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HOSPITALITY LAW

Helping the Lodging Industry Face Today's Legal Challenges

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Respect privacy rights of employees on social Web sites

Court awarded punitive damages for accessing private chat group

By Carolyn D. Richmond & Darren Rumack

A growing area of concern for employers in recent years has revolved around employees' electronic privacy rights, including both e-mail access and social networking Web sites. These issues came to light recently in *Pietrylo v. Hillstone Restaurant Group*, No. 06-5754 (D.N.J. 09/25/09), in which two former employees sued the defendant, Houston's Restaurant, for violations of the federal Wiretap Act/Electronic Communications Privacy Act, the New Jersey Wiretapping and Electronic Surveillance Control Act, the federal Stored Communications Act and its New Jersey equivalent, as well as for termination of their employment in violation of public policy and invasion of privacy.

The employees voluntarily dismissed their wiretapping claims after Houston's showed during discovery that it did not intercept any electronic communications.

A jury found that Houston's had violated the SCA by accessing an invitation-only chat group on MySpace, and the employee's MySpace accounts and passwords without authorization on at least five separate occasions. The jury awarded $2,500 and $903 in compensatory damages, respectively, to the two employees, Brian Pietrylo and Doreen Marino. However, the jury found that Houston's did not violate the employees' privacy. The jury also found that Houston's acted "maliciously," which allowed for the awarding of punitive damages.

Houston's moved for judgment as a matter of law, or alternatively for a new trial, arguing that the jury's findings for the employees could not be sustained. Specifically, the restaurant claimed that no evidence was presented that the managers knowingly accessed the MySpace

(See **PRIVACY** on page 4)

Conduct employee background checks before making offer

'Employee' may proceed with charge of bankruptcy discrimination

By Benjamin J. Court

When employers contemplate hiring decisions, care should be taken with respect to how offers — whether unconditional or contingent — are communicated to job candidates.

As a Florida restaurant chain recently learned in *Myers v. TooJay's Management Corp.*, 5:08-CV-365-Oc-10GRJ (M.D. Fla, 10/21/09), providing a candidate with too much information prior to an unconditional offer could create an unintended expectation of employment resulting in protracted litigation if the candidate is ultimately not offered the position.

In July 2008, Eric Myers learned of an open managerial position at a TooJay's restaurant in Lake Sumter, Fla. He contacted Tom Thornton, a regional manager with TooJay's, about the position, and was scheduled for an in-person interview, which led to a two-day on-the-job evaluation.

At the conclusion of the second day of the evaluation, Myers alleged that Thornton made him an unconditional offer of employment. Thornton contended that he never told Myers that he was officially hired, and that any offer of employment would be contingent on the completion of a background check, which included a consumer credit report check.

Thornton did, however, photocopy Myers' driver's license and Social Security card. He also had Myers sign several employment forms, including a W-4, an I-9, a medical history form, a payroll deduction authorization, an employee discount form, a uniform order form, a food employee reporting agreement, a trade secret nondisclosure agreement, an assistant manager trade secret nondisclosure agreement, and an authorization permitting TooJay's to conduct a background check.

Thornton also provided Myers with a copy of

(See **BANKRUPTCY** on page 6)

Behind the lavish décor that the company boasts on its Web site was a horribly dysfunctional workplace where male workers lived in fear.
— Mary Jo O'Neill, regional attorney at the EEOC

Cheesecake Factory agrees to pay $345,000 to settle lawsuit

EEOC says managers knew about harassment but failed to take action

The Equal Employment Opportunity Commission settled a lawsuit with the Cheesecake Factory over allegations that six male employees were repeatedly subjected to sexual harassment at the company's Chandler (Ariz.) Mall location. Cheesecake Factory has agreed to pay $345,000 in the settlement.

According to the complaint filed by the EEOC, employees claim that Cheesecake knew about and tolerated repeated sexual assaults against the male employees by a group of male kitchen staffers. The company denied the allegations, but according to the EEOC, the evidence overwhelmingly showed that the men suffered sexually abusive behavior. The men alleged that the abusers directly touched their genitals, made sexually charged remarks, grinded against their genitals, and forced victims into repeated episodes of simulated rape. The EEOC charged that the managers actually witnessed employees dragging their victims "kicking and screaming" into the refrigerator.

