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HOSPITALITY LAW

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Question of whether firing was retaliatory for requesting leave

Proper documentation may have helped resort in FMLA lawsuit

By Carolyn D. Richmond & Darren Rumack

A District Court decision highlights the need for employers to be diligent in documenting employee performance issues prior to making an adverse employment decision. In *Markos v. Mount Brighton, Inc.*, No. 08-cv-12588 (E.D. Mich. 08/24/09), the court denied Mount Brighton's motion for summary judgment on Michael Markos' claims of retaliation and interference with his Family and Medical Leave Act rights when he was terminated the same day he requested medical leave due to a knee injury.

Markos worked as the executive chef at the restaurant of the Mount Brighton ski resort starting in March 2004. The parties had contrasting viewpoints of Markos' job performance. Markos presented evidence that he performed quite well as chef, that he was never directed to "do anything differently" as executive chef, and that he was well liked by the customers. Conversely, the employer offered evidence that Markos lied on his employment application, failed to disclose multiple criminal convictions, consistently showed up to work under the influence of alcohol and/or marijuana, and generally performed unsatisfactorily.

In July 2005, Mount Brighton placed a classified advertisement in a newspaper seeking an executive chef, ostensibly to replace Markos. The following day, the resort manager prepared a memo, which was signed by several managers for Markos' personnel file, which stated that Markos had attended a staff meeting under the influence of alcohol. The following week, the manager placed another memo in his file stating that he exhibited a bad attitude at work. Markos claimed that both memos were fabricated, and submitted evidence that two of the managers

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Detailed policies, procedures don't trigger liability for Domino's

Franchisor not liable for negligence of franchisee's delivery driver

By Benjamin J. Court

To ensure the delivery of consistent, quality products and services to consumers in multiple locations across diverse geographies, franchisors often rely on franchisee compliance with uniform rules, standards and operating procedures. However, strict control over such standards and procedures recently landed franchisor Domino's Pizza in court when Scott Mathias, a pizza delivery driver employed by franchisee Zzeeks Pizza & Wings, collided with another vehicle while delivering pizzas. *Viado v. Domino's Pizza, LLC, et al.*, No. A136842 (Ore. Ct. App. 09/02/09).

The collision resulted in injuries to the plaintiff, Alfred Viado, who brought suit against Mathias, Zzeeks and Domino's. Domino's denied the allegations and moved for summary judgment, and a trial court dismissed Domino's from the lawsuit.

On appeal, Viado argued that Domino's was vicariously liable because its franchise agreement and operations manuals went beyond merely setting standards, but exerted substantial control over multiple aspects of the daily operations of its franchisees. The company described in considerable detail the methods by which franchisees are to carry out their responsibilities, including detailed rules and operating procedures for most aspects of the operation.

Viado also pointed to Domino's detailed requirements relating to delivery drivers, including minimum age hiring limits, periodic audits of driving records and insurance, periodic vehicle inspections, the monitoring of moving violations and setting of acceptable standards, mandatory use of seat belts, restrictions on the use of mobile telephones, requirements that all drivers obey traffic laws and "the rules of the road," and a requirement that all delivery

(See **LIABILITY** on page 6)

Commercial liquor liability policy did not cover club assault

Capitol said that because of the liability pleaded by Taylor, which did not include any language or allegations regarding the sale or furnishing of alcohol, the assault was not covered by the commercial liquor liability policy.

Insurer has no duty to defend nightclub in suit filed by patron

Managing risk through the purchase of good liability coverage is one way to potentially avoid a payout if an incident occurs at your nightclub, hotel, restaurant or casino. But managers should take care that they are aware of all of the restrictions in their coverage and try to find ways to limit their exposure. For an Illinois nightclub, a policy's restrictions on assault without alcohol led a District Court to release the club's insurer from the duty to defend it in a lawsuit filed by a patron. *Capitol Specialty Insurance Corp. v. Whitaker, et al.*, No. 09-cv-92-JPG (S.D. Ill. 09/10/09).

When a bar fight broke out at Club Elite, patron Michael Taylor, who instigated the fight, was seriously injured and incurred more than $45,000 in medical bills. He sued Club Elite owners Charles Whitaker and Rodney Moore, arguing that the two were negligent and failed to protect their patrons against unreasonable risk of physical harm. Capitol Specialty Insurance Corp. retained counsel for Whitaker and Moore, but then filed suit against the two, arguing that it owed no duty to defend or indemnify the club's owners because its liquor liability insurance policy did not cover the wrongful action alleged in Taylor's lawsuit.

