

Shared Space Applies to Your Restaurant Lawsuit

If you have a pending lawsuit that pertains to a restaurant or bar industry legal matter, you need to know what “shared space” is, and how it applies to your underlying legal matter, and the role that OSHA guidelines, codes and safety rules will have. Shared space is an industry specific formula and will impact the standards that you apply and could be the difference between winning or losing your case.

There is one special circumstance that is rather unique and significant to the restaurant industry (for the most part, like none other), and it is called *shared space*.

OSHA Is Applicable to Nearly All Restaurant Incidents

OSHA guidelines play a significant role in almost every kind of restaurant industry incident as it pertains to safety, health, and security—not just those involving employees, but all incidents that occur on the restaurant premises where an employee, customer, vendor, or other individual has been injured, harmed, sickened, maimed, or killed. This special circumstance is referred to as *common areas* and *shared space*.

Common Areas and Shared Space

The reasonable and customary restaurant industry standard is that the safety, health, and security standards and methods established to protect restaurant industry employees are the same safety, health, and security standards and methods that must be implemented to protect restaurant customers, vendors, and others who enter the premises. This is due in large part to a mostly restaurant industry-specific special circumstance that is best described as *common areas* and/or *shared space* (an area shared by both employees and customers). There are no areas of the restaurant that the customers utilize that the employees do not also utilize; there are no furniture, fixtures, and equipment that the customers are exposed to in those *common areas/shared space* that the employees are not also exposed to; and there are no potential hazards or potentially dangerous conditions (if any should so happen to exist) within those *common areas/shared spaces* that do not put both the customers and the employees substantially and equally at risk for being injured, harmed, sickened, maimed, or killed. To be clear, the areas used by customers to sit, walk, stand, eat, drink, and use otherwise (such as, but not limited to, the dining areas, bar areas, restrooms, reception areas, etc.) are indeed the same areas referred to as *workspace* or *workplace* of the restaurant and bar employees; and, therefore, these areas are common areas and shared space.

Applying OSHA Standards to Restaurants— Employees, Customers, and Vendors

When OSHA standards are applied and implemented properly in restaurants, they not only protect employees, but also protect all those who enter the working area; and these standards affect all safety, health, and security-related matters that occur where work is taking place. Due to the restaurant industry-specific special circumstance, as previously mentioned (shared space), this includes but is not limited to the area of the worksite commonly referred to as *the dining area*—or the *front of the house*—of the

restaurant where both employees and customers commingle. The same is true for the *back of the house*, where vendors and others often frequent the restaurant premises.

Shared Workplace

OSHA makes several references to such shared *workplace* (as defined in previous sections) and advises industry employers to establish their own safety plans, standards, policies, procedures, and methods that incorporate not only their employees' safety, but the safety of their customers as well. It is this inspiration and advisory provided by OSHA throughout its material that contributed to and inspired the creation of *Restaurant OSHA Safety and Security*. Some of the many examples given by OSHA that reference this concept are as follows:

OSHA.gov: Letter from Assistant Secretary for OSH, November 14, 2012¹⁹: Dear Retailer/CEO: "I am writing this letter to reemphasize how critical it is to consider the safety of employees and customers during the upcoming holiday retail season."

OSHA.gov: How to Plan for Workplace Emergencies and Evacuations²⁰: "What is a workplace emergency? A workplace emergency is an unforeseen situation that threatens your employees, customers, or the public; disrupts or shuts down your operations; or causes physical or environmental damage."

OSHA.gov: Guidance on Preparing Workplaces . . . ²¹: "Protect Employees and Customers . . . Understand and develop work practice and engineering controls that could provide additional protection to your employees and customers, such as: drive through service windows, clear plastic sneeze barriers, ventilation, and the proper selection, use, and disposal of personal protective equipment."

OSHA.gov: Guidance on Preparing Workplaces . . . ²²: ". . . The types of measures that may be used to protect yourself, your employees, and your customers (listed from most effective to least effective) are: engineering controls, administrative controls, work practices, and personal protective equipment (PPE) . . ."

OSHA.gov: Guidance on Preparing Workplaces . . . ²³: ". . . Work with your employees to identify new ways to do business that can also help to keep employees and customers safe and healthy."

Cal/OSHA Guide to Restaurant Safety²⁴:

" . . . Cleaning tasks in restaurants are designed to protect customers from food-borne illnesses . . . "

OSHA.gov²⁵: Evacuation Plans and Procedures: "Procedures for assisting visitors and employees to evacuate, particularly those with disabilities or who do not speak English."

