



Welcome

Eighth Annual Tennessee Hospitality and Tourism Law Symposium

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Hot Topics in Wage and Hour Law



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Agenda

- Overtime Basics and Updates
- DOL Rulemaking and Actions
 - Overtime
 - Regular Rate
 - Joint Employer
- Trends in Wage and Hour Claims/Litigation
- Options for Employers

Why Wage and Hour Claims?

- Recovery for the Employee
 - Recover back wages and liquidated damages (double amount owed)
- Recovery for the Attorney
 - If employee is owed money, employer must pay employee's attorneys' fees
- Recovery for Other Employees (i.e., "the Collective")
 - Little downside for plaintiff's counsel to bringing case as collective action – i.e., claiming the wage and hour violation impacts other employees
 - The bar to get conditional certification of a class is low
- FLSA was enacted in 1938 – statute doesn't have clear answers to the ever-evolving digital workforce of 2019

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5

Why Wage and Hour Claims? (continued)

- In 2018, there were 7,494 collective actions filed in federal court.
- Regulatory developments in 2019 could cause a spike in wage and hour litigation.
- Top ten private plaintiff FLSA wage and hour settlements for 2018 totaled \$253.5 million:
 - \$54.4 million Bloomberg L.P. (failure to pay proper overtime)
 - \$27.5 million Wells Fargo (failure to pay proper overtime)
 - \$25 million Abercrombie & Fitch (improper deductions – buying clothes to wear on job)
 - \$19.1 million Carlson Restaurants (improper tip credits)
 - \$16.8 million Kellogg Co. (misclassification)

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Overtime Basics & Proposed Changes



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Starting at the Beginning... Wage & Hour Law

- The Fair Labor Standards Act (FLSA) is the federal law that governs wage and hour. The FLSA has three basic requirements:
 - Employees must be paid at least federal **minimum wage** (\$7.25) for all hours worked;
 - Employees must be paid an **overtime premium** (at time and one-half the regular rate of pay) for all hours worked over 40 hours in a workweek; and
 - Strict recordkeeping requirements.
- The FLSA is an employee protection act and employees are generally presumed entitled to minimum wage and overtime.

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“White Collar” Exemptions

- Categories of “white collar” employees that may be exempt from both minimum wage and overtime requirements of the FLSA:
 - Executive
 - Administrative
 - Professional
 - Outside salespersons
 - Highly skilled computer employees
 - Highly compensated employees



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FLSA – Wage & Hour Law

Non-exempt employees = eligible for overtime

Exempt employees = ineligible for overtime

SO WHICH EMPLOYEES ARE “EXEMPT”?

- For most employees whether they are exempt or non-exempt depends on:
 - how they are paid;
 - how much they are paid; and
 - what kind of work they do.

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3 Requirements for Exemption

Remember, exemption depends on three things:

1. How employees are paid
2. How much they are paid
3. What kind of work they do

3 Requirements for Exemption (continued)


Remember, exemption depends on three things:

1. **How** employees are paid  **SALARY BASIS**
 - Employee must be paid a pre-determined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed
 - Must be paid the full salary for any week in which the employee performs any work
 - Need not be paid for any workweek when no work is performed
 - No partial day deductions
 - Deductions can result in a loss of the exemption

3 Requirements for Exemption (continued)

Remember, exemption depends on three things:

1. How employees are paid  **SALARY BASIS**

2. **How much** they are paid  **SALARY LEVEL**
 - currently \$455/week (\$23,660/year)

Changes to Salary Level Round 1... 2015–16

- June 2016, DOL proposed new salary threshold of \$50,440/year (\$970/week) (NPRM – Notice of Proposed Rulemaking)
- On May 23, 2016, the final rule raised the salary threshold to only \$47,476/year (\$913/week) effective December 1, 2016
 - Would have raised the HCE exemption from \$100,000/year to \$134,004/year or more
 - Would have increased the salary threshold automatically every three years
 - Would have allowed employers to use nondiscretionary bonuses and incentive payments, including commissions, to meet the salary basis test

Changes to Salary Level Round 1... 2016

- In October 2016, the business community (and 21 states) sued the DOL in federal court in Texas, challenging the rule
 - On November 22, 2016, 10 days before the implementation date, the Texas Court ruled that the DOL did not have the authority to implement such a large increase in the threshold. (i.e., the salary threshold stayed at \$23,660)
 - Obama DOL appealed to the Fifth Circuit shortly before President Obama left office
 - Trump DOL did not withdraw the appeal but the case was stayed pending the DOL issuing a new proposed rule
 - July 2017 – DOL request for information from the public
 - August 2017 – final ruling from Texas court striking down 2016 Overtime Rule

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15

Changes to Salary Level Round 2... 2019

- NPRM – formal rulemaking process again
- Proposed rule was published in Federal Register on March 22, 2019
 - <https://www.regulations.gov/document?D=WHD-2019-0001-0001>
 - Comment period closed May 21, 2019

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Changes to Salary Level Round 2...2019 (continued)

New: \$679/week, \$35,308/year

- Only applies to “white collar” exemptions
- DOL estimates that 1.1 million workers will become OT eligible
- **Up to 10 percent of the salary may be made up of nondiscretionary bonuses**
 - i.e., minimum of \$611.10 must be paid weekly if intending to make up difference with bonus

Changes to Salary Level Round 2... 2019 (continued)

Highly Compensated Salary Threshold

OLD: \$100,000/year or more, which includes at least \$455 per week paid on a salary basis.

NEW: \$147,414/year or more, of which at least \$679 per week must be paid on a salary basis

- 10 percent bonus rule does not apply to the HCE exemption
- But...under the FLSA, employers may use commissions, nondiscretionary bonuses, and other nondiscretionary comp to satisfy the HCE salary basis

Changes to Salary Level Round 2... 2019 (continued)

- The DOL proposes to review the salary threshold once **every four years**, and any update would require notice and comment rulemaking
- Special Salary Tests
 - If employed in the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands, the salary threshold would be \$455/week
 - If employed in American Samoa, the threshold would be \$380/week

Changes to Salary Level Round 2... 2019 **Timeline**

- The comment period ended May 21, 2019. Now DOL will review the comments and prepare a final rule (CAN CHANGE!)
 - final rule goes to Office of Management & Budget for review
 - then final rule gets published (likely 2020)
- Last time, the comment period closed September 4, 2015 and final rule was published May 18, 2016.

3 Requirements for Exemption (continued)

Remember, exemption depends on three things:

1. How employees are paid → **SALARY BASIS**
2. How much they are paid → **SALARY LEVEL**
3. **Kind of work** performed → **JOB DUTIES**
 - Exempt work must be the employee's "primary duty"

Primary Duty

- The principal, main, major or most important duty that the employee performs
- Factors to consider include, but are not limited to:
 - relative importance of the exempt duties;
 - amount of time spent performing exempt work;
 - relative freedom from direct supervision; and
 - relationship between the employee's salary and the wages paid to other employees for the same kind of nonexempt work.
- Employees who spend more than 60 percent of their time performing exempt work will generally satisfy the primary duty requirement.

Round 2 Duties Test for EAP Exemptions?

NO CHANGES!

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23

Summary of 2019 Proposed Overtime Rule Changes

	Current Regulations	NPRM	Final Rule
Salary Level	\$455 weekly	\$679 weekly	?
HCE Total Annual Compensation Level	\$100,000 annually	\$147,414	?
Adjustments	None	Reviewed every four years	?
Bonuses	No provision	Request for comment on counting nondiscretionary bonuses and commissions toward standard salary level	?
Standard Duties Test	See WHD Fact Sheet #17A for a simplified description of EAP duties.	No changes	No changes

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24

3 Requirements for Exemption (continued)

Remember, exemption depends on the

1. How - Must satisfy **ALL THREE** of these tests to be exempt from overtime.
2. Paying salary alone is not enough!
3. Salaried employee is not the same as "exempt" employee.

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More Activity from the DOL... Regular Rate

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Proposed Rule – Regular Rate

- On March 28, 2019, the DOL announced a proposed rule “to clarify, update, and define basic rate and regular rate requirements under...the FLSA.”
 - have not been comprehensively revised in more than 50 years
- What the heck is the regular rate?
 - Not the base rate!
 - It is the rate at which overtime must be paid – includes commission, incentive pay, nondiscretionary bonuses and more
 - Calculated each week by dividing the employee’s total weekly pay by the number of hours worked

Calculating OT: Regular Rate

- **Included in regular rate:**
 - Wages or salary
 - Non-cash wages in form of goods, boarding and lodging
 - Pay differentials and premium pay for hazardous work
 - Non-discretionary bonuses
 - Commissions
 - Other incentive payments based on hours worked, production or efficiency

Calculating OT: Regular Rate **(continued)**

- **NOT included in regular rate:**
 - Sums paid as gifts
 - Payments for time not worked (paid leave)
 - Reimbursement for expenses
 - Discretionary bonuses
 - Profit sharing plans
 - Retirement and insurance plans
 - Overtime premium payments
 - Stock options

Proposed Rule – Regular Rate **(continued)**

- DOL proposes to confirm that the following types of employer-paid benefits may be **excluded**:
 - the cost of providing wellness programs, onsite specialist treatment, gym access and fitness classes, and employee discounts on retail goods and services;
 - payments for unused paid leave, including paid sick leave;
 - reimbursed expenses, even if not incurred solely for the employer's benefit;
 - benefit plans, including accident, unemployment, and legal services;
 - tuition programs, such as reimbursement programs or repayment of educational debt; and
 - pay for time that would not otherwise qualify as hours worked, including bona fide meal periods.

Proposed Rule – Regular Rate **(continued)**

- The DOL states that the proposed rules will not require employers to take any affirmative measures to come into compliance and do not impose any new requirements on employers (the rules will be relaxed, rather than tightened).
- The rule on regular rate was published in the Federal Register on March 29, 2019.
 - <https://www.regulations.gov/document?D=WHD-2019-0002-0001>
 - The comment period was set to end May 28, 2019, but was extended to June 12, 2019

More Activity from the DOL... Joint Employer

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Proposed Rule – Joint Employment

- In 1958 (yes, you heard that correctly), DOL issued a formal interpretation saying multiple entities can be deemed a joint employer if they are “not completely disassociated” with respect to the employment of a particular employee
 - DOL has not updated its joint employer interpretation in more than 60 years.

Proposed Rule – Joint Employment (continued)

- On April 1, 2019, the DOL announced a proposed rule to clarify joint employment under the FLSA.
 - <https://www.regulations.gov/document?D=WHD-2019-0003-0001>
 - Comment period was set to close on June 10, 2019, but was extended to June 25, 2019
- Clear, four-factor balancing test for joint employer status of whether the potential joint employer has the power to:
 - hire or fire the employee;
 - supervise and control the employee’s work schedules or conditions of employment;
 - determine the employee’s rate and method of payment; and
 - maintain the employee’s employment records.

Proposed Rule – Joint Employment (continued)

- The rule also rejects various factors that have fueled recent litigation
 - A worker’s economic dependence on a potential joint employer
 - The potential employer’s business model (e.g., a franchise model)
 - Agreements between entities (e.g., requiring an employer in a business contract to institute a sexual harassment policy)
 - Unexercised power over the worker (ability, power, or reserved contractual right to act with respect to the employee’s terms and conditions of employment not relevant – only actions actually taken)

Arbitration Waivers

HOT TOPIC




Arbitration Waivers

- On May 21, 2018, Supreme Court held in a 5-4 decision that employers may require employees, as a condition of employment, to enter into arbitration agreements that contain waivers of the ability to participate in a class or collective action under various employment statutes.
- On April 24, 2019, Supreme Court held in a 5-4 decision that courts cannot order an arbitration to be conducted on a class-wide basis unless there is an arbitration agreement that expressly authorizes class arbitration.
 - Ninth Circuit had ruled an ambiguous arbitration provision should be construed against the drafter and held that the agreement allowed for class arbitration.

Arbitration Waivers (continued)

- Workplace arbitration agreements with class waivers, if they are well-drafted, should provide employers with a highly-effective class action defense.

EEO-1 Report Drama



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EEO-1 Report Drama

- Who?
 - Employers subject to Title VII with 100 or more employees
 - Federal contractors and first-tier subcontractors subject to Executive Order 11246
 - With 50 or more employees
 - With a contract, subcontract, or purchase order amounting to \$50,000 or more
- Component 1 of EEO-1 Report
 - Race, ethnicity, and sex of the workforce in ten job categories
 - Due May 31, 2019 deadline

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EEO-1 Report Drama (continued)

- In 2016, the EEOC decided to require employers to include compensation information by race, sex, and ethnicity for each of the 12 EEO categories (“Component 2” data).
- The EEOC submitted a proposed form to the (Obama) OMB, which was approved in 2016. In 2017, after the election, the (Trump) OMB stayed the requirement, so it never took effect, and employers were never required to report compensation data.
 - On March 4, 2019, D.C. Circuit Court lifted the stay
 - On April 25, 2019, issued second order giving EEOC until September 30, 2019 to collect Component 2 data

EEO-1 Report Drama (continued)

- On May 3, 2019, the EEOC confirmed that employers will be required to submit Component 2 pay data for years 2017 and 2018 to the EEOC by **September 30, 2019**.
 - Same day DOJ filed a notice of appeal
 - “Does not stay the district court orders or alter EEO-1 filers’ obligations to submit Component 2 data. EEO-1 filers should begin preparing to submit Component 2 data”

Trends in Wage and Hour Claims/Litigation

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Common FLSA Claims

- Misclassification Crackdown
 - Exempt vs. Nonexempt
 - Employee vs. Independent Contractor
- “Off the Clock” Time
 - Pre- or post-shift work
 - Work from home
 - Travel
 - Breaks
- Improper Calculation of Overtime
 - Regular Rate
- Pay Equity

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Common Pay Claims – Pay Equity

- Pay Equity is compensating jobs based upon **skill, effort, responsibility and working conditions required**, not on the people who hold the jobs.
 - i.e., equal pay for equal work
- There is no legal requirement that private sector employees be paid fairly – as long as a pattern of pay inequity is not related to a legally protected class.



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Common Pay Claims – Pay Equity (continued)

- The Equal Pay Act of 1963 amended the Fair Labor Standards Act to prohibit gender-based discrimination in compensation paid for similar jobs performed under similar conditions.
 - Men and women in “substantially equal” jobs must receive equal pay – skill, effort, responsibility, working conditions.
 - Allows for pay differences based upon:
 - seniority
 - merit
 - productivity
 - education
 - factors other than sex
 - All kinds of pay (including benefits)



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Why More Pay Equity Claims Now?

- The “MeToo” Movement has renewed the focus on pay equity in the workplace.
- **EEO-1 Expansion** – Hearing was April 16
- More pay transparency laws at state and local level:
 - are moving from “equal work” to “similar work;”
 - define bona fide reasons for pay disparities, such as education and tenure;
 - pay transparency so that workers know how their wages compare to the target range for the job; and
 - ban salary-history inquiries to stop perpetuating historic pay discrimination.

Options to Prepare for Wage & Hour Claims

HOT TOPIC



Audits

AUDIT!

Self Audit

- Identifying affected employees and possible impact issues
- Gathering data for compensation analysis
- Reviewing policies on pay practices, leave, etc. and impact on newly classified non-exempt employees

Outside Audit

- **Privileged**
- Assist in compiling data and providing legal alternatives on re-classification
- Golden opportunity to analyze and correct any misclassification... “The law made us do it”

Audits (continued)

- Key areas to review:
 - Classification (exemptions and employee/independent contractor)
 - Overtime calculations for non-exempt employees (regular rate)
 - Possible “off the clock” claims
 - Deductions (amount asking employees to pay for uniforms, tools of trade, laundering, etc.)
 - Equity in pay between comparable jobs (similar in skill, working conditions, etc.)