In addition to the monetary relief for the victims, the two-year consent decree settling the suit requires the company to specifically train its employees and managers about sexual harassment and institute an ombudsman to field and address sexual harassment complaints by employees, among other injunctive measures. Failure by the company to fulfill its duties under the decree may mean court intervention and possibly sanctions.

Mary Jo O'Neill, regional attorney of the EEOC's Phoenix District Office, said the EEOC first attempted to reach a pre-litigation settlement with the restaurant chain before filing a complaint. "The evidence was clear, and everyone knew about it," she said. "Behind the lavish décor that the company boasts on its Web site was a horribly dysfunctional workplace where male workers lived in fear."

The case is *EEOC v. Cheesecake Factory, Inc.*, CV 08-1207-PHX-NVW. ■

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For registration details and the conference's full agenda, visit www.HRinHospitality.com. ■

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Worker need not prove she was pregnant at time of adverse action

Casino failed to show termination of cashier was not discriminatory

When a company chooses to discharge an employee who is pregnant or recently returned to the workplace after maternity leave, care should be taken to correctly document and justify the employment decision in the event that the employee later alleges pregnancy discrimination. In *Armstrong v. Greenwood Gaming and Entertainment, Inc., et al.*, No. 09-1321 (E.D. Pa. 10/22/09), the court determined that Armstrong presented enough evidence to proceed with her discrimination claims.

Kelly Armstrong worked as a cage cashier for Greenwood Gaming and Entertainment, and alleged that she was subjected to offensive and discriminatory comments, and that an adverse employment action was taken against her because of her pregnancy. Armstrong claimed that manager Matt Cizenski said he would punch her in the stomach if she became pregnant again, and said she was denied a pay raise awarded to nonpregnant employees.

From October 2007 to January 2008, Armstrong was on maternity leave; she was discharged Feb. 1, 2008, for an alleged violation of workplace rules. Armstrong claims Cizenski and several other male employees committed similar violations without suffering adverse action and filed this complaint.

Greenwood argued that Armstrong failed to set forth a claim for pregnancy discrimination because she was not pregnant at the time of the adverse action, was not performing her job in an adequate manner, and failed to present sufficient evidence of intentional discrimination.

The court noted that there was no merit in Greenwood's argument that Armstrong must show she was pregnant "at the time" of discharge, and found that she established a prima facie case of discrimination. She provided evidence that her employer knew she was pregnant, suffered alleged adverse actions, and because she was fired for a rule violation — not a performance issue — the court said it connotes that she was qualified for her job.

Greenwood also asked the court to dismiss Armstrong's claim for punitive damages, but the court found that Armstrong's complaint that the manager allegedly made hostile statements could lead a fact finder to infer that the employer engaged in a discriminatory practice with malice or reckless indifference, and denied this motion as well. ■

Be careful with employment decisions after pregnancy

By Diana S. Barber

The court in the *Armstrong* case correctly denied the defendant's motion to dismiss the case to allow Kelly Armstrong to proceed with her claim for pregnancy discrimination and have her day in court. Not only did Greenwood Gaming fail in its motion to have the court throw the case out, but the company also appeared to be really reaching for a viable defense when it argued before the court that in order for the employee to allege pregnancy discrimination, she had to show that she was pregnant at the time she was discharged.

The court cited precedential case law to the contrary, bringing to the attention of both parties an appellate case decision that reaffirms that courts do consistently permit pregnancy discrimination cases to go forward where the adverse employment action occurred after the pregnancy, as we have in the *Armstrong* case.

To establish a case of pregnancy discrimination, Armstrong had to show: 1) she is or was pregnant, and her employer was aware of the pregnancy; 2) she was qualified to do her job; 3) an adverse employment decision occurred; and 4) there was a connection between the pregnancy and the adverse employment decision. The court found that Armstrong did meet her burden of establishing the four criteria to withstand a motion to dismiss, which allowed the burden to shift to Greenwood to show a non-discriminatory reason for the adverse employment decision.

As for the punitive damages claim, Armstrong will need to prove at trial that the company practices of Greenwood were conducted with malice or reckless indifference to her federally protected rights. The court found that discharging Armstrong right after her maternity leave, along with the hostile statements made by Greenwood's manager, might allow a jury to conclude a "nefarious attitude" of the company, justifying punitive sanctions.

