



HOSPITALITY LAW

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Week 6: Legally Managing Employees

EMPLOYMENT RELATIONSHIPS



seo Baldock (2014), Hospitality Industry Guest Relations: "Problem Prevention" Is The Key To Customer Satisfaction,
<https://hospitalityrisksolutions.files.wordpress.com/2010/08/hospitality-industry-employees.jpg>

EMPLOYMENT RELATIONSHIPS

- After you have legally selected an employee for your organization, it is a good practice to clarify the conditions of the employment agreement with that employee.
- All employers and employees have employment agreements with each other

Offer Letter

- Offer letters, when properly composed, can help prevent **legal difficulties** caused by employee or employer misunderstandings.
- Offer letters detail the offer made by the employer to the employee.

Components of a sound offer letter include:

- Position offered
- Compensation included
- Benefits included (if any)
- Evaluation period and compensation review schedule
- Start date
- Location of employment
- Special conditions of the offer
- Reference to the employee manual
- **Signature** lines for both employer and employee

Employee Manual

- In most cases, the offer letter will not detail all of the policies and procedures to which the employer and employee agree
- These are typically contained in **the employee manual**

- An important point to remember is that employee manuals are often **referenced** by the courts to help define the terms of the employment agreement if a dispute arises.



David Lester (2023), Staff handbook or employee handbook: what is it and why is it important?
, <https://citrushr.com/wp-content/uploads/2022/01/iStock-1316089606-1080x675.jpg>

Example of common topic to include in Employee manual:

- Probationary periods
- Performance reviews
- Disciplinary process
- Termination
- Attendance
- Drug and alcohol testing

Cont'

- Uniforms
- Lockers
- Personal telephone calls
- Appearance and grooming

Cont'

- Pay periods
- Payroll deductions
- Tip-reporting requirements
- Health insurance
- Dental insurance
- Disability insurance

Cont'

- Policies against harassment
- Grievance and complaint procedures
- Family medical leave information
- Meal periods
- Schedule posting

Note:

- Employee manuals should be **kept up to date**, and it should be clearly established that it is the employer, not the employee, who retains **the right to revise the employee manual**.
- ***“The employer reserves the right to modify, alter, or eliminate any and all of the policies and procedures contained in this manual at any time”.***

Managing Diversity

- Managers have a **legal obligation** to establish a work environment that is accepting of all people.
- The failure to establish such an environment is recognized by the courts to be a form of discrimination.

- As a manager, your ability to effectively work with people from diverse backgrounds will significantly affect your success.

- According to Gene M. Monteagudo, former manager of diversity for Hyatt Hotels International,.....
- ***“It is no longer possible to achieve success in the hospitality industry, either in the United States or abroad, unless you can effectively manage people in a cultural environment vastly different from your own.”***

Sexual Harassment



Lastrooo (2023), Sexual Harassment Work Vector Illustration Cartoon Style Stock Vector Image, https://st4.depositphotos.com/5545846/22630/v/1600/depositphotos_226301792-stock-illustration-sexual-harassment-work-vector-illustration.jpg

- By their very nature, hospitality organizations are **vulnerable** to allegations of sexual harassment.
- Because this is true, it has become increasingly important that managers **be informed** about the attitudes and conduct that fall under the classification of sexual harassment

- Law recognizes **two** types of sexual harassment
- **1. Quid pro quo sexual harassment**, in which the perpetrator asks for sexual favors in exchange for workplace benefits from a subordinate, or punishes the subordinate for rejecting the offer.

- **Hostile environment harassment**, in which the perpetrator, through language or conduct, creates an intimidating or hostile working environment for individuals of a particular gender

Zero Tolerance

- In order to guard against the liability that results from charges of discrimination or harassment, and to ensure a quality workplace for all employees, hospitality organizations should institute a policy of **zero (no) tolerance** of objectionable behavior

- Listed here are some of the measures that companies institute to create a zero tolerance environment:
 - ✓ **Clear policies** that prohibit sexual harassment in the workplace.
 - ✓ Provisions and avenues for seeking and **receiving relief from offensive and unwanted** behavior.

- ✓ **Workshops** to train supervisors and staff how to recognize potentially volatile situations and how to minimize potentially unpleasant consequences
- ✓ **Written procedures** for reporting incidents and for investigating and bringing grievances to closure.

Resolving a Complaint

- In order to **avoid liability**, an employer must offer evidence that a complaint of sexual harassment was investigated thoroughly and that the employer undertook prompt remedial action to end the harassing conduct.

- The Equal Employment Opportunity Commission (**EEOC**) recognizes effective remedial action to include the following:
 - 1. Prompt and thorough investigation of complaints.
 - 2. Immediate corrective action that effectively ends the harassment.