Questions?



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Workplace Violence: Identification, Prevention and If the Worst Happens, Evaluating Exposure



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Violence In Our Society

- Virginia Beach, VA (Government Office)
- Sebring, FL (Bank)
- Aurora, IL (Warehouse)
- Aurora, CO (Movie Theater)
- Intersection of Labor & Employment

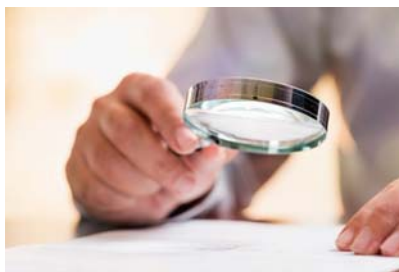


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Overview

- Problem Confronting Employers – Why is it important to be proactive?
- Potential Exposure
- Implementing Workplace Violence Prevention Programs



Workplace Violence

- What is Workplace Violence?
 - Employees directing violence at other employees or employers
 - Customer, patient, or visitor violence against employees
 - Domestic-related violence spilling over into the workplace
 - Property-directed violence
 - Terroristic violence



Numbers

- Nearly 2 million Americans yearly report having been a victim of workplace violence
- A study by the Maricopa Community College Department of Public Safety found that the majority of those committing this type of crime have an outside connection, **such as being a vendor or the recipient of a service.**
- Perpetrators often **have a past or present employment relationship or personal relationship with an employee.**

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Numbers (continued)

- When it comes to workplace violence, women are overwhelmingly victims, according to the [Bureau of Labor Statistics](#).
- 24% of roadway fatalities were men, while 22% were women.
- With falls, slips and trips, 17% of fatalities were men and 11% women.
- But when it comes to homicides, 24% of fatalities were women, while 9% were men. Of those women, 40 percent were killed by a relative or domestic partner, compared to 2% of men, and 33% died as a result of a robbery compared to 16% of men.

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Would You Hire?



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What About This Guy?



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What to Do?

Steps to Prevent
Workplace Violence

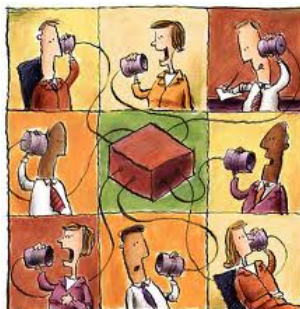


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STEP ONE

- Establish a Workplace Violence Prevention Team to create, communicate, and implement all violence prevention plans, policies, and guidelines



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STEP TWO

Complete a Violence Vulnerability Audit

- Analyze all premises, systems, employees, and customers who interact with employees
- Also look at security systems to assess preparation for violent incidents



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STEP THREE

Establish Policy and Procedures

- Adopt a formal, written Workplace Violence Policy
- Include the Policy in your procedures manual
- Implement results of the Vulnerability Audit and the planned security procedures for responding to violent incidents
- Delineate prohibited behaviors/actions and warning signs
- Establish levels of discipline
- Establish an employee assistance program to help employees deal with stress-related problems

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Establish Policy and Procedures

- Five components to an effective violence prevention program:
 - Management commitment and employee involvement
 - Worksite analysis
 - Hazard prevention and control
 - Safety and health training
 - Recordkeeping and program evaluation



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STEP FOUR

Communicate the Policy and Procedures

- All employees must receive a copy
- Educate all employees on the types of violence and warning signs
- Tell workforce how to report a threat or act of violence



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STEP FIVE

Training

- Goal: To educate all employees and supervisors to spot warning signs and what to do once they recognize them
- Training methods should be different and increasingly detailed for employees, managers and supervisors, and Prevention Team members



STEP SIX

Put the Program Into Action

- Thorough pre-employment screening (Reexamine and Reevaluate)
- Drug testing
- Following the interview, thoroughly check references



Put the Program Into Action (continued)

- Terminate employees in the proper way
- Take all threats seriously (Investigate — interview all witnesses, take written statements, and obtain a complete version of the facts from the accused employee)
- Maintain a strong and workable employee communications network. Establish a confidential “hotline” for employees to report concerns and/or troubling incidents
- Conduct opinion and attitude surveys to ascertain how employees feel about the work environment and encourage participation of all

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Program in Action

- Screen employees with an eye toward identifying employees with predictive criminal histories or aggression issues
- Deal with aggression in the workplace immediately, protecting the company in the process
- If necessary to terminate, do so with an eye toward protecting the workplace



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Screening/Careful Review of Application

- Blank portions
- Failure to adequately explain departures
- Gaps in employment
- Asking that former employers not be contacted
- Failure to provide true references
- Failure to fully explain criminal convictions, if asked OR failure to answer question about criminal convictions.



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12/17		2/15		2/14		2/14	
Company Name			Phone Number		Supervisor's Name and Position		
Company Address			City		State		Zip Code
Lawrence Rd			Memphis TN		TN		38125
Position			Reason for leaving				
Community Counselor			Will Explain				
Duties							
Responsible for the care of children at 6-17.							
From (mo. & yr.)		To (mo. & yr.)		Beginning Salary		Bonus	Ending Salary
2/14		9/14		10.50 hr		1.75 hr	10.50 hr
							1.75 hr

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Are you at least 18 years of age? — Yes No

Have you ever been convicted of a crime (felony or misdemeanor) other than a minor traffic violation? (Note: You are not obligated to disclose sealed or expunged records of conviction or arrests). Yes No

If yes, please state the date of conviction(s), the county and state, and the nature of the offense. Include additional pages if necessary.

Bad checks in Hillman + Dickson all taken care of

NOTE: The existence of a criminal record will not automatically disqualify you from the job for which you are applying.

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EMPLOYMENT

(Start with most recent)

Company Name	Telephone
Address	From: 2012 To: 2014
Name of Supervisor	Weekly Pay
Job title and describe your work	Reason for leaving

Company Name	Telephone
Address	From: To:
Name of Supervisor	Weekly Pay
Job title and describe your work	Reason for leaving

EMPLOYMENT

(Start with most recent)

Company Name	Telephone
Address	From: 3-17 To: Now
Name of Supervisor: <u>Dade</u>	Weekly Pay: <u>1000</u>
Job title and describe your work: <u>Server</u>	Reason for leaving: <u>management</u> + I don't like kids

Company Name Telephone

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PLEASE LIST THREE PROFESSIONAL REFERENCES:

Full Name <i>Dr. Edward Kaufman</i>	Relationship <i>Associate</i>
Company	Phone
Address	Email
Full Name <i>Dr. Mark Wagner</i>	Relationship <i>Associate</i>
Company	Phone
Address	Email
Full Name <i>Dr. Ester Morle</i>	Relationship <i>Associate</i>
Company	Phone
Address	Email

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Pre-Employment Screening Effective Interviews

- Focus less on hypotheticals
- Focus more on their own experiences
- Ask about stressful situations
- Ask about conflict
- Don't stick to "scripted" interview questions – ask follow-up questions



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Sample Interview Questions

- What would you change about your previous job?
- What would your former employers say about you? List some positives and negatives.
- When was the last time you became very angry at work? What was it about? How did the situation resolve?
- Give an example of a goal you reached and tell me how you achieved it.
- Give an example of a goal you didn't meet and how you handled it.
- Tell me about the biggest mistake you made at your last job.
- Who found out about the mistake? How did it come to light? What happened?
- Do you think that was fair?
- Can you name an area where you need to grow?
- Tell me about a company policy you don't agree with? Have you ever gotten in trouble for violating that policy?
- What do you find most challenging about working on a team? Describe a situation where you had that challenge and how it resolved.
- What do you do if you disagree with your boss?
- What did you like most about your last job?
- Tell me about a failure in your last job?
- Tell me about an important success in your last job?
- Describe a situation in which you did something positive that wasn't in your job description?
- Tell me about a situation in which you depended on someone else to get the job done?

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Checks of Employees' Criminal Backgrounds

- At inception of employment
- Conduct periodic re-do of background checks (e.g., every 5 years)
- Subject employees to periodic drug screens
- Require employees to report arrests
- Require employees to report restraining orders

AUTHORIZATION FOR BACKGROUND CHECKS

After carefully reading this Background Check Disclosure and Authorization form, I authorize the Company to order my background report, including investigative consumer reports. I understand that the Company may rely on this authorization to order additional background reports, including investigative consumer reports, during my employment without asking me for my authorization again as allowed by law.

I also authorize the following agencies and entities to disclose to the Background Check Company and its agents all information about or concerning me, including but not limited to: my past or present employers; learning institutions, including colleges and universities; law enforcement and all other federal, state and local agencies; federal, state and local courts; the military; credit bureaus; testing facilities; motor vehicle records agencies; if applicable, worker's compensation injuries; all other private and public sector repositories of information; and any other person, organization, or agency with any information about or concerning me. Workers' compensation information will only be requested in compliance with Federal Americans with Disabilities Act and/or any other applicable federal, state or local laws and only after a conditional job offer is made. The information that can be disclosed to the Background Check Company and its agents includes, but is not limited to, information concerning my employment history, earnings history, education, credit history, motor vehicle history, criminal history, military service, professional credentials and licenses and substance abuse testing.

I agree the Company may rely on this authorization to order background reports, including investigative consumer reports, from companies other than the Background Check Company without asking me for my authorization again as allowed by law. I also agree that a copy of this form is valid like the signed original. I certify that all of the personal information I provided is true and correct.

Last Name First Middle
Maiden/Other Names Years Used

If you live or work for the Company in California, Minnesota or Oklahoma: Check this box if you would like a free copy of your background check report

Signature Date: (Month/Day/Year)

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Employment Conduct and Threat Reporting

- Prohibits actually engaging in violence or threatening to engage in violence
- Zero tolerance?
- Includes prohibitions on violence from third parties, such as vendors and intimate partners
- Have a policy of what and where to report
- Requires employees to report protective/restraining orders



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Risk Factors:

- **Occupational Characteristics**
 - Exchange of money
 - Solo work and isolated work sites
 - Sale of alcohol
 - Poorly lit stores and parking areas
 - Lack of staff training in recognizing and managing escalating hostile and aggressive behavior
- **Industry Context**
- **Fatalities**
 - taxicab services, liquor stores, detectives and protective services, commercial gas stations, retail jewelry
- **Non-fatalities**
 - service and retail trades
 - nursing homes
 - social services
 - grocery stores
 - hospitals
 - eating and drinking establishments

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Weapons Prohibitions

- You can still prohibit employees from bringing firearms into your facility.
- But in Tennessee, an employee with a handgun-carry permit may keep a firearm and ammo out of sight in a locked vehicle in the parking lot.
- Should you allow employees to carry at work? Or out in the community?



Termination Protocols

- Don't signal
- Fire remotely
- Hire security
- Keep security in place
- Get employee out immediately



When DV Comes to Work

- Disruptive personal visits to workplace by present or former partner or spouse
- Domestic partner drops her off and picks her up from work
- Domestic partner hangs out in the parking lot
- An unusual number of phone calls/text messages, strong reactions to those calls/text messages, and/or a reluctance to converse or respond to phone/text messages
- Co-workers receive insensitive or insulting messages intended for the colleague experiencing abuse

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Balance Confidentiality With Protection



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Care for the Victim/Employee:

- Ask the employee what changes in the work environment would make her or him feel safer, such as providing priority parking and escorts from the parking area
- Change the employee's phone number, and remove the employee's name from automated contact lists
- Install panic buttons
- Move employee out of proximity to entrance
- Provide EAP and numbers to DV shelters and resources
- Provide time off or flexible work hours for counseling and court appearances

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What if Your Employee is Alleged to be the Abuser?

- Don't automatically fire
- Draft liberal policies allowing you to fire for criminal, as well as non-criminal violence
- Offer your EAP



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Practical Solutions to Limit Exposure

- Some recommended engineering and administrative controls
- Physical barriers such as bullet-resistant enclosures or shields, pass-through windows, or deep service counters
- Alarm systems, panic buttons, global positioning systems (GPS), and radios ("open mic switch")
- Convex mirrors, elevated vantage points, clear visibility of service and cash register areas
- Bright and effective lighting
- Adequate staffing
- Arrange furniture to prevent entrapment
- Cash-handling controls, use of drop safes
- Height markers on exit doors
- Emergency procedures to use in case of robbery
- Training in identifying hazardous situations and appropriate responses in emergencies
- Video surveillance equipment, in-car surveillance cameras, and closed circuit TV
- Establish liaison with local police

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Post-incident Response and Evaluation

- Several types of assistance can be incorporated into the post-incident response, including:
 - trauma-crisis counseling;
 - critical incident stress debriefing; or
 - employee assistance programs to assist victims.



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COST



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QUESTIONS?



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Workplace Violence: Identification, Prevention and If the Worst Happens, Evaluating Exposure



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Immigration and E-Verify



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Introduction

“Traditionally, immigrants have been a valued source of talent for our industry. That’s been true for decades.... We’re extremely proud of that record. Immigrants make our industry – and our country – stronger – and they provide a huge boost to America’s economy.”

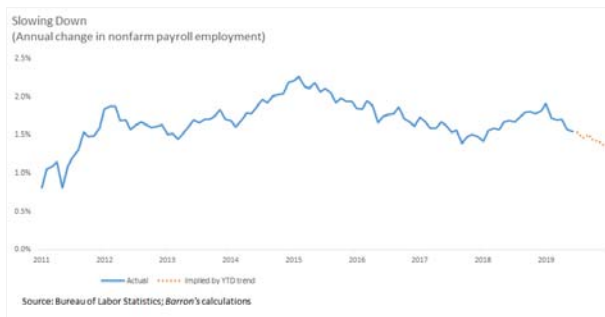
*Jonathan Tisch
CEO of Loews Hotels*



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State of the U.S. Economy



Leading Economic Indicators

- 224,000 jobs added in June 2019
- GDP growth 3.1% (Q1 – 2019)
- Durable Goods Orders (down 1.3% in May 2019)
- Inflation at target (2%)
- Rising stock market
- Stable interest rates

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State of Immigration Law

- Top 5 Immigration Headlines in 2017
- Top Immigration Headlines in 2018
- Headlines in 2019



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Top 5 Immigration Headlines in 2017

- Buy American Hire American
- Increased Scrutiny of H-1B Visa Program
- Travel Ban Impacting Employers
- Employment Verification Discrimination Changes
- Suspension of H-1B Visa Premium Processing



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Top Immigration Headlines in 2018

- H-1B and L-1 visas under scrutiny
- Premium processing
- Increases in RFEs from USCIS
- Decline in school enrollment
- Increase in visa related fees
- Termination of TPS
- Increase in I-9 Audits
- Employers are struggling to find workers



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Top Immigration Headlines in 2019

- H-1B and L-1 visa under scrutiny
- Increases in RFEs from USCIS
- Large-Scale Enforcement Actions and Raids
- Struggle to find workers
- Social Security Administration sending no match letters
- Temporary increase numerical limit (cap) on H-2B visas



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Employment Verification

- What should you do?
- Should you use E-Verify?
- How should you handle Form I-9?
- Should you consider ICE IMAGE and train people?
- How often should you audit your I-9s?
- What should you do with “no-match” letters?
- What type of immigration-related policies do you have at your business?



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Authorized to Work in the U.S.