The club's Capitol policy contains two parts: commercial general liability insurance and commercial liquor liability insurance. The first part does not require Capitol to indemnify the club because of an exclusion for injuries arising from assault or battery, but the club's owners argued that the liquor liability provided coverage for the Taylor incident.

Capitol said that because of the liability pleaded by Taylor, which did not include any language or allegations regarding the sale or furnishing of alcohol, the assault was not covered by the CLL policy. For liability to be assumed under the CLL policy, Capitol said, Taylor would need to hold the club liable under the state's Dram Shop Act.

Whitaker and Moore argued that Capitol's motion was premature because there had not been sufficient discovery to rule out Dram Shop Act liability.

The court found that Taylor's complaint does not seek liability that would be imposed "by reason of the selling, serving or furnishing of any alcohol beverage," but sought to impose liability on the club's owners because they failed to provide adequate security, assist Taylor when the assault began, and warn him about the two assailants. The court found that Whitaker and Moore's speculation that Taylor could raise a Dram Shop Act claim was irrelevant, and declared that if he does so, the club owners may tender their defense again to Capitol.

The court, therefore, granted Capitol's motion for summary judgment, declaring that the insurer had no duty to defend Whitaker or Moore. ■

Defending the insured

Under Illinois law, an insurer has an obligation to defend its insured in an underlying lawsuit if the complaint alleges facts within the coverage of the policy, even if the allegations end up being groundless. ■

HOSPITALITY LAW

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Employee failed to show connection between threat, termination

Server fired for failing to follow restaurant chain's open-door policy

When terminating an employee, it's crucial that companies go "by the book" to protect themselves from wrongful termination claims made by disgruntled workers. In *Cooney v. Bob Evans Farms, Inc.*, No. 08-10337 (E.D. Mich. 08/17/09), because Bob Evans followed its policies, employee Mary Cooney was not able to prevail on her whistleblower claims.

Cooney worked as a server at a Bob Evans in Fenton, Mich., and claimed to be a satisfactory employee. Bob Evans said she made comments about coworkers and customers and was disciplined on two occasions.

In the Bob Evans employee handbook, the code of conduct and work rules are explicitly listed, and violation of rules can result in discipline and/or discharge. The company maintains an open-door policy, encouraging employees to approach management to resolve problems. On two mornings in fall 2007, Cooney claimed she saw one of the assistant managers and a kitchen employee smoking marijuana in the parking lot and told another employee, who spoke with the assistant manager about the allegations. He notified the GM that Cooney had told a coworker she saw him using drugs, denied the offense, and offered to take a drug test. After an investigation, the GM found that no one could corroborate Cooney's story and noted that the dates Cooney said she saw the drug use were false since the two were not scheduled to work on those days. Cooney was suspended for spreading malicious gossip in violation of the company's rules. She threatened to file a complaint for discrimination, but the company terminated her for not following the open-door policy. Cooney filed a lawsuit claiming the company violated her rights under the Michigan Whistleblowers' Protection Act and discriminated on the basis of sex.

The court found that Cooney failed to state a claim under the Whistleblowers' Protection Act. Although there was sufficient evidence that Cooney was engaged in a protected activity since she stated that she was going to file a complaint, the court declared that she failed to show a causal connection between her threat and her termination. The court also found that Cooney's civil rights claim must fail because she could not show her discharge was retaliatory. Therefore, Bob Evans' motion for summary judgment was granted. ■

Timing was everything in whistleblower case

By Diana S. Barber

Timing isn't everything, but it sure can provide fuel for a plaintiff's case of retaliation. In *Cooney v. Bob Evans*, Bob Evans Farms was granted summary judgment in this case by following its workplace policies. By quickly establishing an investigation and taking the appropriate steps, the company prevailed.

Under the Michigan Whistleblower's Protection Act, a plaintiff has to satisfy three criteria: (i) she was engaged in protected activity, (ii) she was discharged from employment, and (iii) there was a causal connection between the protected activity and her discharge. Mary Cooney was able to establish the first two elements, but not the third.

She merely threatened to bring an action without having taken steps to do so, but the court said that was enough to satisfy the first element.

The lesson learned from this case is that timing is crucial. Be careful about employment actions (i.e., discharge or demotions) that occur closely in time with employee threats. Threats alone can be enough to constitute protected activity.

But employers also need to ensure workplace policies are followed and that managers act professional and with their emotions intact. The suit noted that the Bob Evans' manager appeared angry or "mad" during a confrontation with Cooney. Train managers to remain calm when faced with employees who allege threats against the company or managers to avoid any appearance of a manager's intent to retaliate against an employee.

In this case, Cooney was already being disciplined when the threat that she was "about to report" a claim of discrimination was lodged. Since Bob Evans had properly performed the investigation and subsequently documented the investigation and suspension, the court found that Cooney's threat was made to pressure the company into withdrawing the suspension.

