No. A hotel has a non-delegable duty to exercise reasonable care to protect its guests, employees, and others, and this means that it cannot avoid that legal duty by contracting its security out to a third party. If the third-party patrol operator and/or its guards do anything intentional or negligent that results in injury to someone, the hotel is liable. Although the hotel might be able to recover its losses resulting from such an incident from the patrol operator, that can take a long time, cost a lot of money, and is often unsuccessful.”

Q. What specific issues should we be aware of if we contract with a third-party private patrol operator?

A. “A hotel should make sure that its agreement with its patrol operator has appropriate indemnification provisions, and should require the operator to maintain adequate insurance at all times that names the hotel as an “additional insured.” You need to frequently monitor the license status of your patrol operator, and you can do this by going to the State of California Department of Consumer Affairs license lookup webpage.”

Q. Who can become a private security officer?

A. “Any person wishing to register as a PSO must be at least 18 years of age, undergo a criminal history background check, submit an application to BSIS, and pay all necessary fees.”

Q. What kind of training does a PSO need?

A. “PSO registration candidates need not provide any proof of training, but the BSIS is currently in the process of adopting regulations that will spell out specific training requirements that all PSOs will have to meet. BSIS has advised me that these training regulations are likely to become effective sometime this year. Once that happens, all PSOs will have to complete the necessary training in order to maintain their registration.”

You can find more information about these regulations by visiting www.bsis.ca.gov.

Q. Does the hotel need to provide specific training to PSOs?

A. “Employers of PSOs may find that appropriate, job-specific training can provide significant benefits, including, increased awareness, shortened response times, overall improved security effectiveness and correspondingly improved customer
satisfaction. There are three important things to note regarding PSO training.

First, it is strongly recommended that anyone hired to provide security have appropriate training before he/she starts working. Failure to have adequately trained security guards could well be considered to constitute negligence (i.e., a failure to exercise reasonable care), and if that results in an injury to someone, the hotel could be liable. Second, when the BSIS adopts specific training requirements, the hotel will need to make sure its PSOs comply with the training requirements. Third, PSO employees will need to be compensated appropriately when they take this training.”

Q. I know that my PSOs need to be registered with BSIS, but does my hotel, their employer, need to be registered as well?

A. "At this time, the answer is "no." However, Senate Bill 741, which is currently pending in the California Legislature, would require employers of PSOs to register with BSIS as well."

Q. I know that in order for my employees to qualify as PSOs, they must “wear a distinctive uniform clearly identifying the individual as a security officer.” What does this mean?

A. "On the one hand, if your PSOs wear a uniform that clearly designates them as security personnel — for example, if they wear a white shirt that says “Security” on it and have a badge — they will meet this qualification. But what about someone who just wears a shirt with the hotel’s logo on it, just like the shirts that all other employees wear? Or what if the all the PSOs wear the same type of sports coat and slacks? It is clear from my discussions with BSIS that this is a grey area, and BSIS will evaluate each situation on its facts. BSIS feels that SB 741, discussed above, will help provide a bit of clarity on this point."

Q. What happens if one of my PSOs failed to get registered? What happens if one of my PSOs was registered but his or her registration was suspended or revoked by BSIS?

A. “Your PSO employee is guilty of a crime! Business and Professions Code Section 16240 provides:

Every person who practices, offers to practice, or advertises any business, trade, profession, occupation, or calling, or who uses any title, sign, initials, card, or device to indicate that he or she is qualified to practice any business, trade, profession, occupation, or calling for which a license, registration, or certificate is required by any law of this state, without holding a current and valid license, registration, or certificate as prescribed by law, is guilty of a misdemeanor.”

Q. If a PSO changes employment, does he or she need to apply for a new PSO registration?

A. "No. However, the new employment must be exclusively for the new employer."

Q. Can a PSO work on a temporary registration?

A. “No. The PSO must have a valid registration before going on duty.”
Q. Can a person carry a firearm and/or a baton while licensed as a PSO?

A. "No, a PSO cannot carry a deadly weapon."

Q. My hotel employs in-house security officers. I am confused about how this law affects my business. Can I request that a BSIS representative visit my hotel and help me comply with this law?

A. "Yes, BSIS has an outreach program for California hotels that fits your needs. Please contact Rolando Taeza at (916) 575-7055 or send him an email at rolando_taeza@dca.ca.gov to schedule an appointment."

You can contact Jim Abrams at 415-984-9679 or jabrams@jmbm.com if you have questions about any of the legal aspects of hotel operations.

This is Jim Butler, author of www.HotelLawBlog.com and hotel lawyer, signing off. We've done more than $87 billion of hotel transactions and have developed innovative solutions to unlock value from troubled hotel transactions. Who’s your hotel lawyer?

Our Perspective. We represent hotel lenders, owners and investors. We have helped our clients find business and legal solutions for more than $87 billion of hotel transactions, involving more than 3,900 properties all over the world. For more information, please contact Jim Butler at jbutler@jmbm.com or 310.201.3526.

Jim Butler is a founding partner of JMBM and Chairman of its Global Hospitality Group®. Jim is one of the top hospitality attorneys in the world. GOOGLE “hotel lawyer” and you will see why.

JMBM’s troubled asset team has handled more than 1,000 receiverships and many complex insolvency issues. But Jim and his team are more than “just” great hotel lawyers. They are also hospitality consultants and business advisors. For example, they have developed some unique proprietary approaches to unlock value in underwater hotels that can benefit lenders, borrowers and investors. (GOOGLE “JMBM SAVE program”.)

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