- U.S. individuals
 - Citizen
 - Permanent Resident
 - Refugee
 - Asylee
 - National
- Foreign national authorized to work



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Form I-9

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name (Family Name) ?		First Name (Given Name) ?		Middle Initial ?	Other Last Names Used (if any) ?	
Address (Street Number and Name) ?			Apt. Number ?	City or Town ?		State ? ZIP Code ?
Date of Birth (mm/dd/yyyy) ?	U.S. Social Security Number ?	Employee's E-mail Address ?			Employee's Telephone Number ?	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

1. A citizen of the United States ?

2. A noncitizen national of the United States (See instructions) ?

3. A lawful permanent resident (Alien Registration Number/USCIS Number): ?

4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): ?
Some aliens may write "N/A" in the expiration date field. (See instructions)

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: ? OR 2. Form I-94 Admission Number: ? OR 3. Foreign Passport Number: ? Country of Issuance: ?	QR Code - Section 1 Do Not Write in This Space
---	---

Signature of Employee ?	Today's Date (mm/dd/yyyy) ?
-------------------------	-----------------------------

Form I-9 (continued)

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name (Family Name) ?		First Name (Given Name) ?		Middle Initial ?	Other Last Names Used (if any) ?	
Address (Street Number and Name) ?			Apt. Number ?	City or Town ?		State ? ZIP Code ?
Date of Birth (mm/dd/yyyy) ?	U.S. Social Security Number ?	Employee's E-mail Address ?			Employee's Telephone Number ?	

N.B.: N/A should be used when skipping a field

Form I-9 (continued)

Preparer and/or Translator Certification (check one):

I did not use a preparer or translator. A preparer(s) and/or translator(s) assisted the employee in completing Section 1.
(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Today's Date (mm/dd/yyyy)	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)	City or Town	State	ZIP Code

N.B.: N/A should be used when skipping a field

Form I-9 (continued)

- Unique Situations:
 - F and J Students and Exchange Visitors
 - Extension based on receipt notices:
 - Automatic 240 days rule for certain workers
 - I-766 EADs



Form I-9 (continued)

- Retention Requirements
 - To copy or not to copy
 - Paper v. electronic
 - When using E-Verify
 - Separate from personnel files
 - Would you able to produce documents in 3 days?
 - Control access with audit trail
- Do you hire remotely?

Form I-9 (continued)

- Avoiding Discrimination
 - Common mistakes
 - You hear an accent?
 - Should you re-verify?
 - Battling union?

LISTS OF ACCEPTABLE DOCUMENTS
All documents must be **UNEXPIRED**.

Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	LIST B Documents that Establish Identity	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-688) 3. Foreign passport that contains a temporary I-95 stamp or temporary I-951 printed notation on a machine-readable immigrant visa 4. Employment Authorization Document that contains a photograph (Form I-797) 5. For a nonimmigrant alien authorized to work for a specific employer: <ul style="list-style-type: none"> a. Foreign passport, and b. Form I-94 or Form I-94A that has the following: <ul style="list-style-type: none"> (1) The same name as the passport, and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form. 6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	4. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address 3. School ID card with a photograph 4. Voter's registration card 5. U.S. Military card or draft record 6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority For persons under age 18 who are unable to present a document listed above: 10. School record or report card 11. Clinic, doctor, or hospital record 12. Day-care or nursery school record	1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH DHS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION 2. Certification or report of birth issued by the Department of State (Forms DS-1050, DS-245, DS-246) 3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal 4. Native American tribal document 5. U.S. Citizen ID Card (Form I-87) 6. Identification Card for Use of Resident Citizen in the United States (Form I-178) 7. Employment authorization document issued by the Department of Homeland Security

Form I-9 (continued)

- Audits
 - What to do with errors or omissions?
 - Backdate, erase or white-out?
 - Better to complete a new form?
 - Avoid discrimination
 - Document that does not “reasonably appear on its face to be genuine”?
 - Destruction of Form I-9s

Form I-9 (continued)

Type	FY 2018	FY2017
Worksite investigation	6,848	1,691
I-9 audits	5,981	1,360
Criminal arrests	779	300
Administrative arrests	1,525	750

The arrests are worksite-related.

E-Verify

How it Works

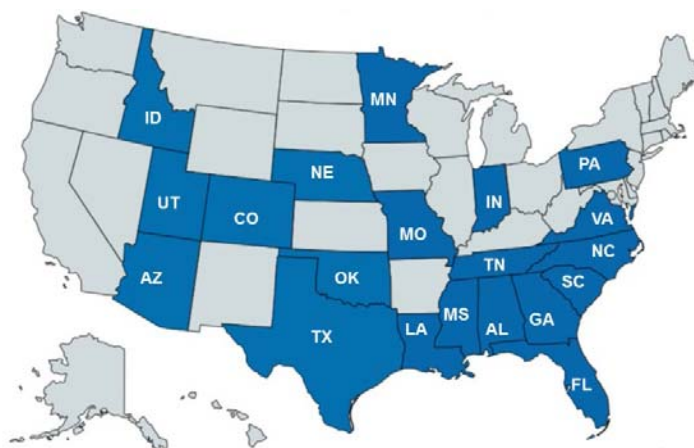


U.S. Citizenship
and Immigration
Services

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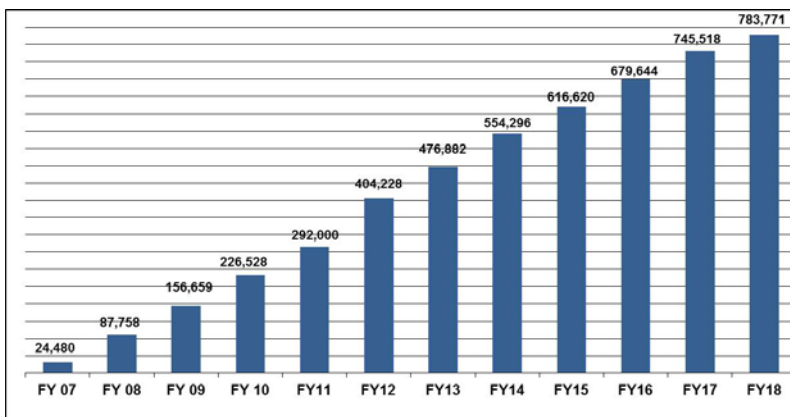
E-Verify (continued)



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E-Verify (continued)



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E-Verify (continued)

VERIFICATION PROCESS

Verification Process Overview

CREATE A CASE



1

The employer uses information from the employee's Form I-9 to create a case in E-Verify.

GET RESULTS



2

E-Verify displays an initial case result within a few seconds, though some cases may require additional action.

CLOSE THE CASE



3

The employer closes the case once E-Verify displays a final case result.

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E-Verify Results

Employment Authorized

Tentative Non-confirmation

Verification in Process

E-Verify Results (continued)

- Tentative Non-Confirmation:
 - Social Security Administration?
 - Notify employee and refer him to SSA
 - Department of Homeland Security?
 - Was DHS unable to verify employment eligibility?
 - Refer employee to DHS
 - Did the employer indicate that photo did not match?
 - Scan and upload image of the document to E-Verify

E-Verify Results (continued)

- Tentative Non-Confirmation:
 - Do not assume the worst:
 - No match Social Security
 - Unreported event
 - Incorrect information
- Print TNC Further Action Notice
 - Determine what employee wants to do
 - Wait on employee for update
 - Do not terminate employee because of TNC



Registering with E-Verify

- Pros
 - Federal contractors are required to register
 - STEM OPT requires employers to be registered
 - Helps avoid no-match letters
- Cons
 - Will not avoid I-9 audit
 - Dedicate a couple employees to E-Verify
 - Open the door to investigations
 - Unavailability in case of government shutdown
 - Still have to rely on I-9

E-Verify Versus Form I-9

VERIFICATION PROCESS

Verification Process Overview

1 CREATE A CASE



The employer uses information from the employee's Form I-9 to create a case in E-Verify.

2 GET RESULTS



E-Verify displays an initial case result within a few seconds, though some cases may require additional action.

3 CLOSE THE CASE



The employer closes the case once E-Verify displays a final case result.

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E-Verify Versus Form I-9 (continued)

- Employees:
 - Complete Form I-9
 - Choose and present acceptable documents
- Employers
 - Maintain I-9s on all employees
 - Use most recent I-9s
 - Complete I-9
 - No discrimination or prescreening

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E-Verify Versus Form I-9 (continued)

- Employees:
 - Social Security Number on Form I-9
 - Select List B documents with photo

- Employers
 - Use info in completed Form I-9
 - Create E-verify
 - Maintain copy of photo matching document
 - Re-verify in Section 3 of I-9 ONLY

E-Verify Versus Form I-9 (continued)

Mandatory v. Optional

E-Verify Participation/Enrollment Notification	
Notice of E-Verify Participation	Right to Work Poster
	

Best Employment Practices

- Use E-Verify
- Use Social Security Number Verification Service
- Hiring and employment eligibility verification policy
- Internal compliance and training program
- Personnel in charge of program
- Annual audits by external providers
- Contractors and subs use of same policies and procedures
- Anti-discrimination policies
- Report to ICE credible information of suspected misconduct
- Tip line for employees to report unauthorized workers
- Copies of documents submitted with I-9

Questions?



Immigration and E-Verify



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Guests Who Overstay Their Welcome: How to Roll Up the Welcome Mat



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How Can Guests Wear Out Their Welcome?

- Refusing or otherwise failing to pay
- Staying beyond the dates reserved
- Engaging in drunk, disorderly, or other conduct that places others at risk
- Violating the law
- Engaging in other objectionable behavior



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Grounds for Refusing Accommodations to a Guest

Under Tennessee law, an innkeeper may refuse accommodations to a guest:

1. for nonpayment;
2. for public intoxication or disorderly conduct;
3. if the owner reasonably believes the guest is using the premises for an unlawful purpose; or
4. if the owner reasonably believes the guest brought something into the hotel that may be dangerous to others.

See TCA 68-14-602.



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Grounds for Rolling Up the Welcome Mat

Tennessee law allows a hotel to eject a person:

1. for nonpayment;
2. for public intoxication or disorderly conduct;
3. if the owner reasonably believes the guest is using the premises for an unlawful purpose;
4. if the owner reasonably believes the guest brought something into the hotel that may be dangerous to others;
5. for violating a federal, state, or local hotel law or regulation; or
6. for violating a conspicuously posted hotel rule.



See TCA 68-14-605. Ejection From Premises

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The Holdover Guest

- Distinction between a “tenant” and a “transient guest”
- Tenant: a person who rents property with the intent to establish long term residency
- Transient guest: a person who rents property (usually for a brief period of time) who does not intend to establish residency
- Legal implications are different



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Removal of Holdover Guests: Best Practices

- Conduct the removal in (1) a reasonable manner and (2) at a reasonable time
- Document the removal (in writing and/or via audio or video)
- Clearly explain to the guest – in writing and/or verbally – why s/he is being removed (cite at least one of the grounds in TCA 68-14-605)
- Send at least two employees
- Refrain from engaging in a verbal altercation, using profanity, threatening the guest, or any conduct that could create independent liability (e.g., defamation, intentional or negligent infliction of emotional distress)

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The Holdover Guest: Special Circumstances

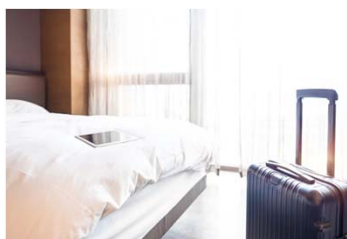
- What if the guest is very ill?
- What if the guest is homeless?
- What if the guest is a minor? Or elderly?
- What if the guest threatens physical or other harm?
- What if the guest refuses to leave?

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Disposal of Holdover Guests' Property

- **TCA 62-7-108. Sale of Guests' Baggage by Hotels**
- If a guest leaves any baggage or property at the hotel and has an unpaid bill, the hotel may, at any time 30 days after the person incurring such debt has left the hotel, sell at public auction, for cash, at the hotel office, any or all baggage or property left at the hotel necessary to satisfy the debt or obligation.
- The sale shall be advertised by written or printed posters for at least **ten days** before the sale.



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Disposing of the Holdover Guests' Property: Best Practices

- Keep belongings in a safe/secure place until the 30-day period runs
- Create a written and photographic inventory of each item (pictures or video log) and condition of items prior to, and after, removal from room
- Place two or more employees in charge of creating the inventory



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The Unruly/Unlawful Guest

Remember: Tennessee law allows you to eject a guest for a host of “bad” behaviors:

- public intoxication or disorderly conduct;
- if the owner reasonably believes the guest is using the premises for an unlawful purpose;
- if the owner reasonably believes the guest brought something into the hotel that may be dangerous to others;
- violating a federal, state, or local hotel law or regulation; or
- violating a conspicuously posted hotel rule.



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Unlawful Activities

- Tennessee law on marijuana use
 - Marijuana growth and possession are still illegal (even for medicinal purposes)
 - Exception allows high CBD, low THC cannabis oil to be used by seizure patients
 - State legislature blocked legislation that would legalize medical cannabis and repealed city ordinances passed by Memphis and Nashville that gave officers discretion to issue a civil ci small amounts of marijuana



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Unlawful Activities (continued)

- What should you do if your employees suspect or witness drug activity?
 - smell of marijuana
 - paraphernalia in room
 - large sums of cash, weapons, etc.

- General rule: Individuals have a general expectation and right to privacy in their hotel rooms, and the 4th Amendment protects them from warrantless searches and seizures



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Unlawful Activities (continued)

- Can a hotel owner or manager grant a police officer's request to search a room?
- Yes, IF (1) the guest consents or (2) the rental period has either expired or been lawfully terminated by the hotel for, e.g., illegal activity
- How does a hotel "lawfully terminate" a guest's occupancy? By taking "justifiable affirmative steps to repossess [a] room ... and to assert dominion and control over it," even if the hotel is not successful in keeping the guest out of the room. *US v. Spicer*, 549 Fed. Appx. 373, 376 (6th Cir. 2013)

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The Unruly Guest

- Tennessee law grants hotels both civil and criminal rights of action against any person guilty of “turbulent or riotous conduct” within or about the hotel.
- Any person found guilty of such conduct commits a Class C misdemeanor.
- The owner or persons so offended may sue in the owner’s or offended person’s own name for the turbulent or riotous conduct.
- TCA 62-7-110. Penalty for Riotous Conduct



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The Unruly Guest (continued)

- What is “turbulent” conduct?
 - Characterized by conflict, disorder, or confusion; not controlled or calm
- What is “riotous” conduct?
 - Marked by or involving public disorder
- Examples:
 - Lindsey Lohan
 - Charlie Sheen

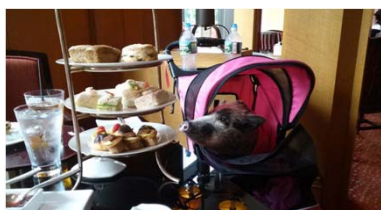


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The Animal Guest

- Know the differences between “service animals” and “comfort animals” (aka “emotional support animals”)
- Hotels are only legally required to accommodate service animals



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Definition of “Service Animal” Under the ADA

Two Different Contexts:

1. Title I of the ADA, which covers private employment
2. Titles II and III of the ADA, which cover public/government employment and places of public accommodation like restaurants, hotels, retail establishments, and public areas of commercial facilities

Definition of “Service Animal” under Titles II and III of the ADA: dogs that are individually trained to do work or perform tasks for people with disabilities

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140

“Service Animals” Can Be Dogs or . . .

...Wait for it!



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“Service Animals” Can Be Dogs or Miniature Horses

- Current ADA regulations have a provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.
- Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.
- Entities covered by the ADA must modify their policies to permit miniature horses where reasonable.