The court made clear in its analysis that the Whistleblower Protection Act was not designed to protect disgruntled employees who believe that their job is in jeopardy and attempt to extort the employer into reversing an imminent termination.

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

Hotel worker accuses employer of exposing guests to black mold

A Tampa hotel employee has filed a complaint against his employer alleging that the company exposed the workers and patrons to asbestos, mildew and mold.

Tom Voorhees, a former engineer for the former Westshore Hotel, said he was terminated for revealing the dangerous conditions in a lawsuit he filed in Hlilsborough Circuit Court.

He said he and other workers were ordered to ready rooms containing black mold for visitors attending the Super Bowl and said that employees covered up moldy mattresses, and used bleach as a temporary fix on walls and furniture. He also claimed that asbestos was present in the ceilings in a number of the guest room bathrooms. Voorhees said that the hotel knowingly exposed him and other employees and guests to the dangers, and said he's concerned about his health.

At the end of 2008, the hotel was in foreclosure. According to court documents, the lender stated that more than 40 of the hotel's 235 guest rooms contained dangerous mold. Records show that Janus Hotels & Resorts took over the operations of property, and according to the company, a mold remediation company was hired to remove the dangerous substance. The company also stated that rooms infested with mold were not available to guests. ■

Failing to show an employee disciplinary write-ups also gives an employee an easy out to argue later that the document is not authentic. — Carolyn D. Richmond & Darren Rumack, attorneys

Take preventive steps in the workplace

By Carolyn D. Richmond & Darren Rumack

The case *Markos v. Mount Brighton* provides employers with several lessons: follow progressive disciplinary practices; document infractions, and ensure that the forms are filled out thoroughly and consistently; and pay attention to the details — terminating an employee the same moment FMLA leave is requested might deserve a second thought.

The facts in this case highlight a number of fatal flaws for employers to avoid. In this case, the employee allegedly had a number of serious performance issues that might ordinarily warrant immediate termination. By continually tolerating terminable offenses such as drinking on the job, it called into question why an adverse action was taken only when the employee was injured and leave was requested. Failing to show an employee disciplinary write-ups also gives the employee an easy out to argue later that the document is not authentic.

Winning summary judgment in employment discrimination cases is difficult. The burden on employers is very high. Employers have to make sure that they take as many preventive steps as possible well before a claim is ever made. The first steps start with making sure supervisors and managers practice consistent disciplinary practices and thorough recordkeeping. Simply by signing and dating disciplinary forms and ensuring that they are provided to employees is a major step toward prevention. Meting out discipline in as uniform a fashion as possible is another important step in avoiding liability.

These steps are not a panacea for avoiding litigation claims. However, if a business is going to implement policies and practices in their workplaces, they need to be followed consistently. ■

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who signed the memo did not see him intoxicated at the meeting. Further, Markos claimed that the memos were never shown to him and that no disciplinary action was ever taken against him for his alleged wrongful conduct.

In April 2006, Markos injured his knee while attempting to break up a fight between two patrons. The knee injury left him on crutches and in an iron brace, making him unable to stand on his feet all day. However, he agreed to continue to perform his job as executive chef to the best of his ability.

In May 2006, Markos was placed on probation after a manager caught him drinking in a back room on the resort's premises. Later that month, Mount Brighton placed another ad for an executive chef in a newspaper. In June 2006, the resort hired a replacement chef who would start work in July, with the expectation that Markos' last date of employment would be June 30, 2006.

However, on June 30, 2006, Markos' doctor informed him that he could no longer work due to his knee injury. After presenting proof of his disability to his employer and requesting leave, Markos was terminated that same day. He filed suit for interference with his FMLA rights and also claimed that he was terminated in retaliation for seeking FMLA leave.

Mount Brighton argued that there was no causal connection between his request for medical leave and his termination. However, the court disagreed that the decision to terminate him was made well before he made his request for medical leave. Specifically, the court found that a question of fact existed regarding the connection between his FMLA request and the decision to terminate him, given that both occurred on the same day.

Significantly, the court noted that there were inconsistencies in Mount Brighton's testimony coupled with the fact that Markos was never informed or required to sign any of the disciplinary forms his employer claims he received. As a result, the court denied Mount Brighton's motion for summary judgment on the retaliation claim.

The court also denied the company's motion for summary judgment on the claim of interference, rejecting the claim that Markos would have been terminated irrespective of his request for leave. In particular, the court found it suspicious because Markos' alleged bad conduct had been ongoing for several years, but he was not terminated until the day he sought FMLA leave.

