

Five Employment Law Issues Facing Employers in the Hospitality Industry

Wisconsin's hospitality industry remains significant to the state's economy. With peak tourism season just around the corner, restaurants, hotels and resorts should take advantage of these last few days of spring to brush up on the following five employment law issues facing employers in the hospitality industry:

1. Social Media and Employees' Protected Speech.

Many restaurants, hotels and resorts conduct social media marketing campaigns on Facebook, Twitter and Instagram, and commit significant resources to developing and maintaining a positive online presence. What, then, should an employer do when an employee posts or tweets disparaging remarks about the company? Recent rulings by the National Labor Relations Board ("NLRB") establish that employers may be prohibited from penalizing an employee for such activity, as such activity may be protected by the National Labor Relations Act ("NLRA"). Employers should review their social media policies to ensure compliance with the NLRA and consult an attorney before disciplining an employee due to their social media activity.

2. Joint Employer Liability.

The NLRB has also broadened the definition of "joint employer," which may cause franchisors to be held liable for the actions of their franchisees if both parties share control over the same employees and the manner in which work is performed. For these same reasons, hotels and resorts may also be held liable for the actions of workers placed through staffing agencies. Employers should evaluate who controls and directs the workers to manage the risk of joint employer liability.

3. Wage and Hour Claims.

Wage and hour claims brought under the Fair Labor Standards Act ("FLSA") are on the rise, especially in the hospitality industry. Hotel and motel industries accounted for over 50% of wage and hour lawsuits filed against low-wage employers in fiscal year 2015. As recently as 2016, the Department of Labor's ("DOL") Wage and Hour Division found that 24 Madison-area restaurants and

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hotels owed more than \$724,000 in back wages to 2,075 workers. To minimize their potential liability, employers should conduct regular audits to ensure compliance with relevant minimum wage and overtime laws, including laws pertaining to tipped employees.

4. Hiring Unpaid Interns.

Although common in the hospitality industry, hiring unpaid interns may expose employers to substantial liability. The DOL has developed a six-part test to determine whether an internship may be unpaid. For more information on this test, please see [Employers: Do You Owe Your Interns Wages? The Answer May Surprise You](#). If an employer misclassifies an intern, the employer may be liable for overtime, back wages, liquidated damages and attorneys' fees. Employers should consult an attorney before establishing an unpaid internship program.

5. Data Breaches.

Hackers often target hotels and resorts because of the high volume of personal and financial information stored on company databases. Employee error is a common cause of data security breaches. To minimize potential liability, employers should adopt internal cybersecurity policies to prevent data breaches from occurring and regularly train employees to conduct their day-to-day responsibilities in accordance with these policies. Employers should also develop and train employees to execute a rapid response plan to promptly notify affected individuals in accordance with relevant state law.

If you have any questions about any of the topics discussed above, please contact [Katie D. Triska](#) or your Reinhart attorney.

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