



HOSPITALITY RRREPORT

SERVING HOTEL AND OTHER HOSPITALITY CLIENTS WORLDWIDE

**SPECIAL ISSUE:
EMPLOYMENT LAW**

The Best Defense: Employment Law Compliance Reviews & Prevention Strategies for Hospitality Assets

The “Perfect Storm” for Hospitality Employment Class Actions

During the past year, companies in the hospitality industry handed out millions of pink slips and slashed legal budgets to remain viable during the economic crisis. Owners and operators also faced some of the toughest employment legislation seen in decades. At the same time, headlines announced a record number of employment class action filings with massive settlements and monetary awards. Some companies have been victims of high stakes discrimination class action lawsuits and agency enforcement proceedings. Other companies, an ever-growing number, have been targets of the employment lawsuit *du jour* — wage and hour class/collective claims.

Working With Labor: Can’t Live With Them... Can’t Live Without Them!

The challenges facing the hospitality industry in the wake of the new Obama administration have only just begun to take shape:

- Labor-Oriented Legislation — More employment-related legislation is on the horizon — most notably, pay equity legislation.
- Increased Enforcement — The recent up-tick in large-scale government agency enforcement proceedings will continue. The Department of Labor (DOL) has acted on its promise made earlier this year to reinvigorate the work of its Wage and Hour Division and beef up staffing to achieve increased enforcement. The Equal Employment Opportunity Commission (EEOC) has signaled that combating systemic discrimination is among the agency's top priorities this year. Its supervisors and investigators across the country now have been trained to identify and litigate cases where hiring/selection, compensation/benefits, leave/disability, and other

personnel practices are viewed as having company-wide discriminatory effects against a protected class. Federal contractors also can continue to expect a far more aggressive Office of Federal Contract Compliance Programs (OFCCP) in the months ahead.

- Increased Litigation Against Owners and Operators — Against this backdrop, the onslaught of wage and hour lawsuits filed by increasingly savvy private plaintiffs' attorneys shows no signs of slowing. A surge in discrimination class action lawsuits challenging pay and employment selection procedures (pre-employment testing, background/credit checks) also is looming.

This perfect storm already has had a devastating impact on some owners and operators, and others cannot help but wonder: *Are we next?*

Minimizing Your Company’s Exposure: Getting The Target Off Your Back

An owner or operator's best defense against becoming the next target of a class action lawsuit or an agency enforcement proceeding is to be *proactive*. A careful, well-counseled review of your employment and labor policies and practices is a critical component of the prevention strategy. Even innocent mistakes can present costly liability exposure if allowed to go undetected and uncorrected.

Paul Hastings provides customized compliance diagnostics, reviews, and practical legal recommendations to address employment challenges specific to the hospitality industry before they become major disasters. With our extensive knowledge, experience and resources in the hospitality industry, Paul Hastings is uniquely qualified to conduct compliance reviews designed to help employers avoid litigation or to help with remediation of problems if your company already has been sued. Whether you are developing a new hotel project or maintaining or expanding a hospitality asset, or portfolio of assets, whether your operations are located in the U.S. or abroad, our Resort, Restaurant & Recreation Practice Group and Employment and Labor Hospitality Team have both the practical experience and knowledge expertise to assist.

Benefiting from Our Experience with Compliance Reviews

We have conducted hundreds of federal and state compliance reviews for employers across virtually every industry and every state, including many in the hospitality industry. By working closely with our clients, we are able to (1) identify areas of noncompliance and prioritize for focus those that we believe place you at greatest risk; (2) recommend tailored, practical corrective solutions; and (3) help implement “best practices” that comply with all applicable federal and state employment laws.

When we conduct compliance reviews, we simultaneously provide education and training to human resources representatives so that your company is able to internalize the compliance review process and achieve cost savings in the future. We are also available to provide training that is separate from the compliance review process, upon request.

Understanding the unique needs of the hospitality industry, being responsive, and performing with utmost efficiency are core components of our compliance reviews. We call upon our subject matter experts so no one is learning on your dime. We make use of our expansive library of work product to create customized materials in a fraction of the time that it would take if started from scratch. When we conduct multi-state reviews, we often make use of 50-state substantive law surveys that we have compiled with local counsel licensed to practice in each jurisdiction. As a result, we are able to pass on significant cost savings to our clients.

