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Justin R. Bragiel is General Counsel for the Texas Hotel & Lodging Association. Justin handles a diverse array of legal and legislative issues, including local and state hotel occupancy tax, hospitality law, regulatory issues, contract law, employment issues, and more.

Based in Austin, THLA is the largest state lodging association in the United States, serving over 3,500 member businesses by providing operational, technical, educational, marketing and communications services, in addition to governmental affairs representation.


Employment Law in the Hotel Industry

Short Course

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- ▶ What word, phrase, question, or concern comes to mind when you think of "employment law?"

Roles to play

- ▶ Lawyer
- ▶ Investigator
- ▶ Documenter
- ▶ Disciplinarian
- ▶ Terminator
- ▶ Reference (maybe)



Lawyer's Hat



- ▶ Managers and supervisors must be aware of basic state and federal employment laws
- ▶ Violation of laws can result in liability for the company, the individual or both.

Employment Law



- ▶ Title VII
- ▶ ADA
- ▶ ADEA
- ▶ FLSA
- ▶ NLRA
- ▶ FMLA

Which of the following is NOT a protected classification for employment law?

- Pregnancy
- Age
- Gender
- Sexual orientation
- Religion
- Creed
- National Origin

Title VII (Civil Rights Act of 1964)



Protected Classifications

- ▶ Gender
- ▶ Race
- ▶ Color
- ▶ Religion (reasonable accommodation)
- ▶ National Origin

Americans With Disabilities Act



- ▶ Guest Access: Title III
 - ▶ Eliminate Barriers
- ▶ Employment: Title I
 - ▶ Protects QIDs
 - ▶ May require reasonable accommodation
 - ▶ New standards in 2009

Americans With Disabilities Act



Employee Accommodations
scenario one: Larger
computer monitors and special
software.

Does the employer have to
accommodate?

Yes

No

Americans With Disabilities Act



**Employee Accommodations
scenario two: Service canine in
the kitchen. Does the employer
have to accommodate?**

Yes, this is a reasonable
accommodation.

No, this is unreasonable and
the employer does not have to
accommodate.

FLSA

- ▶ Susan and her coworker Miranda are housekeepers. Miranda finished cleaning her rooms and clocked out, but Susan still has a few more rooms to go. They don't want to be late to a concert, so Miranda offers to help her friend Miranda clean the last room.
- ▶ Miranda doesn't tell the hotel management that she spent about 15 minutes helping Susan finish her remaining rooms.
- ▶ Hotel management finds out much later. Does the hotel have to go back and now pay Miranda for those 15 minutes? Can the hotel discipline Miranda for this off-the clock work?

Miranda and Susan question 1: Does the hotel have to pay Miranda for the extra time? You can select more than one answer.

- ☐ Yes, because Miranda was still "on property."
- ☐ Yes, because Miranda performed a job duty that benefits the employer.
- ☐ No, because Miranda volunteered to help her friend.
- ☐ No, because the hotel was unaware Miranda was helping Susan finish her rooms.

Miranda and Susan question 2: Can the hotel discipline Miranda for working off the clock?

- ☐ Yes, because she violated company policy.
- ☐ No, because she has protected status. She was responding to a federal agent, and the hotel cannot retaliate against her.

Age Discrimination in Employment Act



- ▶ Protects age 40 and up
- ▶ Eliminated mandatory retirement

National Labor Relations Act



- ▶ Poll: True or false: It is legally permissible to have a company policy that prohibits employees from discussing how much money they make with other employees.
- ▶ Protected concerted activity

Family and Medical Leave Act



- ▶ 12 weeks of unpaid leave, if eligible.
- ▶ The employee must have been employed with the company for 12 months.
- ▶ The employee must have worked at least 1,250 hours during the 12 months prior to the start of FMLA leave.
- ▶ The employer is one who employs 50 or more employees within a 75-mile radius of the worksite.

CONTRACTS



- ▶ Written
- ▶ Oral
- ▶ Implied

Employment Torts

- ▶ Defamation - Libel and Slander
- ▶ Intentional Infliction of Emotional Distress
- ▶ Invasion of Privacy
- ▶ Negligence - in hiring, retention, supervision



The Usual Pitfalls

- ▶ Bias - Positive & Negative
- ▶ Non-objective Factors
- ▶ Unbalanced in Time & by Task
- ▶ Leniency



Effective Feedback

- ▶ Objective
- ▶ Informative
- ▶ Clear
- ▶ Consistent Message
- ▶ Factual
- ▶ Conduct-Based
- ▶ Specific



Terms to avoid

- ▶ “Bad Attitude”
- ▶ “Not A Team Player”
- ▶ “It Was Your Fault”
- ▶ “You Have A Problem”
- ▶ “Inconsistent”

Why Document?

Employer Followed Corrective
Action Plan

Preserve (or Refresh) Memory

Demonstrate Consistent
Treatment

WHAT TO DOCUMENT?



- ▶ Performance Appraisals
- ▶ Counseling Notes or Memos
- ▶ Written Corrective Action
- ▶ Resignations / Terminations
- ▶ Exit Interviews

Effective Documentation

- ▶ Prepare Promptly
- ▶ Important Incidents
- ▶ Job-Related Standards
- ▶ Be Specific
- ▶ Have Two People Present
- ▶ Get Employee's Comments & Signature

Documentation



- ▶ Interview Notes
- ▶ Sexual Harassment Complaints
- ▶ Attendance Records
- ▶ Warnings
- ▶ Corrective Action Notices
- ▶ E-Mail



Remember:

An employee who is genuinely surprised about discipline or discharge is more likely to view the situation as unfair

Sexual Harassment



- ▶ Standard For Liability
- ▶ Affirmative Defense
 - ▶ Policy of Investigating
 - ▶ Always Investigate
 - ▶ Always take action
- ▶ Not just Sex Harassment

Hostile Work Environment

- Objective and Subjective
- Severe or Pervasive
- Alters terms and conditions