The bottom line for employers is this: Be careful when making any adverse employment decisions during or after an employee's pregnancy. The scrutiny will be greater, and actions or statements could be judged harshly against the employer.

Diana S. Barber is an attorney and faculty member at the Cecil B. Day School of Hospitality at Georgia State University. ■

Prevent accidents, lawsuits resulting from holiday parties

The holiday season will soon be in full swing, with many employers hosting gatherings to show workers an appreciation for a job well-done. However, these year-end events can sometimes get out of hand and lead to accidents, injuries, and incidents of sexual harassment.

Employers need to take steps to ensure they are protected from potential areas of liability. When planning holiday parties, employers should:

- Keep attendance voluntary.
- Create holiday party policies. Have guidelines in place outlining acceptable behavior at company gatherings.
- Avoid or limit alcohol. If you supply alcohol, you may be legally responsible for the welfare of the employee if he suffers from a drink-induced accident, even if it occurs outside of the party. If alcohol cannot be eliminated, limit the number of drinks permitted, the length of time when alcohol is served, or provide a cash bar.
- Know your state laws. It is crucial that corporate counsel examine under which conditions your business could be held liable and what liabilities may apply.
- Offer transportation to employees if you serve alcohol.
- Check the insurance coverage of anyone hired for the party. If you hire caterers, servers, bartenders, or anyone else to provide and serve drinks, it is crucial that you check to see if they carry liability insurance that would cover any potential exposure for your business from the event. ■

Since this area of the law is still evolving, in order to avoid legal liability, employers should exercise extreme caution when it comes to monitoring the online activities of employees. — Carolyn D. Richmond & Darren Rumack, attorneys

Institute formal policies on Internet usage, social networking

By Carolyn D. Richmond & Darren Rumack

The case, *Pietrylo v. Hillstone Restaurant Group*, is emblematic of the constantly evolving field of electronic privacy rights, which portends to be a growing area of concern for employers in the coming years. It is a particularly tricky minefield for employers to navigate, in part because the law is so unsettled.

However, employers can still take a number of steps in order to avoid potential legal liability. First, employers should, where possible, institute formal workplace policies regarding usage of the Internet, e-mail, and social networking sites such as Facebook and MySpace. By instituting formal policies regulating both employees' use of these sites, employees will be put on notice that their content may be monitored or viewed by their employer, particularly for workplace usage of these Web sites.

Additionally, this case demonstrates that employers should ensure that managers and supervisors do not attempt to "pry" into employees' lives online, whether they are "authorized" or not. As this case shows, employees may feel pressured to provide passwords or access to online sites that they might otherwise not wish to share with coworkers. Moreover, it is not necessarily advisable for supervisors to be able to access employees' online profiles, because it may lead to the discovery of otherwise private information that could lead to potential charges of discrimination down the road. For example, viewing an employee's Web page may reveal a medical condition or sexual orientation not previously known — or relevant — to the employer.

Since this area of the law is still evolving, in order to avoid legal liability, employers should exercise extreme caution when it comes to monitoring the online activities of employees. Moreover, instances of managers going "rogue" and conducting their own background checks on applicants and current employees is increasing at an alarming rate. Managers need to be trained on the parameters of Internet use and researching one's own employees.

While the Internet and social networking have opened up many new opportunities for companies, it has also opened up a potential Pandora's Box of new liability. ■

PRIVACY (continued from page 1)

chat group without authorization, or that their conduct was malicious in order to support an award of punitive damages.

The court, however, rejected this argument, finding that the employee who provided Houston's managers with her log-in information felt compelled to do so because she worked for Houston's and was under the supervision of her manager. At trial, the employee further testified that she would not have provided her password if it was not for her manager being the one who requested it. She also testified that she felt compelled to provide her password, because she "felt that [she] probably would have gotten in trouble" if she had not given the managers access to her MySpace account.

As a result, the court said that this testimony could allow a jury to infer that Houston's managers did not have authorization to access the Web site, because the log-in information was coerced or provided under pressure. The court also added that the jury could reasonably infer that the managers intentionally accessed the Web site without authorization, because of testimony indicating that the managers knew that the employees were "uneasy" with having provided their passwords.