OSHA.gov²⁶: Evacuation Plans & Procedures: "If there are customers, clients, or visitors in the building, provide for their safety . . . "

OSHA.gov: Employer Guidance Reducing . . . Workers' Exposures. . . ²⁷: "Workers . . . and visitors should be trained how to use proper hand hygiene and cough etiquette . . . Workers . . . and visitors should have easy access to supplies . . . post signs on hand hygiene and cough etiquette as visible reminders to workers . . . and visitors."

The CDC (Centers for Disease Control and Prevention) and NIOSH (National Institute for Occupational Safety and Health) state: "Federal statutes or acts are passed by Congress and become part of the US Code. Regulations may then be issued and enforced by a designated agency charged with that

responsibility. Federal regulations are first issued in the *Federal Register*. After a public comment period, final Federal regulations are compiled in the Code of Federal Regulations (CFR) (as used in OSHA standards) and can be cited by title, part, and section . . . The laws are designed to protect private sector employees, public employees (federal, state, county, and municipal employees, including public school teachers), private and public school students, the general public, and the environment.”²⁸

In applying OSHA guidelines and standards to all areas of the workplace— as is required by law—restaurants create a safer, healthier, and more secure environment not only for their employees, but for their customers, vendors, and all others who enter the restaurant premises as well. Because of shared space, OSHA plays a role in almost every type of restaurant industry incident where someone, anyone—an employee, customer, vendor or another individual—is injured, harmed, sickened, maimed, or killed. With that said, the understanding (or lack of understanding) of and compliance (or noncompliance) with OSHA, as well as *Restaurant OSHA Safety and Security*, by restaurant owners, operators, managers, executives, employers, and employees will most likely play a significant role in the outcome of any litigation matter that may develop as a result of said incident as well.

If you have a restaurant or bar industry matter, of any kind, and want to chat with us in greater detail about shared space and how it may specifically apply to your case give us a call at 800.300.5764 or find us online, www.RestaurantExpertWitness.com.

Until next time. Kindest Regards and God Bless.

Howard Cannon—is the world’s most sought-after forensic Restaurant Expert Witness, with 200+ cases and several hundred pre-litigation consulting matters to his credit. He is called on by judges, juries, plaintiffs and defense lawyers, members of the media, and industry executives to provide his unbiased opinions pertaining to an astonishing variety of incidents where employees, customers, and vendors become injured, harmed, sickened, maimed, or killed on the premises of restaurants and bars across the United States. To contact Restaurant Expert Witness – Howard Cannon, call 800.300.5764 or visit our website at www.RestaurantExpertWitness.com

19 United States Department of Labor, Occupational Safety and Health Administration, David Michaels, PhD, MPH—Assistant Secretary for Occupational Safety and Health, osha.gov, https://www.osha.gov/asst-sec/blackfriday_letter_2012.html, Web. (3/2016).

20 United States Department of Labor, Occupational Safety and Health Administration, osah.gov, U.S. Department of Labor, Elaine L. Chao, Secretary, and, John L. Henshaw, Assistant Secretary, Occupational Safety and Health Administration, “How to Plan for Workplace Emergencies and Evacuations,” OSHA 3088 (Rev. 2001), <https://www.osha.gov/Publications/osha3088.html>, Web. (4/2016).

21 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, “Guidance on Preparing Workplaces for an Influenza Pandemic,” OSHA 3327-02N 2007, https://www.osha.gov/Publications/influenza_pandemic.html, Web. (3/2016).

22 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, “Guidance on Preparing Workplaces for an Influenza Pandemic,” OSHA 3327-02N 2007, https://www.osha.gov/Publications/influenza_pandemic.html, Web. (3/2016).

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25 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, "Evacuation Plans and Procedures eTool," <https://www.osha.gov/SLTC/etools/evacuation/evac.html>, Web. (3/2016).

26 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, "Evacuation Plans and Procedures eTool," <https://www.osha.gov/SLTC/etools/evacuation/shelterinplace.html>, Web. (3/2016).

27 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, "Employer Guidance, Reducing Healthcare Workers' Exposures to Seasonal Flu Virus," <https://www.osha.gov/dts/guidance/flu/healthcare.html>, Web. (3/2016).

28 Centers for Disease Control and Prevention (CDC), cdc.gov, DHHS (NIOSH) Publication Number 2004-101 (Rev. 2014), <http://www.cdc.gov/niosh/docs/2004-101/chap1.html>, Web. (3/2016).