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142

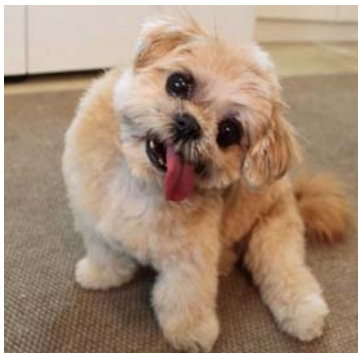
“Service Animals” Can Be Dogs or Miniature Horses (continued)

The ADA regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility:

1. whether the miniature horse is housebroken;
2. whether the miniature horse is under the owner’s control;
3. whether the facility can accommodate the miniature horse’s type, size, and weight; and
4. whether the miniature horse’s presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

“Service Animals” versus “Comfort Animals”

- Dogs and miniature horses whose sole function is to provide comfort or emotional support do not qualify as service animals under Titles II and III of the ADA.



What Questions Can Hotels Ask People with Service Animals Under Titles II and III of the ADA?

When it is not obvious what service an animal provides, only limited inquiries are allowed.

Two questions are permitted:

1. Is the service animal required because of a disability?
2. What work or task has it been trained to perform?

They cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the animal, or ask that the animal demonstrate its ability to perform the work or task.

Animal Guests and Tennessee Law

- No proprietor of any inn or hotel shall refuse to permit a blind, physically disabled or deaf or hard of hearing person to enter the place or to make use of the accommodations provided when the accommodations are available, for the reason that the blind, physically disabled or deaf or hard of hearing person is being led or accompanied by a dog guide.
- A dog guide shall be under the control of its handler.
- A place of public accommodation shall not require documentation, such as proof that the animal has been certified, trained or licensed as a dog guide.
- See TCA 62-7-112. Dog Guide to be Admitted—Penalties

QUESTIONS?



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Guests Who Overstay Their Welcome: How to Roll Up the Welcome Mat



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Thank You

**Eighth Annual Tennessee Hospitality and
Tourism Law Symposium**

July 11, 2019

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GSRM
Attorneys at Law





Industry Overview

Memphis, Gatlinburg, Nashville and the NFL Draft

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 @STR_Data

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Agenda



Total U.S. and TN Performance

Memphis and Gatlinburg
Performance & Pipeline

Nashville Performance & Pipeline

NFL Draft and Short-Term Rental
Supply

Q&A

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Total US: the low/slow growth story continues



		<u>% Change</u>
Room Supply		2.0%
Room Demand		2.5%
Occupancy	64.4%	0.4%
ADR	\$130	1.2%
RevPAR	\$84	1.6%

Total US, YTD May 2019

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Tennessee growth stronger than US



		<u>% Change</u>
Room Supply		3.7%
Room Demand		6.4%
Occupancy	62.7%	2.6%
ADR	\$116	2.8%
RevPAR	\$73	5.5%

Tennessee, YTD May 2019

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Memphis Market

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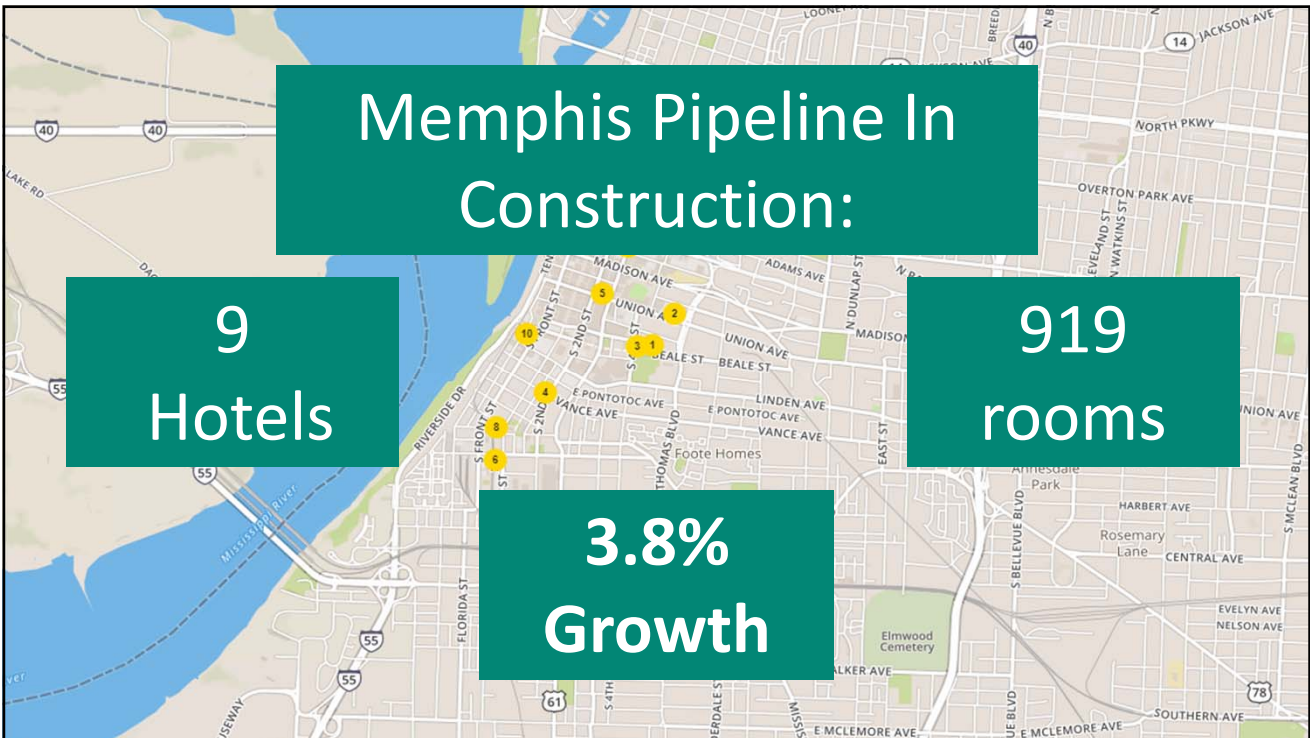
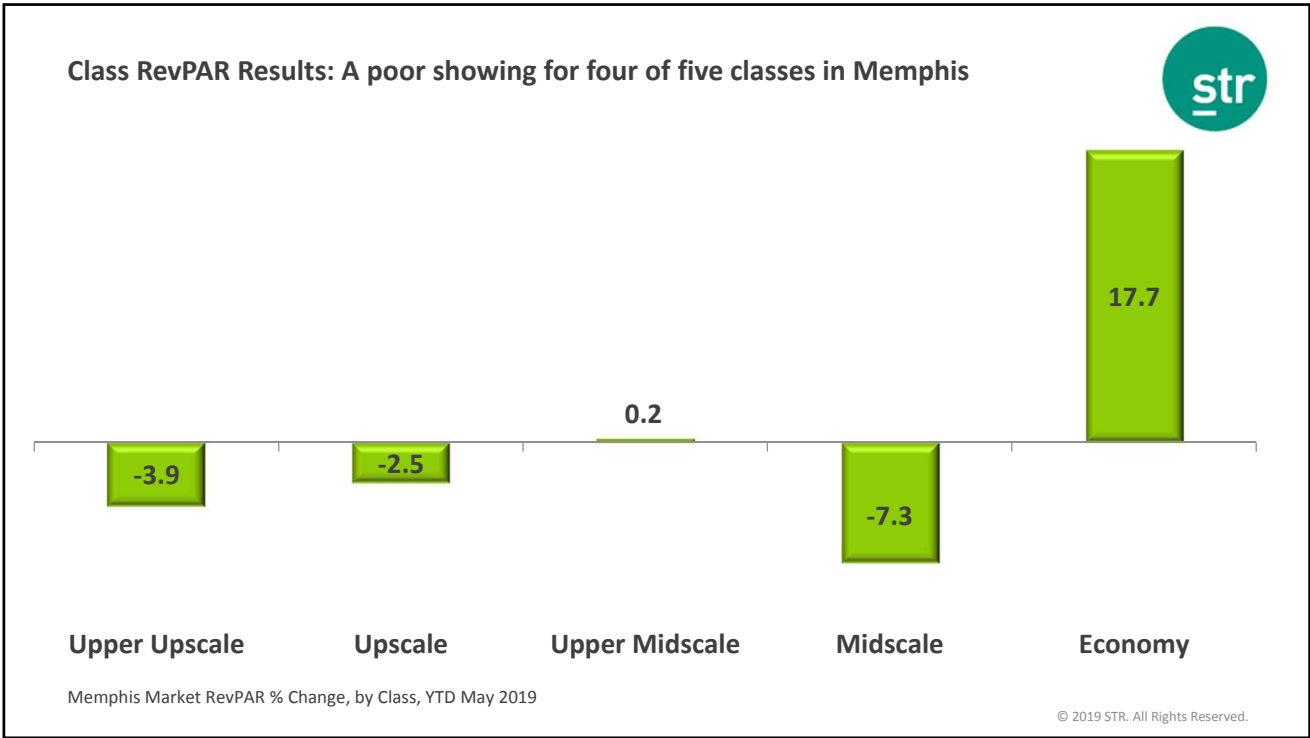
Demand growth driving RevPAR growth



		<u>% Change</u>
Room Supply		2.2%
Room Demand		6.9%
Occupancy	65.8%	4.5%
ADR	\$98	-1.7%
RevPAR	\$64	2.7%

Memphis Market, YTD May 2019

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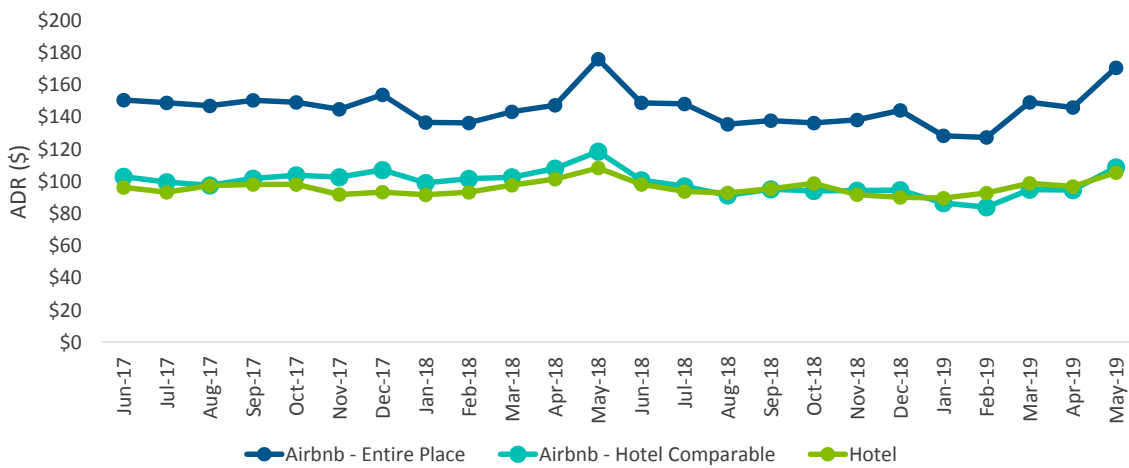
Hotels enjoy higher occupancy than Airbnbs



Memphis market occupancy, 6/2017-5/2019
Source: AirDNA, STR

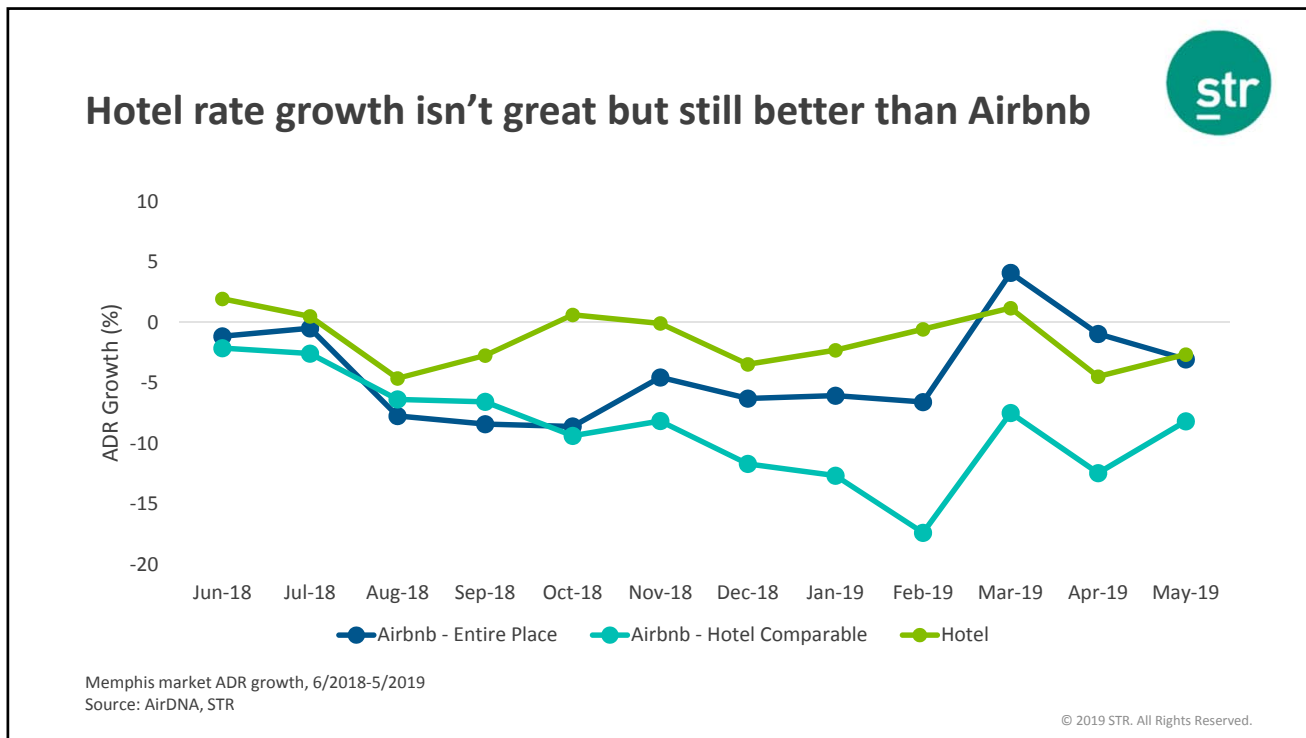
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Hotel rates in line with smaller Airbnb rates



Memphis market ADR, 6/2017-5/2019
Source: AirDNA, STR

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Gatlinburg/Pigeon Forge Submarket

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Occupancy, ADR see healthy YOY gains

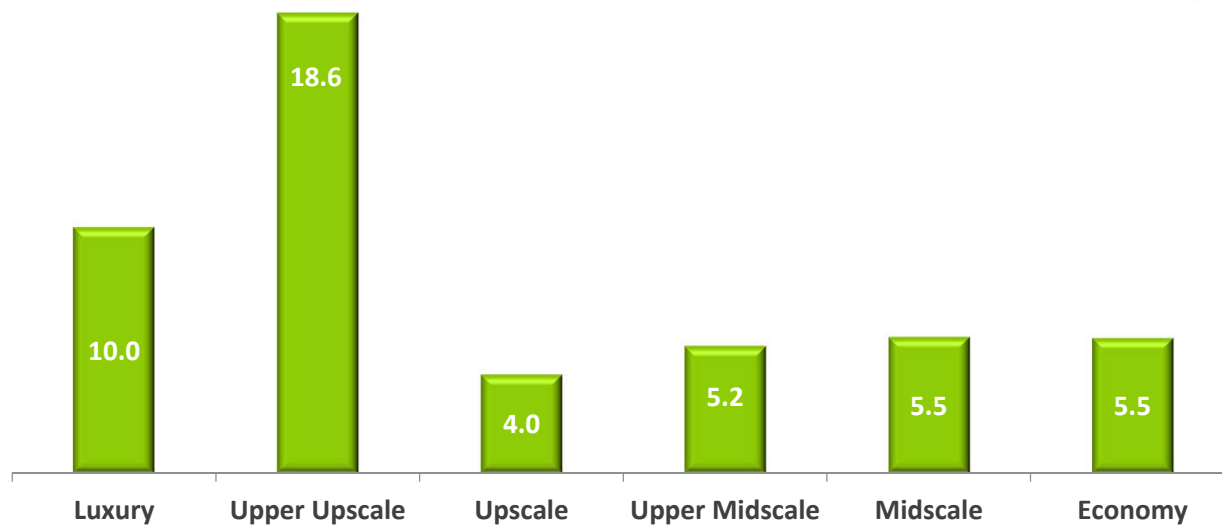


		<u>% Change</u>
Room Supply		2.1%
Room Demand		5.8%
Occupancy	52.1%	3.7%
ADR	\$107	3.4%
RevPAR	\$56	7.2%