Understanding the Employment Liabilities of the Hospitality Industry

Although we conduct compliance reviews on all facets of employment law, the following areas are among the most important to owners and operators:

Wage and Hour Related Litigation

- **Exempt Status.** This review addresses whether your employees are properly classified as exempt or non-exempt under applicable federal and state laws. While our approach is tailored based on client needs, we typically follow a multi-step process: (1) we request and review relevant personnel data; (2) we work with knowledgeable human resources experts to understand the duties that the employees in the targeted positions perform; (3) we assess the exempt status of the job incumbents; (4) we recommend converting to non-exempt any

employees whom we believe are not properly classified as exempt; and (5) we assess the risks of not converting and assist with the implementation of the reclassification process, if any.

- **Regular Rate of Pay.** Regular rate of pay class action lawsuits are fast becoming a favorite of plaintiffs' counsel as they become better and better versed in this complicated area of wage and hour law. When we conduct regular rate reviews, we help you determine the types of pay and hours that must be included in (and can be excluded from) the regular rate. We work with your knowledgeable payroll and human resource representatives to assess whether the company properly calculates the regular rate on which it pays statutory overtime. In the course of a review, we commonly have identified significant areas of potential cost-saving to the company.
- **Timekeeping.** Timekeeping is often overlooked as a wage and hour compliance issue, yet non-compliant timekeeping practices are the source of many “off the clock” wage and hour class actions. During this review, we examine your time recording systems and practices and look for issues that may exist due to pre-population of employee time entries, automatic deductions for meal periods, exception reporting and rounding of time entries (both employee rounding and software rounding).
- **Pay Practices.** This review addresses whether your practices in the following areas are compliant with applicable federal and state laws: pay stub format; pay frequency and timeliness; meal and rest periods; pay for off-the-clock work (includes assessment of pre-shift and post-shift activities); and pay for business travel.

Equal Employment Opportunity/Employment Discrimination

- **Class Action Diagnostics.** We assist employers through a multi-pronged approach: (1) we review for outdated and questionable policies, including the internal complaint process; (2) we interview managers to assess policies versus practice; (3) we develop statistics regarding hiring, promotions, terminations (voluntary and involuntary), compensation, and performance management; and (4) we develop remedial strategies including best practices and alternatives designed to correct statistical differences over time.

- Pay Equity Analysis. We use sophisticated statistical regression analysis to assist employers in assessing/redesigning compensation practices to ensure that they will not inadvertently create pay differences based upon protected characteristics.
- Executive Order 11246 Compliance. Paul Hastings has expertise in all of its offices assisting federal contractors with complying with their obligations under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, the affirmative action obligations contained within the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C. § 4212, and the associated implementing regulations. We assist federal contractors with design of Executive Order 11246 compliance programs and also regularly advise clients on effectively using their compliance programs in aid of more broadly directed diversity initiatives. We approach the development of an affirmative action compliance program strategically with each of our clients to ensure that the program that is implemented reflects the individual client's needs. We also advise contractors when they face OFCCP compliance evaluations.
- Global Employee Diversity and Inclusion Programs. We regularly work with employers setting up employee inclusion and diversity programs by defining diversity consistent with employer culture and mission, and providing advice on how country specific laws and regulations affect implementation of global diversity programs. We consult on inclusion/diversity best practices, including, establishing affinity networks, use of mandatory diversity slates, implementing executive/manager accountability based on programmatic efforts not numeric goals and developing and maintaining annual diversity business plans.

Other Areas

- Reduction-In-Force. We develop appropriate decisional units, prepare business case rationales, review selection tools, prepare ADEA notices, develop voluntary and involuntary severance programs, conduct adverse impact analysis, and develop remediation strategies to reduce or eliminate liability.
- Employee Benefits. We work with clients to assess their vulnerability to class and individual actions; assist them in identifying compliance issues under the Internal Revenue Code, ERISA, and other applicable laws; identify compliance options that will minimize

potential liability and cost while maximizing employee satisfaction; and maximize the likelihood of success in litigation.

Evaluating Your Options

Our extensive experience will enable us to respond quickly and consistently to your needs and to staff leanly, helping your bottom line. We are committed to working collaboratively with you, providing seamless, integrated services, proactive project management, timely communications, reasonable notice and delivery timeframes, as well as a substantial infrastructure that will support all practical requests for any and all information. We would be delighted to provide a budget for you based on your specific needs.