The court further found that the employees presented evidence that Houston's managers accessed the Web site account on several different occasions, although knowing that they were not authorized to access the contents. As a result, the court upheld the damage awards to the employees.

Carolyn D. Richmond is cochair of the Hospitality Practice Group and partner in the New York office of Fox Rothschild LLP. Darren Rumack is an associate at the firm. ■

The Stored Communications Act

In 1986, Congress enacted the Stored Communications Act as part of the Electronic Communications Protection Act, which expanded the protections available in the Wiretap Act written into law 18 years earlier. The intent of the SCA is to create privacy protection of electronic communications, such as e-mails and online chats, somewhat akin to the protection created by the Fourth Amendment.

The law provides that anyone who "... intentionally accesses without authorization a facility through which an electronic communication service is provided" or "intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage ... shall be punished …" ■

Damages appropriate for failure to attend to customer's needs

Court affirms award of $260,000 in damages to poisoned patron

If an accident occurs, the first instinct of staff members should be to attend to the customer; the second should be avoiding liability. If these priorities are reversed and the customer files a lawsuit and prevails, punitive and compensatory damages can be expected. *Everhart v. O'Charley's Inc.*, No. COA08-1454 (App. N.C. 10/06/09).

Katherine Hanna Everhart and her husband were at an O'Charley's restaurant for dinner when Everhart was served a glass of water from a pitcher that had been used to soak soda nozzles in a cleaning solution called Auto-Chlor sanitizer. When she took a drink of the water, she said that she had been poisoned and felt sick. The assistant dining room manager, Byron Witherspoon, came to the table to discuss the incident with Everhart's husband and began to complete a customer accident/incident report. Everhart's husband repeatedly asked Witherspoon what his wife consumed, but Witherspoon allegedly ignored the request and continued to ask questions on the incident report. Her husband took her to the emergency room, but the couple remained unaware of what was ingested. Everhart filed a complaint against the restaurant for negligence and breach of the implied warranty of merchantability. A trial court awarded Everhart $10,000 in compensatory damages and $250,000 in punitive damages. O'Charley's appealed, arguing that the trial court erred in denying its motion for judgment notwithstanding the verdict and its motion for a new trial on the punitive damages award. The restaurant claimed there was insufficient evidence that Everhart's injuries were related to willful or wanton conduct attributable to O'Charley's.

The appeals court found that O'Charley's argument that there was insufficient evidence of willful or wanton conduct fell flat. "In arguing that Mr. Witherspoon's conduct was not willful or wanton, however, O'Charley's … ignores the evidence indicating that Mr. Witherspoon, consistent with O'Charley's' policy, willfully disregarded the possibility of injury to Ms. Everhart so that he could complete the incident report form." The court noted that Witherspoon made no effort to identify what had been served to Everhart and did not attempt to check the Auto-Chlor label for its first aid instructions. The manager testified that the company's policy requires managers to complete an incident report before doing anything else unless the customer is convulsing, passed out on the floor or bleeding profusely. The form expressly states that it is to be completed "in anticipation of litigation."

The court found that a jury could conclude that Witherspoon — by choosing to protect O'Charley's from possible litigation over providing assistance to a customer who had been served a possibly toxic substance — acted with "conscious and intentional disregard of and indifference to" Everhart's safety, supporting a finding of willful or wanton conduct. ■

Customer, not policy, should come first

By Joseph Holland

In *Everhart v. O'Charley's Inc.*, the company was found liable to Katherine Hanna Everhart in trial court for $10,000 in compensatory damages and $250,000 in punitive damages.

O'Charley's Inc. appealed the punitive damage award and requested a new trial, but the North Carolina Appeals Court upheld the trial court's judgment and denied the motion for a new trial. The court found that under the facts presented, the award of punitive damages and the amount awarded were both reasonable.

The appellate court provides clear standards for a restaurant when a customer is in need of assistance. The standard for punitive damages under the North Carolina statute is "wanton and willful" disregard. In this case, where the plaintiff Everhart was clearly in distress and her spouse specifically asked about the nature of the liquid ingested, the manager ignored this simple request and continued to comply with "policy" and complete the restaurant's incident report. This conduct, according to the court, amounted to a wanton and willful disregard for her safety.