Gatlinburg/Pigeon Forge Submarket, YTD May 2019

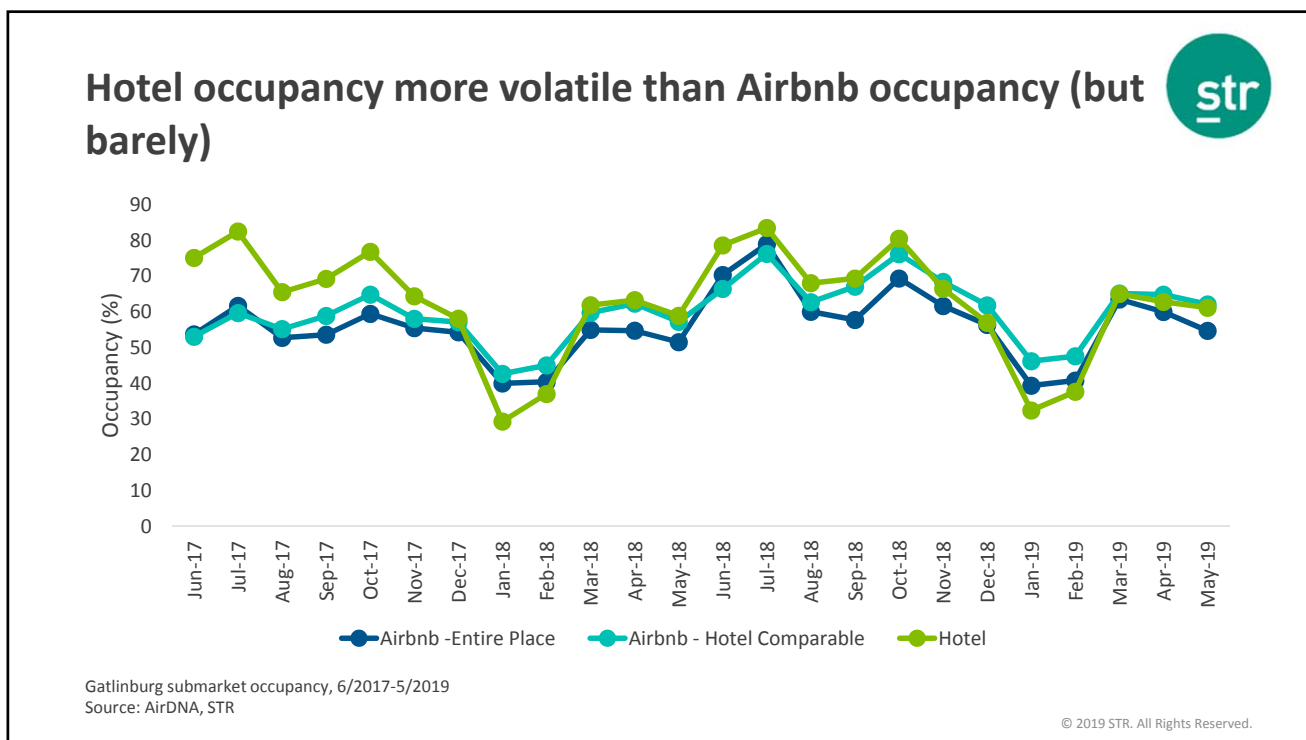
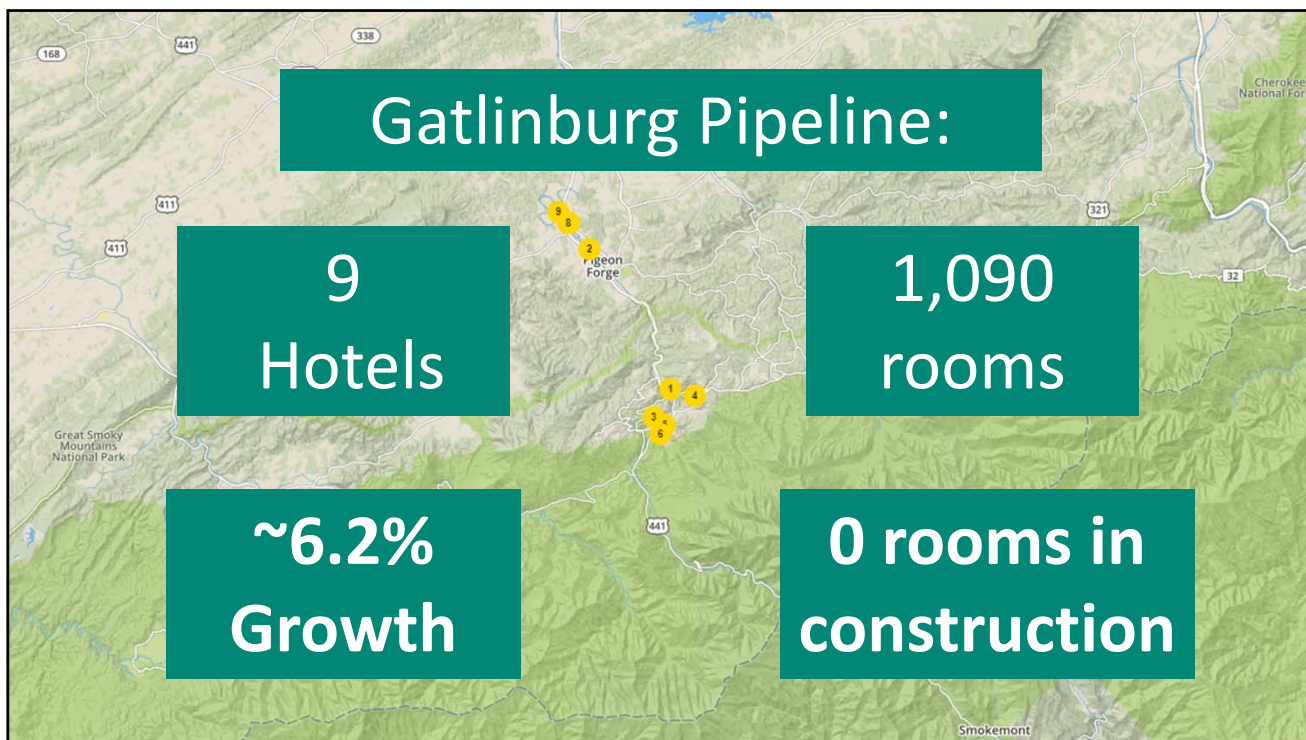
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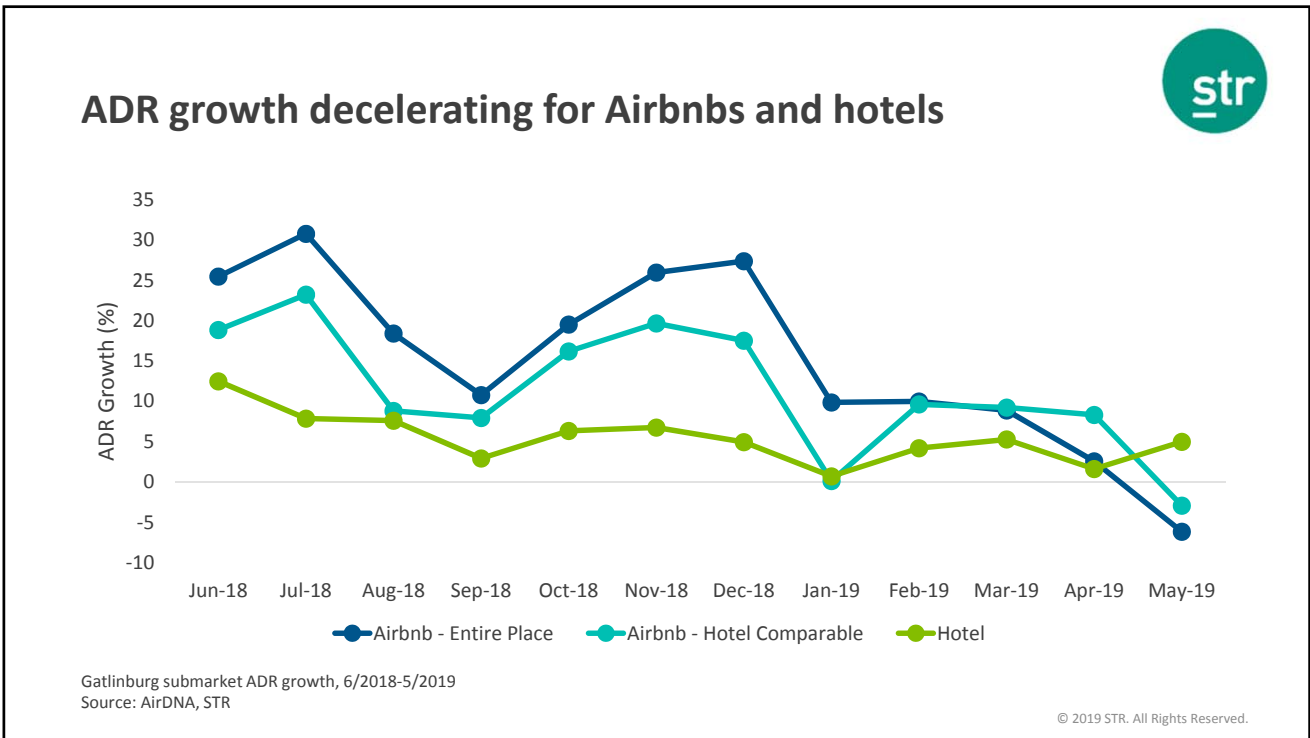
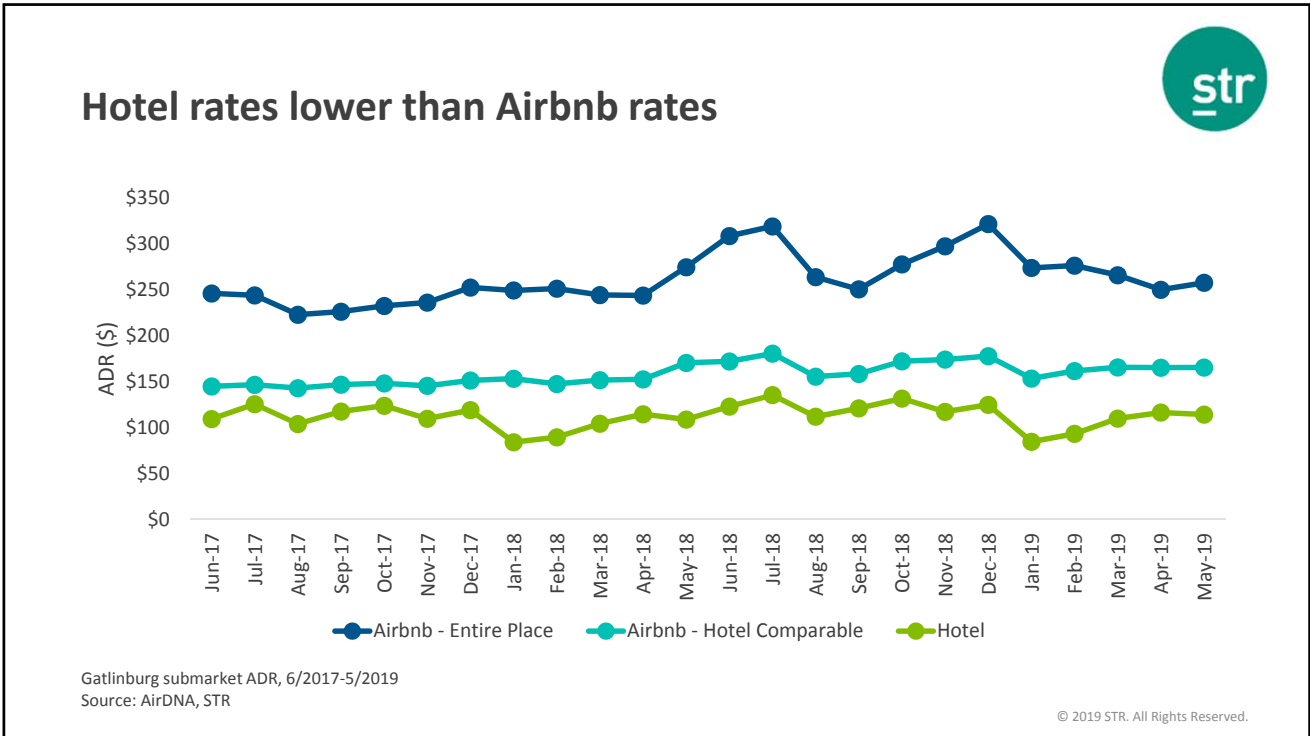
Class RevPAR Results: Strong performance across the board for Gatlinburg



