



Co-Working Spaces: Mitigating Litigation Risks While Encouraging Innovation

Insights

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Co-working spaces are quickly becoming the Uber equivalent to office space rentals for remote-work professionals. On Monday morning, log onto an app and reserve a cubicle space down the street at a price much cheaper than a short-term office lease. On Tuesday, welcome a new client into a reserved conference room at a different co-working space with modern décor in the lobby and a Keurig coffee maker in the kitchen.

In an age when flexibility, options, and instant reservations are becoming an expectation, co-working spaces continue to attract freelancers, entrepreneurs, and, more recently, companies with remote workers or those in need of temporary work spaces. In 2017, there were approximately 542,000 people working in co-working spaces in the United States. This number is expected to increase to approximately 1.08 million people by 2022.

While this growing industry encourages innovation and collaboration, owners and operators of co-working spaces, and companies taking advantage of these flexible workspaces, are presented with some unique legal issues. The community aspects of co-working spaces are often similar to that of an office, with individuals working in close proximity to one another and often sharing resources. However, most of the individuals working in the space are not employees of the owner or operator of the space. As a result, owners and operators have less control over their actions. Also, businesses utilizing co-working spaces for remote employees or as temporary space may not routinely have management-level personnel available to supervise their employees in person.

As the co-working industry continues to grow and evolve, so too does the law in this area. Understanding the legal risks and proactively implementing workspace policies and practices to address those risks will help ensure a respectful and safe working environment and reduce the risk of costly litigation.

Some Of The Risks

The combination of the anonymity of users of the space, the absence of policies governing conduct, and the availability of alcoholic beverages at many locations can be a recipe for bad behavior. That behavior often comes in the form of sexual harassment, but may also include theft and other unwanted behavior.

Owners and operators of co-working spaces have an obligation to protect their own employees from unlawful harassment by users of the space. Users of the space may demand that owners and operators of the space take action against those working in the space accused of harassment. Moreover, shared spaces often offer free-flowing alcoholic beverages as a perk to their users, which can increase the chances of a harassment incident and increase the likelihood of an alcohol-related accident.

Additionally, while there is a trusting, collaborative spirit to the co-working paradigm, there is also an increased risk of theft or misuse of confidential or proprietary information. Finally, owners or operators of co-working spaces should also be cognizant of the fact that they may also be considered a place of public accommodation under federal and state disability statutes and, as such, have accessibility obligations.

Set The Ground Rules

One of the most effective ways for an owner or operator of a co-working space, or a business utilizing a co-working space, to limit risk is to set the ground rules for workspace etiquette from the beginning. Owners and operators should have clear, written, anti-discrimination and anti-harassment policies applicable to employees and users of the space alike. They should consider including these policies as terms and conditions of the user or member contract itself thereby contractually obligating users to comply with the rules. Businesses utilizing co-working spaces should make clear to employees that company policies around equal employment, anti-discrimination, anti-harassment and alcohol consumption are equally applicable to employees working at remote locations.

Operators of co-working spaces should also adopt policies and procedures for how complaints or concerns of harassment or discrimination by employees and users will be addressed. This includes provisions addressing to whom such complaints should be made, the process for investigating the complaints, and how policy violations will be handled.

You should also establish ground rules to prevent the unauthorized access, or attempted unauthorized access, of confidential information, accounts, computer systems, and networks a user may come into contact with while working in the space. The rules should also prohibit the use or disclosure of a third party's confidential or proprietary information. Again, the best practice would be to include these ground rules in the user contract itself.

Businesses with remote workers using co-working spaces should ensure that its existing policies and procedures for safeguarding confidential and proprietary information are sufficient to address the unique co-working environment. If not, you should adopt new ones for employees working in this type of shared environment. A visit to the space, or virtual tour of the space, is highly recommended while developing these policies.

Co-working agreements should make clear that a violation of the co-working space's code of conduct and policies may result in warnings, fines, or immediate termination of the agreement with

conduct and policies may result in warnings, fines, or immediate termination of the agreement with no refund for any up-front payments. An obligation should be placed on users and their employers to notify all guests entering the space on their behalf of the expectation to comply with the co-working space's policies.

Owners and operators of co-working spaces should also consider incorporating broad indemnification obligations for users of the space, including the payment of attorneys' fees and costs, as a deterrent to bad behavior. Many co-working spaces also require users to have their own liability insurance for personal injury and property damage and encourage the purchase of cybersecurity liability insurance for increased protection.

Increase Surveillance And Security

Another way to ward off bad behavior is through the installation of legally compliant cameras. Security cameras can assist in navigating conflicts between tenants, inform investigations into alleged bad behavior, and minimize security concerns for all. If you go this route, you will want to work with counsel to ensure you stay on the right side of any applicable privacy laws in your jurisdiction.

Another tip: some co-working businesses require two-factor authentication before a user may access their Wi-Fi network. Others insist upon individualized private Wi-Fi use to avoid issues with unauthorized access to devices and data.

Requiring tenants to sign a security policy or incorporating a security policy into the user contract can also go a long way towards protecting owners and users alike. Such a policy should include what hours are associated with the rental of the space and what categories of guests are permitted to visit the premises and during what hours.

One of the attractions of a co-working space is the convenience of trusting that one's belongings are safe while using the restroom or grabbing a cup of coffee. With a large group of individuals all working on different, often innovative, and highly confidential topics in close proximity with one another, owners and operators should be sensitive to ways in which you can promote the protection of confidential information and workers' belongings.

Know Your Public Accommodation Obligations

A number of owners and operators have recently faced lawsuits against owners for allegedly failing to comply with public accommodation laws. In *Olsen v. WeWork Companies, Inc.*, for example, an aggrieved individual filed a federal class-action complaint under the Americans with Disabilities Act, New York State Human Rights Law, and New York City Human Rights Law. On behalf of himself and others similarly situated, the plaintiff claims WeWork failed to "construct, maintain and operate its website" in a manner that was accessible to and "independently usable" by him and other visually-impaired people. He identified at least 10 specific examples of how the website limited his ability to review and access WeWork's offerings.

Similarly, the plaintiff in *Kiler v. Bklyn Commons, LLC* filed a similar class action complaint against Bklyn Commons, a co-working space in Brooklyn, New York. The lawsuit highlighted the website's lack of alt-text equivalents to explain concepts presented by graphics on the web screen, lack of accommodations for blind customers to fill out online forms, and a blind user's inability to access drop down menus, image maps, and the website's shopping cart to complete transactions.

These class action lawsuits highlight a significant litigation risk for owners and operators of co-working spaces. Owners and operators should assess their online websites and apps and confirm that individuals with disabilities can access and take advantage of their offerings.

Conclusion

Should a co-working space invest in storage lockers and device charging stations? Offer free coffee and pastries or beer and wine in the kitchen? With each unique amenity, co-working spaces try to distinguish themselves from the increasing number of competitors entering the market. As these innovative work spaces continue to push the boundaries on what a "typical" work environment entails, businesses and their counsel need to be creative in tailoring contractual protections and policies to ensure a respectful and safe environment for users and to mitigate the risk of costly litigation.

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