Hopefully, this case will serve as a guide to other restaurant operators. When a customer is injured, you must, at the very least, attempt to determine the nature of the injury and offer the necessary information so that the injured customer can receive proper first aid. This does not change any existing standard of care; it simply clarifies that you cannot ignore the injured customer or turn a "deaf ear" to their inquiries. You must at least provide them with information regarding the source of the injury and any warning information you have available.

Joseph Holland is chair of the Department of Hospitality and Tourism at the University of Wisconsin-Stout. ■

Jimmy John's sued by man who received wrong sandwich

A Chicago man who was given the wrong sandwich at a Jimmy John's Gourmet Sandwiches has filed a complaint against the chain seeking more than $50,000 for the mistake.

In November of 2007, Mackenzie Seiler ordered a Turkey Tom sandwich without cheese and mayonnaise at a Jimmy John's location in Champaign, Ill. He suffers from allergies to ingredients in cheese and mayo.

Instead of the plain turkey sandwich, he received a tuna sandwich with cheese and mayonnaise, which caused him to go into anaphylactic shock. Seiler was hospitalized for three days and claimed that the bite of the sandwich caused him to become seriously ill and that he suffered continued effects from the incident for some time.

He said he did not examine the contents of the sandwich, but instead removed the wrapper from the sandwich to eat it like a burrito. He said he took just one bite that he quickly spit out when he realized it had cheese and mayo.

Seiler's attorney said his client asked the company to pay his medical bills, but when it refused, he filed a complaint for negligence against the chain. The attorney also claimed that Jimmy John's argued that Seiler should have inspected the sandwich before taking a bite.

Jimmy John's stated that it cannot comment on pending litigation. ■

BANKRUPTCY (continued from page 1)

TooJay's employee handbook and sexual harassment policy, and directed Myers to sign acknowledgment forms that he had received copies. On each of these forms, Myers placed his signature on the blank listed for "employee signature."

Myers, who had filed for Chapter 7 Bankruptcy in January 2008 and had his debts fully discharged a few months later, provided notice to his then employer that he was resigning; but 10 days later, he received a letter from TooJay's stating that the company was rescinding its offer of employment. Myers was later informed that he was not hired because TooJay's, as a matter of corporate policy, does not hire individuals for management positions who have a bankruptcy on their credit report. A few weeks later, TooJay's sent Myers a paycheck for the amount owed for the on-the-job evaluation.

Myers sued TooJay's for bankruptcy discrimination. Despite determining that the most likely reason that TooJay's did not hire Myers was his bankruptcy, the court held that TooJay's failure to hire did not violate the Bankruptcy Act. However, Myers argued that his two-day job evaluation constituted an employment relationship, and that TooJay's actually terminated him because of his bankruptcy. The court held that Myers' claim of an unconditional offer of employment, coupled with the payment of $200 for the two-day job evaluation, the execution of numerous employee-related forms, and receipt of the TooJay's employee handbook, was sufficient to create a material dispute as to whether Myers was actually employed by TooJay's. Therefore, the court allowed Myers' claim that TooJay's terminated him in violation of the Bankruptcy Act to proceed.

Had TooJay's simply waited for the results of the background check before requesting that Myers execute employment forms, it may have been able to avoid a lawsuit.

By disclosing to Myers corporate information generally made available only to employees and having him sign employee-related documents, the court found that TooJay's created an expectation of potential employment.

If your company's hiring decisions are contingent on the outcome of background checks, be sure that your objective actions are plain and clear — that any employment offer is contingent and not final until all preconditions are successfully addressed.

Benjamin J. Court is a commercial litigator at the Minneapolis law firm Krass Monroe, P.A. ■

Know bankruptcy discrimination laws

By Benjamin J. Court

Although bankruptcy discrimination laws have somewhat limited application in the private sector, the Bankruptcy Act prohibits private employers from terminating the employment of, or discriminating with respect to employment against, an individual who is or who has been a debtor under the Bankruptcy Act. That often includes taking any adverse employment action against an employee simply due to a bankruptcy filing. Several decisions from the federal courts have indicated that the prohibition on employment discrimination does not, however, extend to initial hiring decisions.