Gatlinburg/Pigeon Forge Submarket RevPAR % Change, by Class, YTD May 2019

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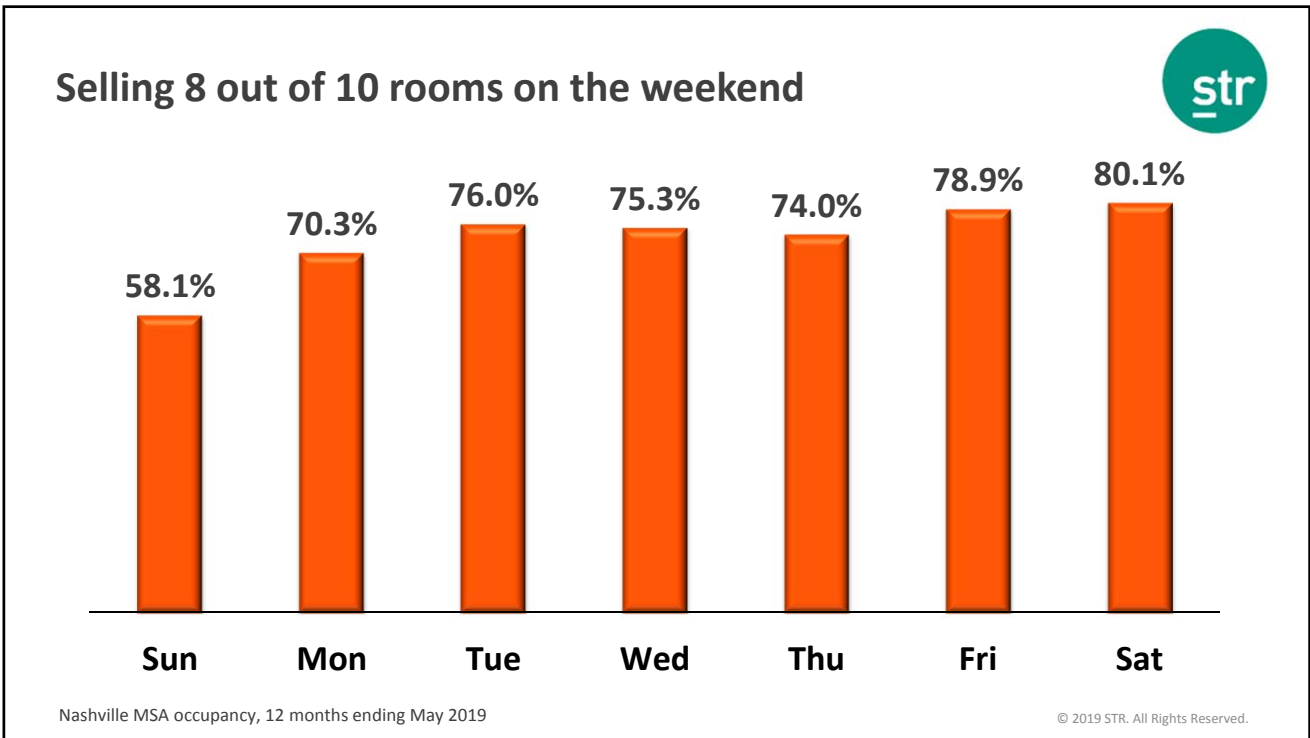
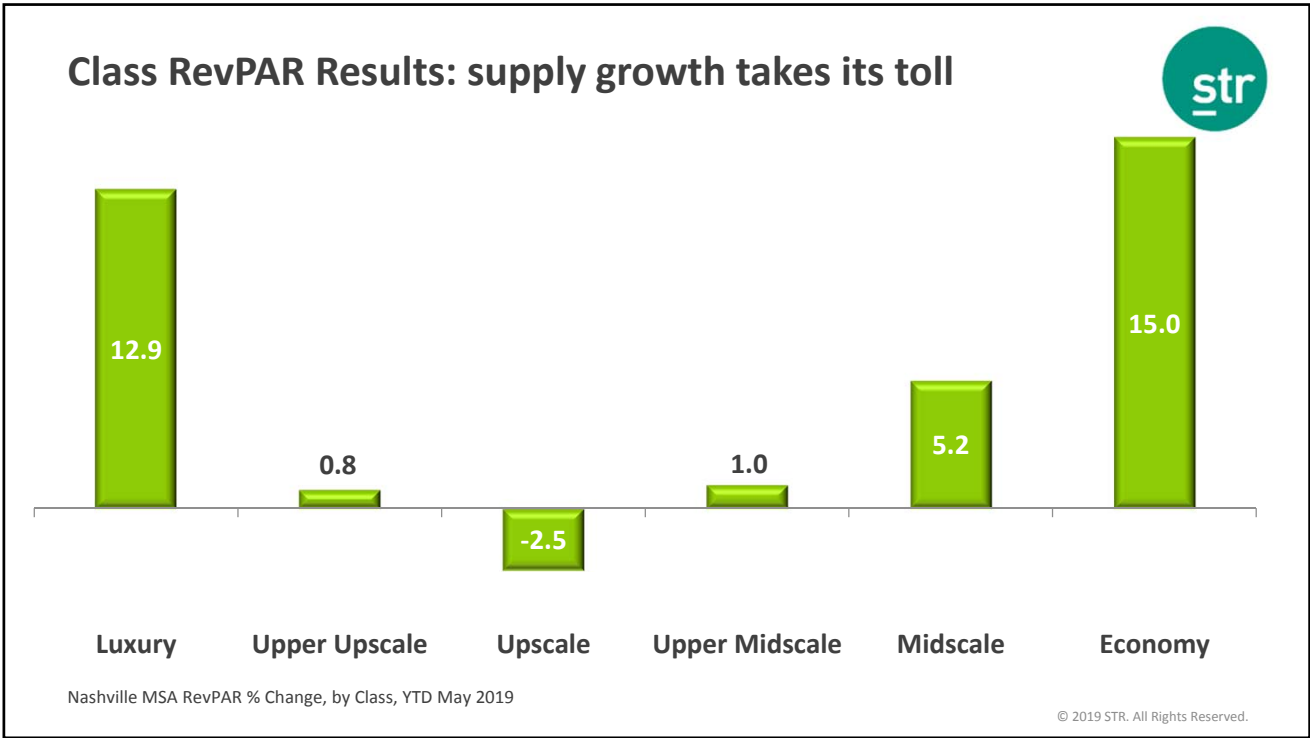


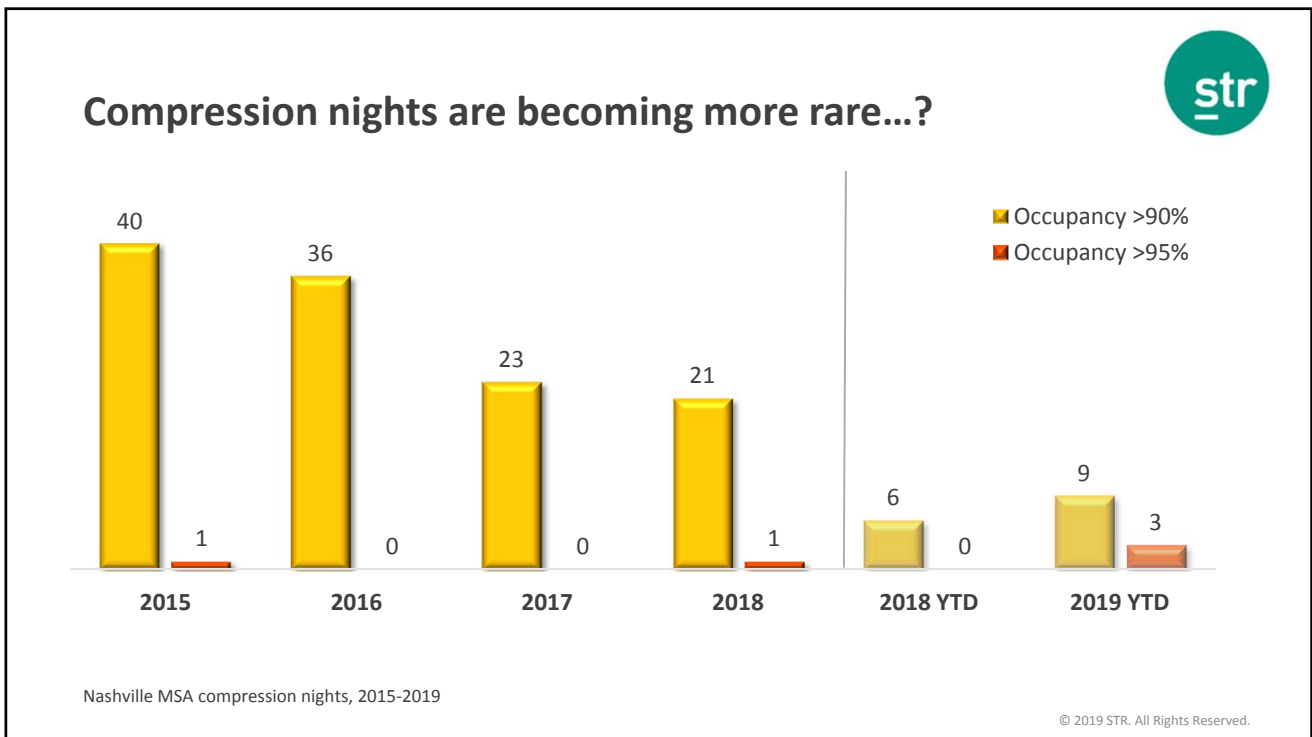
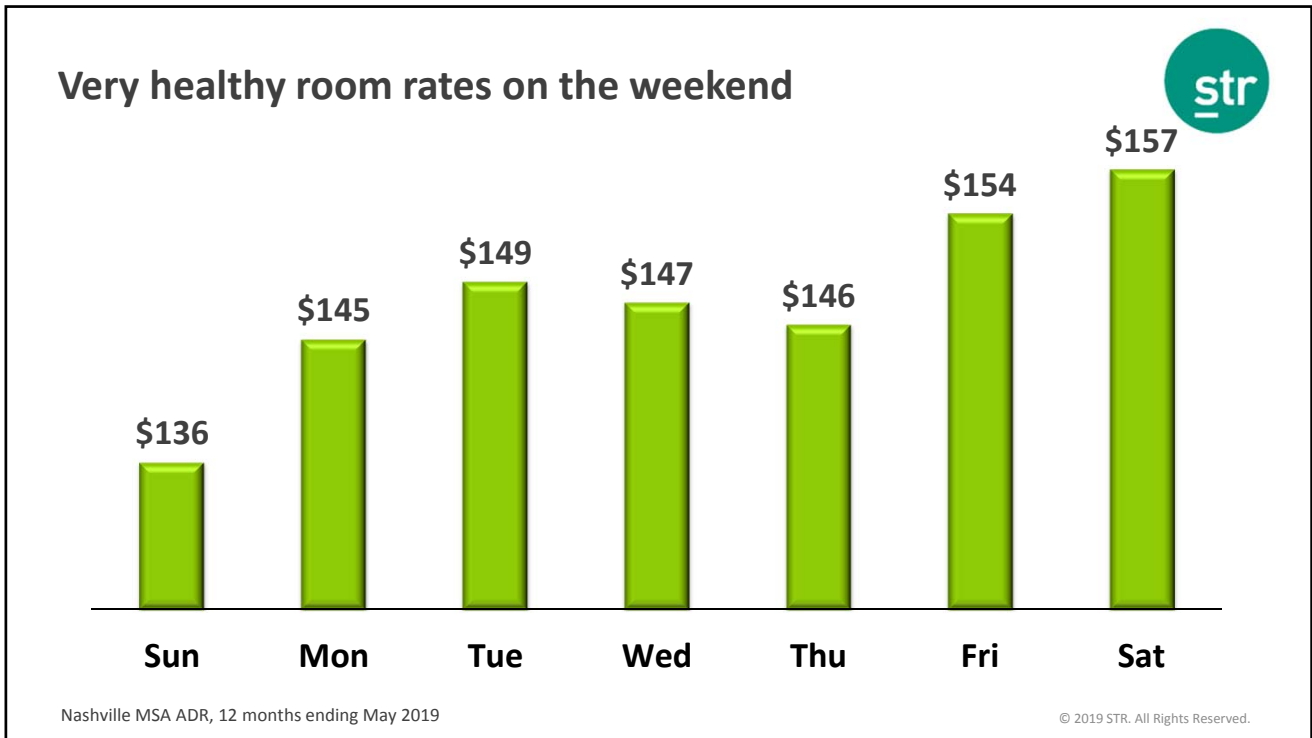


RevPAR growth driven by rate growth



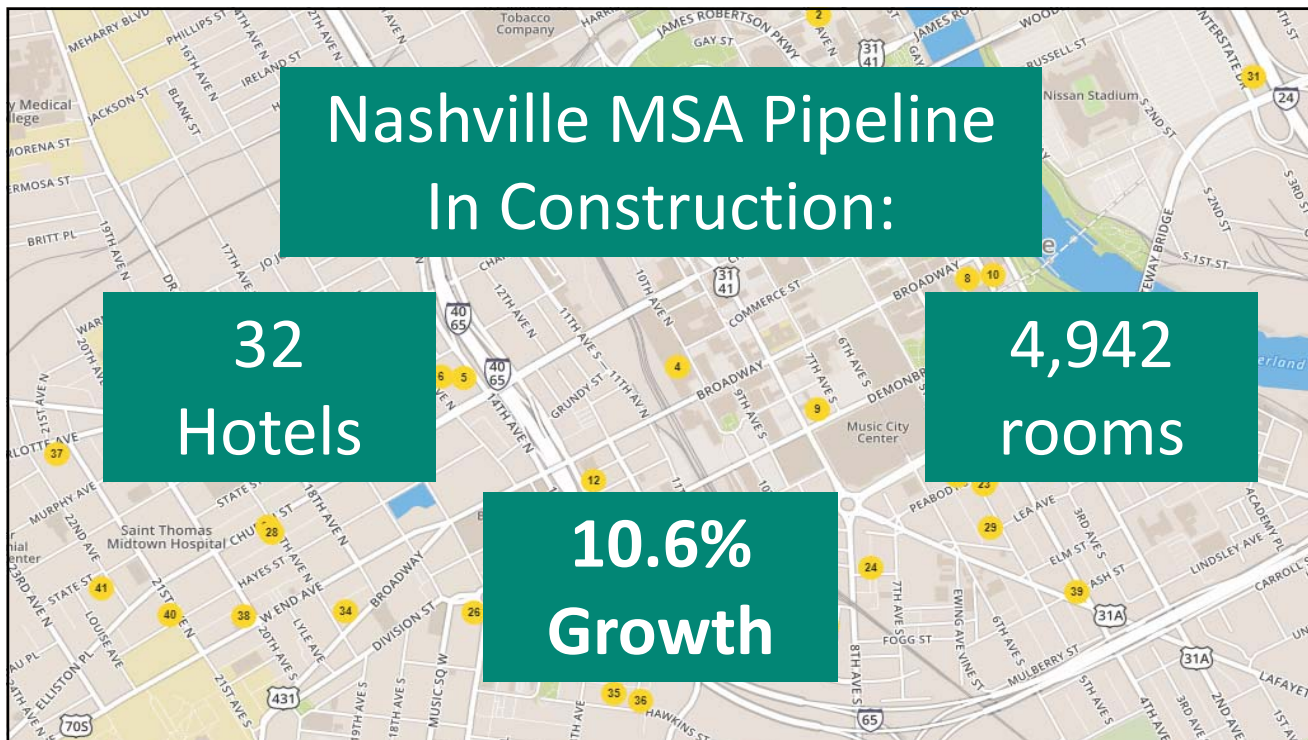
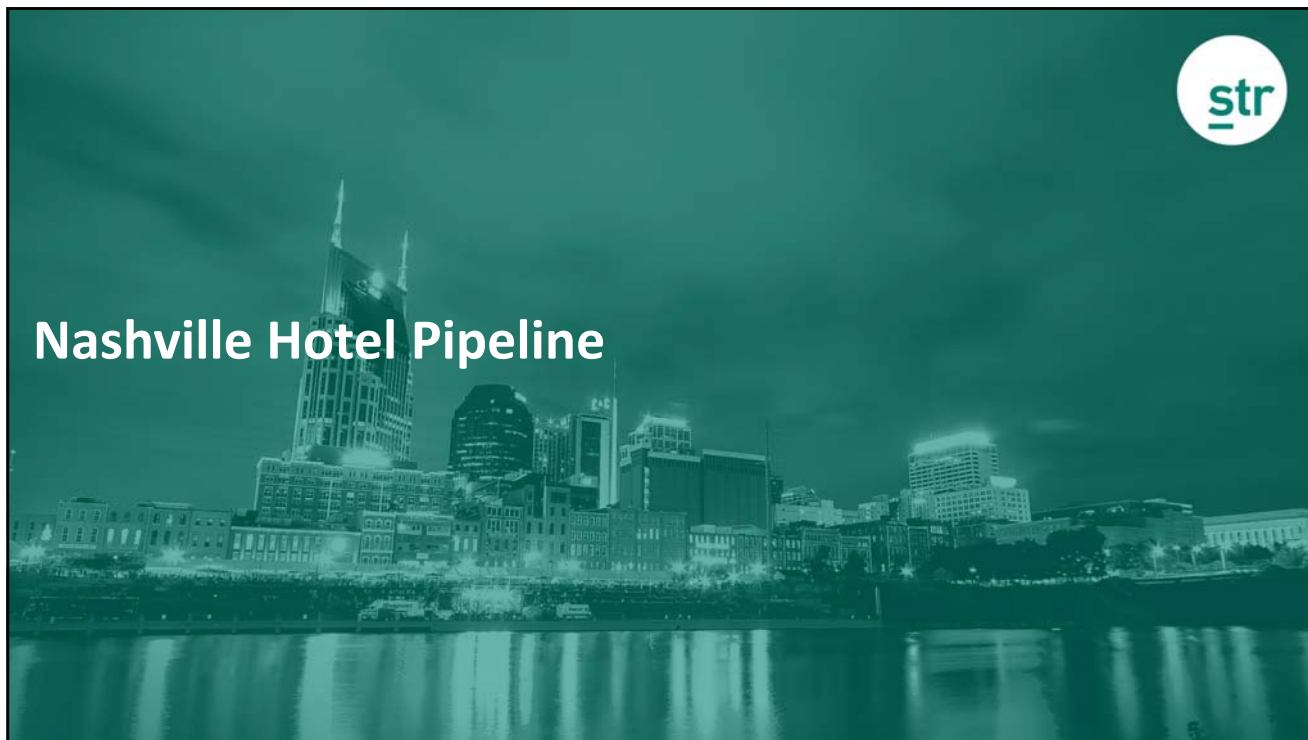
		<u>% Change</u>
Room Supply		7.7%
Room Demand		9.4%
Occupancy	72.2%	1.5%
ADR	\$149	3.4%
RevPAR	\$108	5.0%

