



Bars and Security Should Mix Like a Well-Poured Drink

By: Rene M. Faucher, Esq.

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Bars are a unique entertainment venue because they serve alcohol and operate late into the evening and early morning. These are recognized ingredients for security risks to a bar's patrons and employees resulting in lawsuits. Every state and country has different laws but the laws in California can be an instructive guide, no matter where your bar is located.

Do You Need Security Guards?

First, you need to determine if your bar needs professional security guards. California courts have recognized certain circumstances which make assaults reasonably foreseeable and for this reason create a "duty" to have security guards. Duty is a term of art that means a legal obligation the breach of which can create liability. A brain injury that occurs on or near a bar's property can result in a jury verdict in the millions! Do I have your attention yet?

As a matter of common sense and California law, circumstances that can create a duty to have security guards include a prior incident of an assault or battery on or near the premises, a bar's location in a high crime area, several previously threatened assaults or even thefts in the vicinity of the bar and the known presence of gang members in or around the bar. It is important to consider if and what elements make your bar more prone to crime.

Do You Hire Security Guards Directly or Hire a Security Company?

If you decide you need security guards for your bar, one of the frequent questions is whether you should hire security directly or hire a security company to provide them. If you directly hire a security guard, you should have a basic understanding of what this job will entail. For example, in California you may only hire security guards as an employee, not as an independent contractor. They are required to wear a security uniform, be licensed by the State of California and receive the required training and continuing education courses. Your employee security guard cannot be armed. Calling your security personnel a bouncer doesn't

change the fact they are security guards and must still comply with California law. The rules become complicated making it more important to seek legal advice before hiring.

The alternative is to hire a professional security company - an entity with a license to provide security services. In California, this is a private patrol operator which must be licensed with the State of California. You can check licenses on the State's Department of Consumer Affairs, Bureau of Security and Investigative Services website www.bsis.ca.gov. The security company is then responsible for monitoring the security guard's background, licenses, training compliance and performance, which requires specialized knowledge about each of these requirements.

Each security guard employed by the private patrol operator must also be licensed to exercise the power to arrest and other security officer skills which requires formal training. The private patrol operator must then provide each security guard a review course in security officer skills on an annual basis and keep a record of its completion for two years.

The private patrol operator's security guard may be armed but first must complete a training course in carrying and use of firearms and obtain a license from the California State Department of Consumer Affairs. A security guard can also carry a baton and/or chemical agents but only after completing a course in their use and obtaining the required certificates. It is also recommended that security guards do not carry large flashlights due to the propensity to use them as weapons. If the security guard discharges a firearm, he/she must prepare a detailed report for the California Director of the State Department of Consumer Affairs within seven days. If the security guard conducts a citizen's arrest, the police should be called and they can decide whether to release the person or book them.

Stay Involved with Your Hired Security

Even if you hired a private patrol operator to hire and manage your security guards, bar management should stay involved and knowledgeable about who they are and what they are doing. Bar management should request a copy of the sign in sheet for the security guards every night to stay abreast of who is working. More importantly, management should ask that the security guards prepare written incident reports and provide a copy of all of them at the end of the night. A security guard should also be equipped with a cell phone and, if possible, a digital camera to document incidents and their outcome. Take the opportunity to meet with each security guard to assure a direct line of communication. Remember, the security guard is a representative of the bar as well as another set of eyes and ears for the management team.

Do you want your security guards to merely observe and report or to do something more?

You might not have a choice. In California, although a private citizen is not liable for failing to protect another person, a security guard and the bar can be liable to a customer for failing to act affirmatively as a reasonable security guard to protect the customer while on the business premises. Also, don't overlook the fact that your parking facilities are part of your business because, as in California, you may be liable for assaults in parking areas.

Another important aspect to consider is your security guard's job description. Many times, guards check for identification at the front door because, at least in the United States, there are age limits. This is usually the first contact a patron will have with your employees in your establishment. Consider the value of making this process a pleasant experience and having a guard that is friendly and inviting. It is critical to make a positive first impression on the guest which can often set the tone for the evening. Take gender into consideration, a female patting down female patrons may be less intrusive than a male. Metal detecting wands might also be quite helpful. With these security measures in place, you can hopefully avoid a serious situation which could put you out of business.

Don't Underestimate the Value of Insurance

Once you hire security, there are a number of ways you can limit your exposure to liability. Make sure you have liability insurance with sufficient limits. Also confirm the private patrol operator has its own liability insurance with sufficient limits. In California, a security company that employs security guards who carry firearms is required to maintain an insurance policy with a minimum limit of \$500,000.

You may also consider an indemnity agreement in the contract whereby the private patrol operator agrees to indemnify (defend and reimburse) you for claims arising out of their security work. An additional technique is to have the private patrol operator's insurance carrier issue an Endorsement (not just a Certificate) naming your bar as an additional insured. In the case of a claim or lawsuit, consider tendering your defense directly to this insurance carrier rather than your own since this might avoid your payment of a deductible or self insured retention. Expect your landlord to be looking for these kinds of assurances.

Security is an important consideration for the bar industry. How you address your security concerns can make a difference in your bar's reputation and bottom line.

Rene Faucher is an attorney with Gray•Duffy, LLP, who routinely represents bars, restaurants, security guards and their employers and has obtained multiple defense verdicts on behalf of these clients. He can be reached at rfaucher@grayduffylaw.com or (818) 907-4000.