The purpose of the anti-discrimination language in the Bankruptcy Act is to protect a debtor's means of earning a living or pursuing a livelihood. Violations may lead to damage awards for back payment of wages and fringe benefits, an injunction prohibiting such practices, and potential reinstatement. ■

Third party can seek contribution from tavern in dram shop suit

Tavern may have violated duty by serving intoxicated patron

The obligation to monitor the intoxication levels of patrons is not limited to those who are driving, but everyone being served at an establishment. In *O'Gara v. Alacci, et al.*, No. 2008-05841 (N.Y., App. Div. 2d. Dept. 09/22/09), an appeals court declared that a man who hit an intoxicated woman may sue the tavern that served her for violation of the Dram Shop Act.

Matthew Alacci was driving a car owned by Gladys Alacci on a parkway at 5 a.m. when he struck Kathleen O'Gara, who was attempting to walk across the parkway. O'Gara did not know how she ended up on the parkway, but knew she took Percocet and consumed many alcoholic beverages at a tavern owned by Katonah Bar & Grill.

Alacci filed a third-party action against Katonah seeking contribution for the incident. Alacci claimed that Katonah's employees' were negligent in serving alcohol to O'Gara "in such quantities and over a long period of time," and that the employees knew or should have known she was intoxicated.

Katonah moved to dismiss, claiming that Alacci failed to state a cause of action for which relief could be granted, and said Alacci also could not seek contribution pursuant to a "negligent intoxication" theory because common law "does not recognize a cause of action in favor of a party injured by reason of the intoxication of a person against the seller of alcohol."

The Supreme Court of New York noted that other decisions have held that where an intoxicated person is injured by a tortfeasor and commences a personal injury action, the tortfeasor does not have a cause of action for contribution against the sale of the alcohol based on the Dram Shop Act. However, the court concluded that a third-party complaint sets forth a cause of action for contribution based on an alleged violation of the Dram Shop Act.

In this case, the Alaccis alleged that O'Gara's injuries were caused in part by Katonah's violation of the Dram Shop Act. But the tavern could not be considered to have violated a duty owed to O'Gara because an alcohol purveyor does not have a duty to protect consumers from the results of their voluntary intoxication, and the Dram Shop Act does not give the consumer a cause of action against the seller to recover damages for injuries that the consumer suffered as a result of a Dram Shop Act violation.

The court said that because the Alaccis did not allege that the tavern breached a duty owed to O'Gara, it might appear that they cannot seek contribution from Katonah. However, the court found an exception to the typical flow of contribution, finding that it has been recognized that a party's liability for contribution can flow from a breach of an independent duty owed to the defendant, provided that the breach played a part in causing or augmenting the injury. Assuming that Katonah employees violated the Dram Shop Act by serving a visibly intoxicated O'Gara, the tavern breached a duty owed to the Alaccis, who are members of the public. And if the tavern is found in violation of the Dram Shop Act, and breached a duty to the public, the court found "it cannot be said as a matter of law that this breach of duty had no part in causing or augmenting the alleged injuries of the plaintiff." The court noted that a fact finder could conclude that the accident occurred as a result of three separate breaches of duty: the tavern's breach of duty under the Dram Shop Act; O'Gara's breach of duty to exercise reasonable care for her own safety; and Alacci's breach of duty to exercise care to avoid colliding with O'Gara. Accordingly, the court found that the Alaccis can seek contribution from Katonah based on its alleged violation of the Dram Shop Act. ■

HLaw Glossary

What is a tortfeasor?

A tortfeasor is a person who commits a tort, or a civil wrong. Unlike a crime, a tort could be something like trespassing, or as is common and the tort committed in *O'Gara v. Alacci*, negligence. A tort does not distinguish whether the wrong committed was intentional or accidental.

In *O'Gara*, the tortfeasor is the man who hit the intoxicated woman with his car. The intoxicated woman was injured by the tortfeasor, but the court found that because the accident was, at least in part, caused by tavern employees allegedly serving alcohol to the intoxicated woman, the tortfeasor was granted leave to seek contribution from the tavern. ■

Employee sues Wynn for exposing workers to secondhand smoke

A Wynn Las Vegas worker has filed a lawsuit against the casino and its parent company for exposing employees to secondhand smoke. Kanie Kastroll claims that the secondhand smoke exposure has caused her and other employees to suffer from coughing, wheezing, headaches, and shortness of breath. The complaint alleges that the casino exposes employees to life-threatening illnesses by failing to implement measures to minimize secondhand smoke exposure. Kastroll is seeking class action status.