- 3. Provision of a remedy to complainants for such harassment (e.g., restoring lost wages and benefits).
- 4. Preventive measures against future recurrences

Tipped Employees

- The hospitality industry employs a large number of individuals who customarily receive **tips** in conjunction with their work duties. Some employees, such as hotel housekeepers, may receive tips only occasionally. **Food servers**, on the other hand, often receive more income in tips than their employer pays them in wages.

- **Tip:** A gratuity given in exchange for a service performed. Literally an acronym for “to improve service”

Tip Pooling

- In some hospitality businesses, employees routinely share tips.
- **Consider, for example,** the table busser whose job includes refilling water glasses at a fine dining establishment
- If a guest leaves a tip on the table, the size of that tip would certainly have been influenced by the attentiveness of the busser assigned to that table.

Tip-Pooling Consent Form

- 1. Employee name**
- 2. Date**
- 3. A complete explanation of the facility's tip-pooling policy**
- 4. The statement: "I understand the tip-pooling procedures and procedures stated above, and agree to participate in the tip-pooling and redistribution program."**
- 5. Employee signature line below the preceding statement**

MANAGING EMPLOYEE PERFORMANCE

- Most employees come to a job with the expectation that they can complete or learn to complete the tasks assigned to them.
- In the hospitality industry, some of the workers hired are entering the workforce for the first time, while others may have many years of experience.

- Regardless of ability or background, to effectively manage employee performance, employers must have a valid and defensible system of employee evaluation, discipline, and, if necessary, termination.

Evaluation

- Employee evaluation is often used in the hospitality industry as a basis for **granting pay increases, determining who is eligible for promotion or transfer,** or as a means of modifying employee performance.

- Unfortunately, the subjective nature of many employee evaluation methods makes them susceptible **to misuse and bias.**
- When employee can demonstrate that the evaluation system is **biased against a class of workers specifically protected by the law,** the liability to the employer can be great.

- In most larger hospitality companies, the human resources department will have some **type of form or procedure** in place for use in employee evaluations

Discipline

- Companies have the right to establish rules and policies for their workplace, as long as those rules do **not violate the law**. Even potentially controversial policies such as **drug testing or surveillance** have been upheld by the courts, provided that those policies **do not discriminate** against or single out specific groups of employees.

- Workplace rules should be properly **communicated and consistently enforced.**
- The communication process can include **written** policies and procedures (including an employee manual), **one-on-one coaching**, and formal **training** sessions

ANALYZE THE SITUATION 6.1

- Gerry Hernandez worked as a breakfast cook at a large day-care facility. His attendance and punctuality were **both good**. Written into the facility's employee manual (which all employees sign when they begin their employment) was the following policy: **“To be fair to the facility, your fellow employees, and our clients, you must be at your work station regularly and on time.”**

- Gerry had worked at the facility for **10 months** when, one day, he was **15 minutes late** for work. While Gerry was aware of the facility work rule regarding punctuality, Gerry's supervisor, Pauline Cooper, rarely enforced the rule. Employees who were 5 to 20 minutes late may have been scolded, but **no disciplinary action was usually taken**, unless, according to Ms. Cooper, the employee was **"excessively" tardy**

- She preferred to, in her words, **“cut some slack” to employees**, and thus was considered one of the more popular supervisors. On the day Gerry was **late**, a variety of problems had occurred in the kitchen. **Frozen food deliveries arrived early, and no cook was available to put them away; the sanitation inspector arrived for an unannounced inspection; and the rinse agent on the dish machine stopped functioning, so dishes had to be washed by hand.**

- Ms. Cooper was **very angry**, so when Gerry arrived at work, **she terminated him, stating, “If you can’t get here on time, I don’t need you here at all!”** The next day, Gerry filed suit against the day-care facility claiming that he was terminated because of his **ethnic background**

- Ms. Cooper and the day-care facility countered that Gerry was an **at-will employee**, and thus the facility had the right to terminate employees as they see fit, especially when the employee was in **violation of a communicated work rule**

Your comments:.....!

- 1. Does Ms. Cooper have the right, under at-will employment, to terminate Gerry?
- 2. How would you advise Ms. Cooper to handle tardy employees in the future

- 2. If Ms. Cooper has no records documenting her actions in cases similar to Gerry's, is it likely she will be able to help defend her organization against a discrimination charge?

References

[1] STEPHEN BARTH (2009), Hospitality Law: Managing Legal Issues in the Hospitality Industry , p 198 -237 ,<https://www.pdfdrive.com/hospitalty-law-managing-legal-issues-in-the-hospitality-industry-e157128399.html>

[2] Valentini Kalargyrou (2019), Managing Entitled Employees in the Hospitality Industry: An Exploratory Study, https://www.researchgate.net/publication/336531269_Managing_Entitled_Employees_in_the_Hospitality_Industry_An_Exploratory_Study

Thank you!

Next lecture: Your Responsibilities as
Hospitality Operator

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