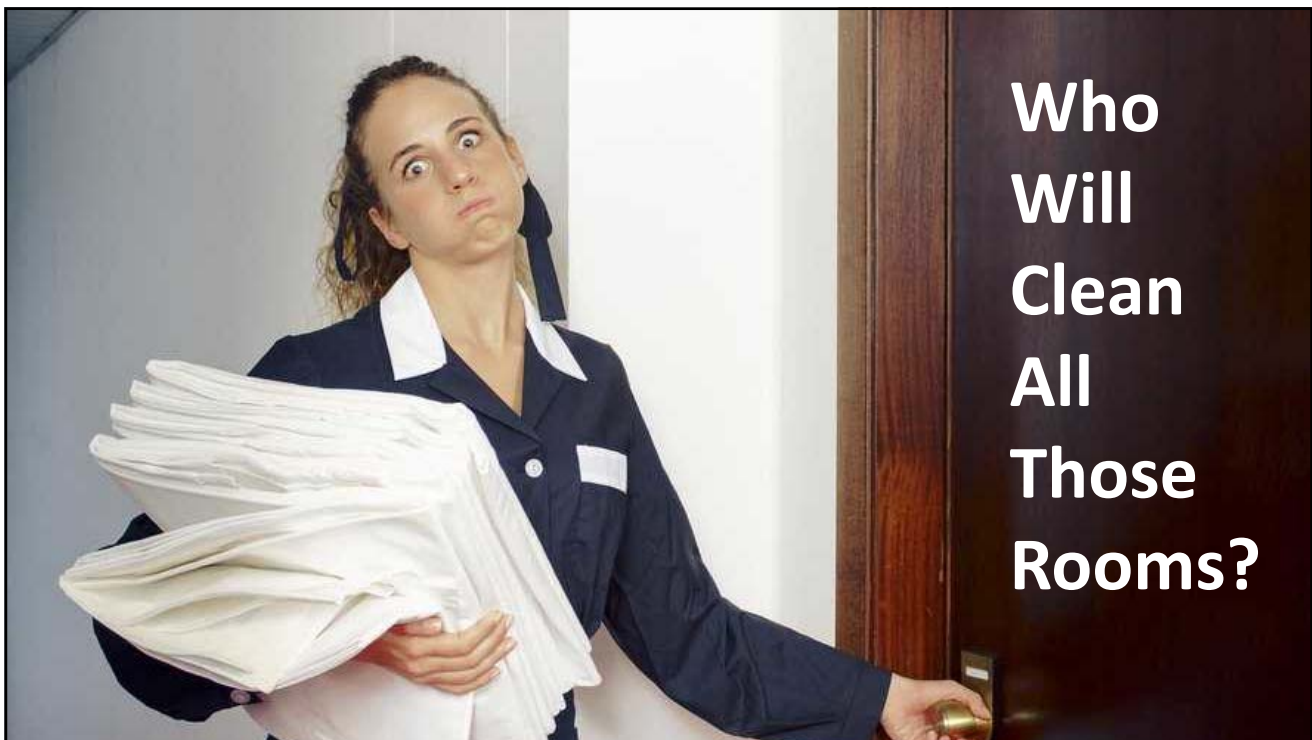
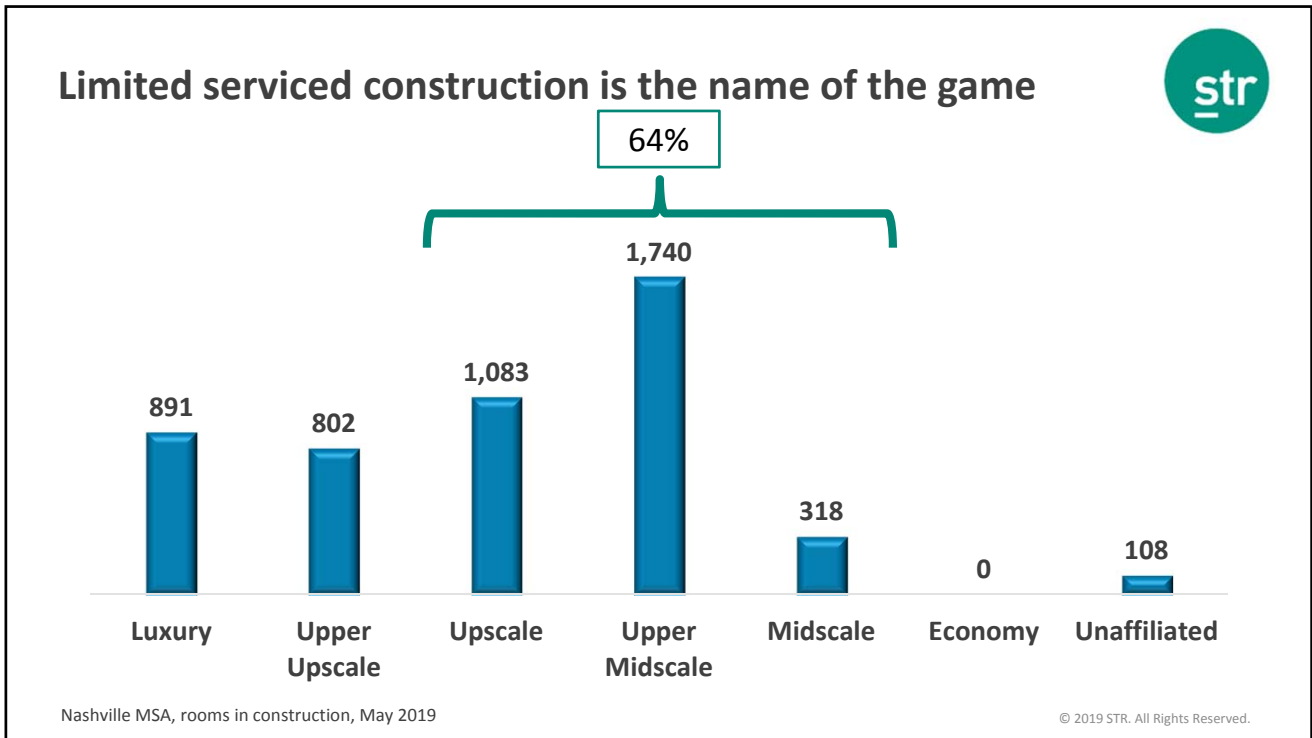




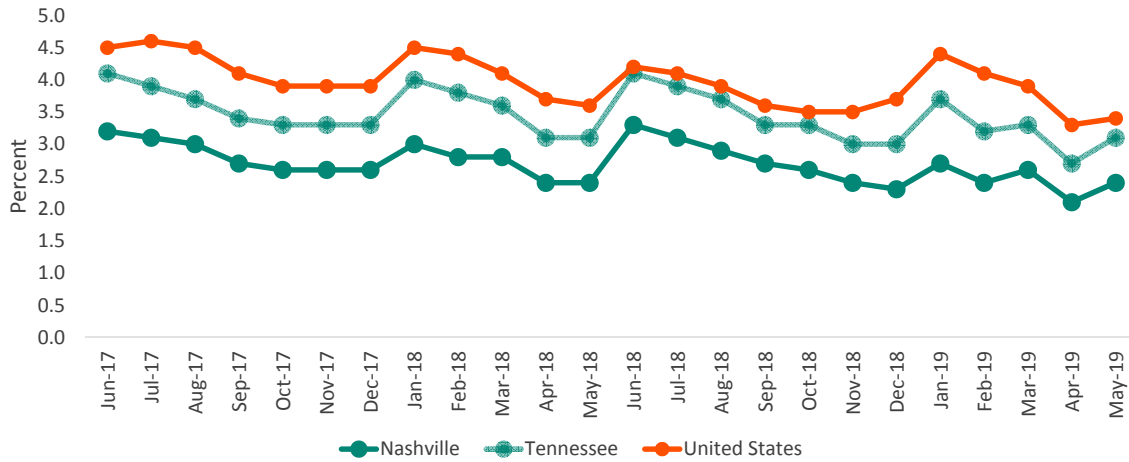


Nashville Hotel Pipeline





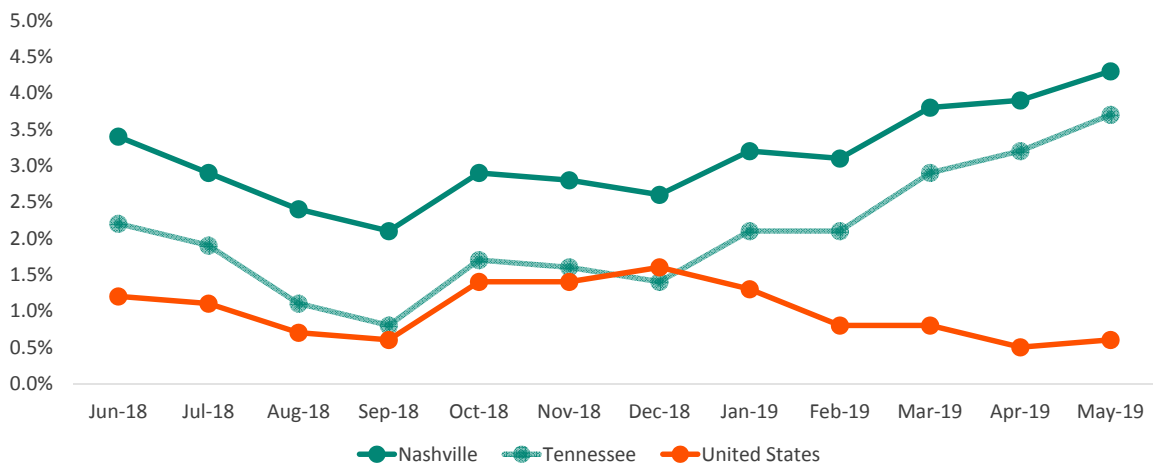
Nashville unemployment rate lower than TN, total US



Not Seasonally Adjusted Unemployment Rate
Source: BLS CPS (national) and LAUS (state and MSA)

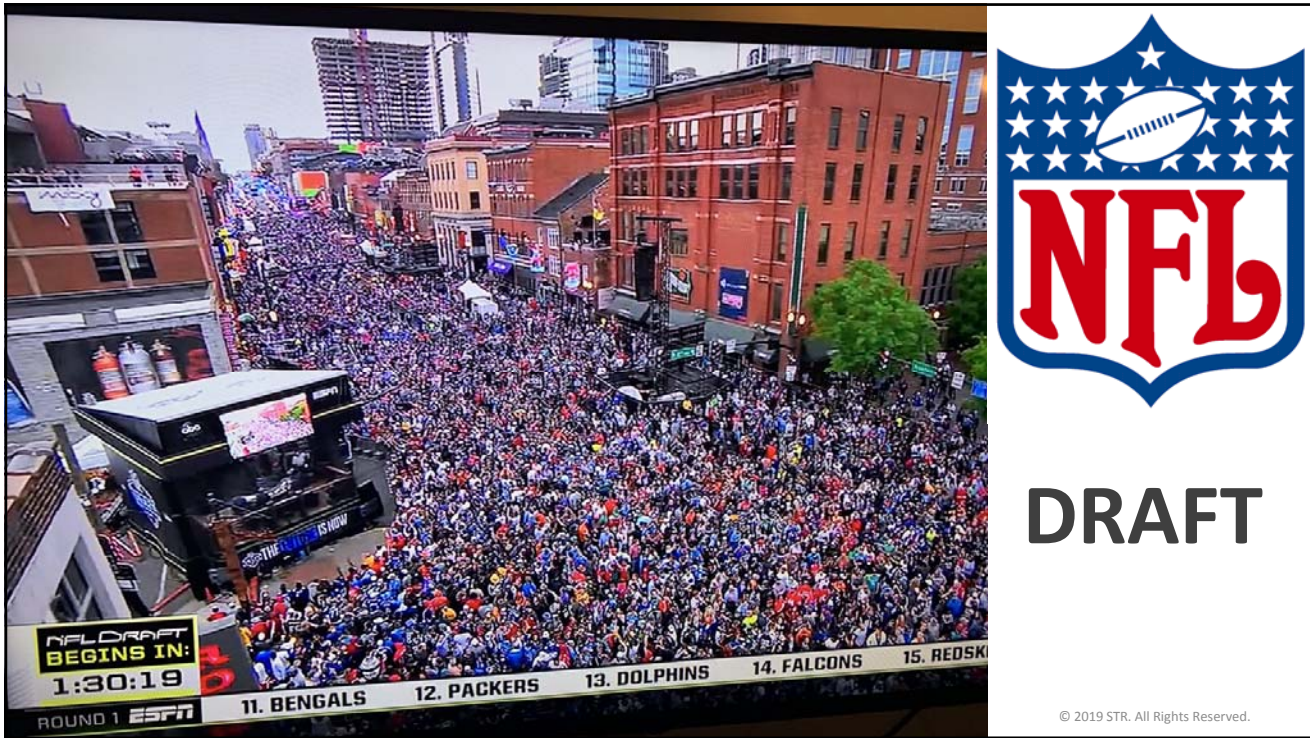
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...but civilian labor force is growing faster!