The lawsuit also claims that some casinos in Las Vegas have made efforts to reduce secondhand smoke, citing the Bellagio's air filtration system and the Palazzo's smoke-free corridors.

According to Kastroll's representation, KamberEdelson LLC of Chicago, practices by some Las Vegas casinos "fly in the face of state and federal laws that require employers to provide safe work environments, free from hazards known to cause serious health and safety risks." The firm states that rather than implement policies to protect employees, the Wynn makes its "employees choose between unemployment and potentially life-threatening disease."

KamberEdelson is also currently prosecuting class action lawsuits against Harrah's Entertainment's Caesar's Palace Hotel and Casino for exposing employees to secondhand smoke. ■

Be wary of workplace violence when making layoffs

The economic downturn continues to force more companies, particularly those in the hospitality industry, to lay off workers. But employers must use caution when breaking the bad news to employees to avoid incidents of workplace violence.

Paul Harvey, assistant professor of management at the University of New Hampshire, said that although there really is no good way to tell someone they are being laid off, employers should tailor the bad news in a way that minimizes the likelihood of an extremely bad reaction.

"Part of it is common sense and being respectful," Harvey said. "One of my colleagues used to work for a company that decided it needed to downsize. The company took the bizarre step of announcing who would be laid off in stages, with each announcement coming on a Friday the 13th. This creates fear and tension among employees, and also creates an 'us vs. them' mentality. There weren't any disasters on that occasion, but it's not hard to imagine tensions boiling over."

Harvey said managers should try to understand an employee's personality and watch for a "hostile attribution style" — people who have a tendency to blame others whenever things go wrong in their lives. These people, he said, usually are easy to identify in that they never take responsibility for problems, frequently seek scapegoats, and tend to be angry frequently.

"If you need to lay this type of person off, it's important to be very explicit about why they were chosen and why this was a logical decision," Harvey said. "If it's because of economic reasons, be very clear that it's because of economic reasons. Otherwise the tendency to believe 'they're out to get me' often takes over."

Even if an employer believes an employee is a calm and reasonable person, Harvey cautioned that it's best to be as candid as possible and explain all the reasons a person is being laid off, even if it's a bit awkward.

"One of the worst things you can do is create ambiguity," he said. "While the managers might think they are sparing feelings, they are also giving ex-employees an opportunity to spin conspiracy theories which fuel anger and resentment. Be kind and respectful, but also as candid as possible."

For more information on workplace violence, visit the University of New Hampshire Web site at www.unh.edu. ■

Reduce employee stress

Even if no layoffs are planned at your hotel, casino or restaurant, the recession and fear about job security can lead to more work-related stress. For many employees, this is compounded by worries about increasing cost of food and fuel, and the housing and credit crises.

Paul Harvey of the University of New Hampshire said an overall increase in stress raises the potential for more workplace aggression, such as yelling at coworkers and threatening them with violence. Increased stress, he said, can also translate into alcohol abuse, depression, withdrawal from work and family and even suicide.

"A big problem with these reactions is that they don't always go away once the stress is reduced," Harvey said. "People become addicted to alcohol or irreparably harm their reputation at work or their relationships with family members. Fortunately, the really dramatic stress-related incidents, like workplace shootings, are rare."

Harvey said employers must understand the difference between "good" stress and "bad" stress. Good stress, he said, challenges employees with reasonable goals and rewards for completing tasks. Bad stress — such as very tight deadlines, arcane policies, and uncomfortable working conditions — can lead to reduced productivity and should be kept to a minimum.

"Reducing bad stress often can be done by reducing bureaucracy and listening to employees' concerns to see if they can be addressed," Harvey said. "What you generally don't want to do is try to reduce employees' overall stress levels by taking away the good stress, the aspects of a job they find enjoyable and energizing."

Whenever possible, Harvey said employers should try to be vaguely aware of what employees are dealing with in their personal lives, whether it's the loss of a home, death of a loved one, or a divorce. People have different levels of coping ability, but everyone has a breaking point.

"While you can't really make a habit out of letting employees shirk their duties at work every time they have a personal problem, any steps that can be taken to reduce the bad stress these employees have to deal with will go a long way toward helping them ride out a tough time," he said. ■