Not Seasonally Adjusted Civilian Labor Force YOY Growth
Source: BLS LAUS (state and MSA)

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Nashville demand surges during draft weekend

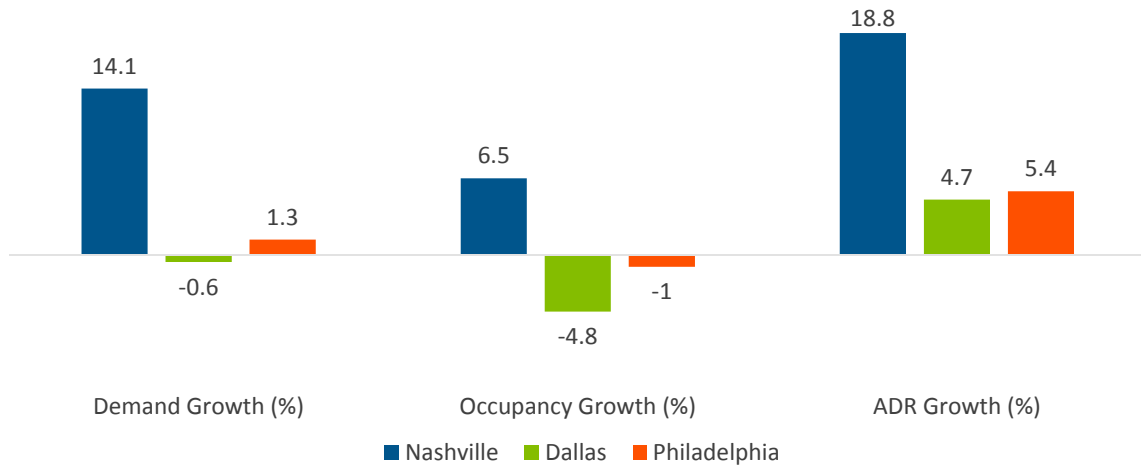


		<u>% Change</u>
Room Supply		7.2%
Room Demand		14.1%
Occupancy	88%	6.5%
ADR	\$196	18.8%
RevPAR	\$172	26.5%

Nashville MSA, Draft weekend (April 25-April 27 2019)

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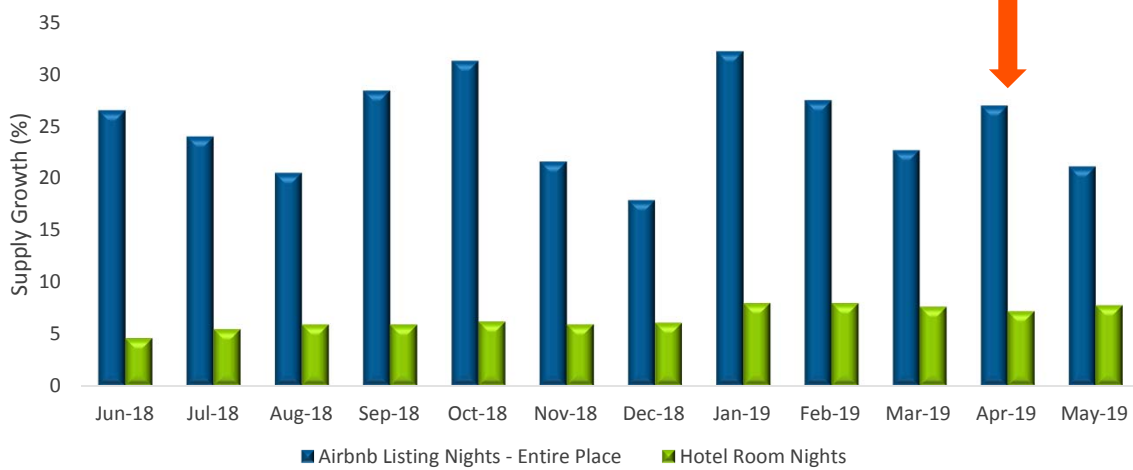
Nashville draft weekend leaps and bounds above other cities



Nashville MSA, Dallas MSA, Philadelphia MSA on respective Draft weekend (Thursday-Saturday)

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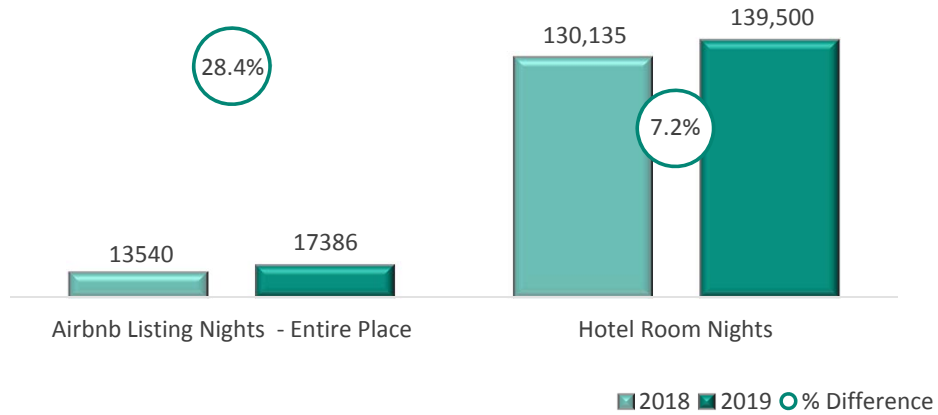
High supply growth the norm for Airbnbs



Supply Growth, 6/2018-5/2019
Source: AirDNA, STR MSA

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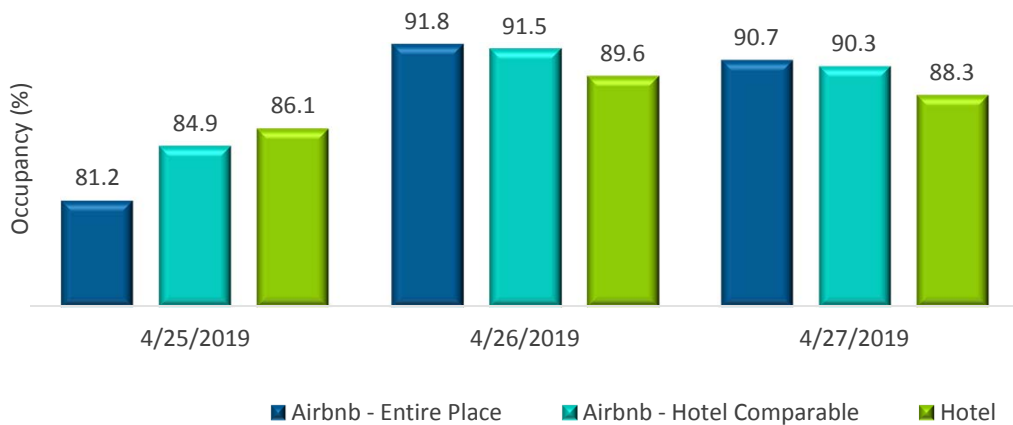
Draft weekend supply growth high but not significantly (for Airbnb)



Daily Supply
 Thu Apr 26 to Sat Apr 28, 2018 vs. Thu Apr 25 to Sat Apr 27, 2019
 Source: AirDNA, STR MSA

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Larger Airbnbs more popular Friday, Saturday



Occupancy, Thu Apr 25 to Sat Apr 27, 2019
 Source: AirDNA, STR MSA

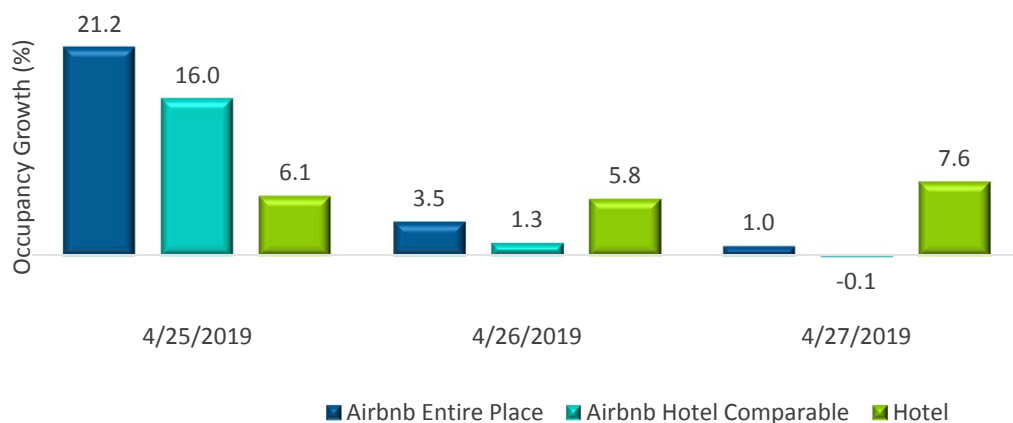
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The bachelorettes send their regards...



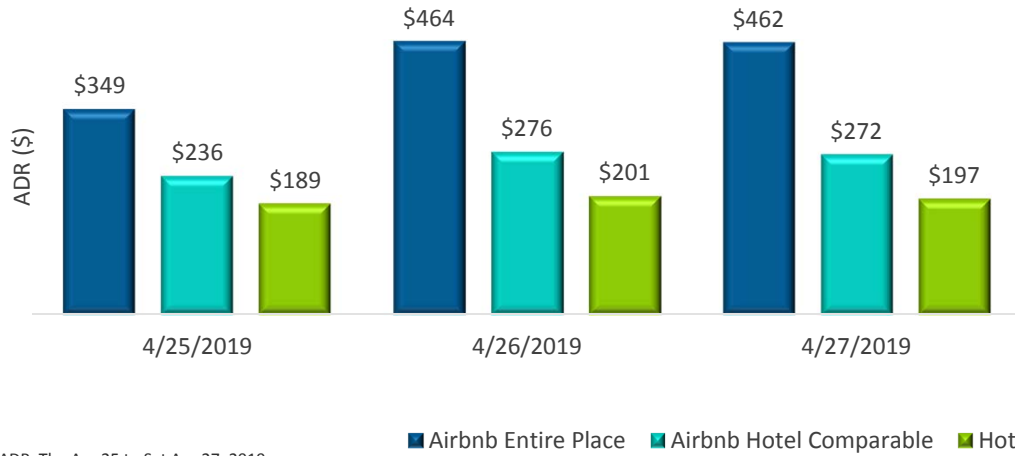
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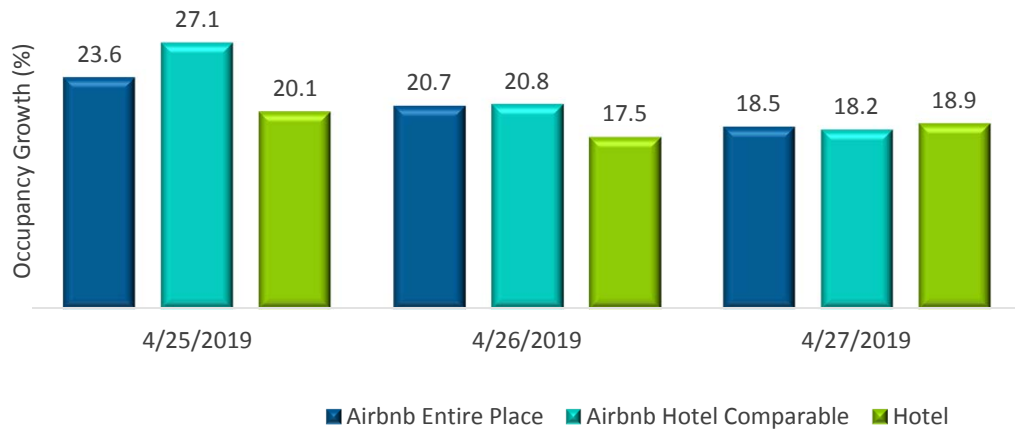
Hotel rate lags behind Airbnb rate



ADR, Thu Apr 25 to Sat Apr 27, 2019
Source: AirDNA, STR MSA

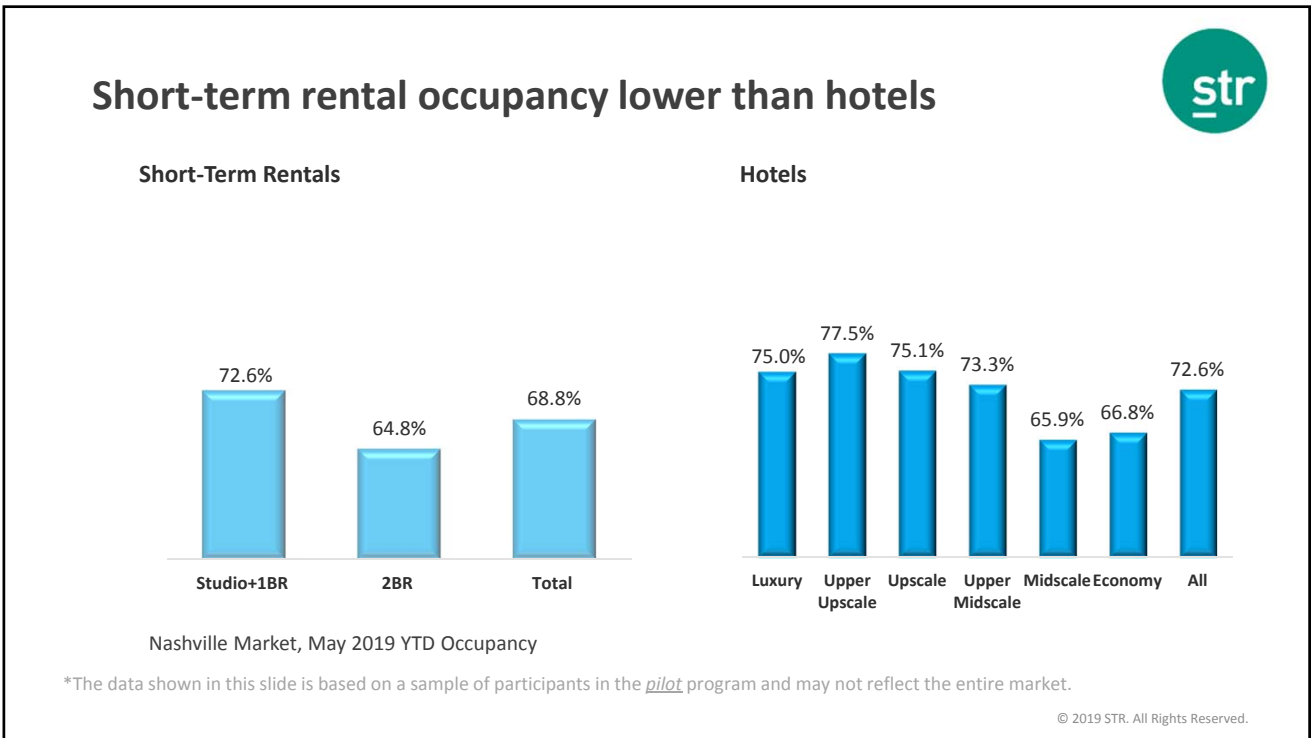
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Hotel rate growth softer likely due to group demand



Year-over-year Occupancy growth, Thu Apr 25 to Sat Apr 27, 2019
Source: AirDNA, STR MSA

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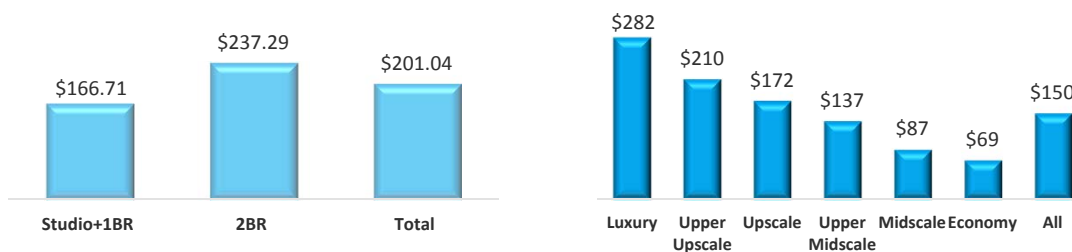


Hotel-comparable short-term rentals closest in rate to Upscale hotels



Short-Term Rentals

Hotels

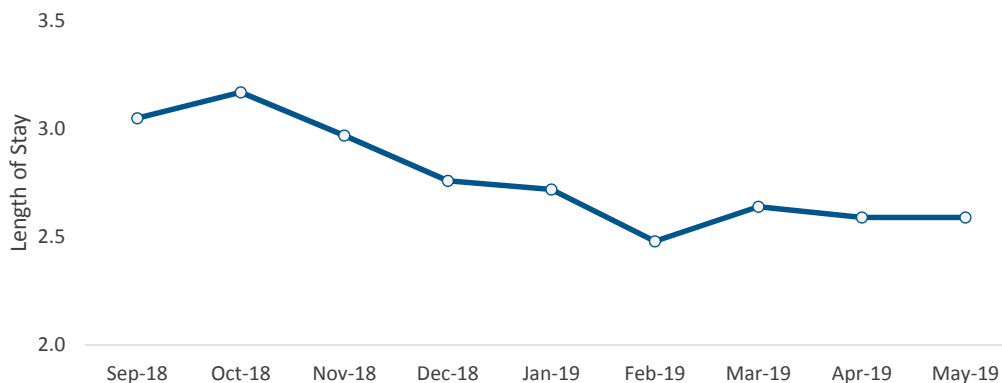


Nashville Market, May 2019 YTD ADR

*The data shown in this slide is based on a sample of participants in the *pilot* program and may not reflect the entire market.

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Short-term rental average length of stay (ALOS) decreasing



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Questions?



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