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. ■

FMLA legislative changes

In January, several changes to the Family Medical Leave Act went into effect. Review your policies to ensure they are up-to-date with current legislation. ■

Restaurant, premises owner not negligent in snow, ice removal

Patron could not show restaurant failed to provide safe ingress

Businesses have a duty to maintain their premises in a safe condition for customers. In winter months for much of the country, keeping walkways free of snow, ice and other unsafe conditions can be a challenge. But keeping up with this task is important for protecting patrons and avoiding potential slip and fall litigation. *Ciciora v. CCAA, Inc., et al.*, No. 08-1099 (7th Cir. 09/04/09).

Lela Ciciora slipped on ice on the sidewalk and fractured her ankle outside the Burrito Jalisco restaurant on her way to pick up her take-out order. A restaurant employee had cleared the sidewalk of snow and salted it that morning, and Ciciora said she did not observe ice on the sidewalk when she began walking. Ciciora filed a complaint against the restaurant's owners, CCAA Inc., arguing that the restaurant failed to provide a reasonably safe means of ingress into its property, and that it was negligent in its removal of snow and ice outside its entrance. Ciciora also claimed that the Bridgeview Bank Group, which owns the premises, was contractually obligated to remove snow and ice according to its lease, and negligently performed and delegated that duty to another party.

A District Court granted summary judgment to the defendants on all charges. Ciciora appealed the decision.

The 7th U.S. Circuit Court of Appeals noted that Ciciora produced evidence that Burrito Jalisco voluntarily removed the snow and ice from the walkway on a regular basis, and that there was an informal, unwritten agreement between the restaurant and the owner that the restaurant would clear the sidewalks; but a contractor employed by Bridgeview would plow the parking lot.

Although defendants who voluntarily undertake the removal of snow and ice can be liable if their actions result in an unnatural accumulation of snow or ice or aggravate an existing condition, Ciciora failed to show her injury was a result of these actions. The court noted that Ciciora stated that the sidewalk was clear and dry and that ice was not visible when she began to walk on it, and that she presented no evidence that the ice on the walk was anything other than a natural formation.

Ciciora also argued that the District Court should not have granted summary judgment to Bridgeview because of the lease agreement that stated that Bridgeview agreed to assume responsibility for the maintenance of the parking lots, driveways and sidewalks, including snow and ice removal. The court disagreed, finding that even if Ciciora could rely on the lease to establish a duty of negligence, she failed to demonstrate that Bridgeview failed to exercise reasonable care and that its breach of duty proximately caused her injuries. Therefore, the court affirmed the District Court's grant of summary judgment to CCAA and Bridgeview. ■

Plaintiffs have initial burden in slips, falls

By Joseph Holland

When plaintiffs allege negligence, they must understand that they bear the burden of establishing the elements of negligence. They must prove that the defendant owes them a duty, that the defendant breached that duty, and that the breach was a direct cause of an injury of loss.

In *Ciciora v. CCAA*, Lela Ciciora admits that when she exited her car to pick up an order at the restaurant, she did not see any ice or snow on the restaurant's sidewalk. However, after walking about 20 steps, she slipped and was injured. She alleged that the owner of the property had a contractual obligation to remove snow and ice from the premises but allowed the occupier of the property to perform this duty for them, resulting in negligence. She further alleges that the occupier also failed to properly remove all snow and ice from the sidewalk.

The court held that even though the owner of the property had a contractual obligation to remove snow and ice, there was no proof that the occupier who voluntarily removed it in any way created an unnatural hazard or contributed to an aggravation of an existing condition. The court recognized that it would be an undue burden to require a property owner or the occupier of a property to remove all snow and ice during winter months, and Ciciora herself admitted that the sidewalk appeared clear and dry.

This establishes a clear standard for plaintiffs bringing a negligence suit due to a slip and fall. They have the initial burden of establishing facts that indicate a defendant's negligence. As consistent with this case, they can't prevail on allegations alone. Simply because an accident occurred on a restaurant's property does not necessarily mean that the property owner or tenant was negligent.

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

Food service workers more likely to smoke than other workers

Food service industry employees are more likely to smoke than workers in any other industry, according to a study from the Substance Abuse and Mental Health Services Administration.

In the U.S., 28 percent of full-time workers reported that they had smoked a cigarette in the past month. Of those workers, nearly 45 percent worked in the food service industry. The occupations with the second-highest rate of smokers included construction and mining workers. Employees who work in the education field were least likely to have lit up at just 12.3 percent.

The researchers also discovered that younger workers were more likely to smoke, and that the likelihood that an employee had smoked a cigarette in the past month decreased with age. More than 40 percent of full-time workers under age 25 reported that they had smoked cigarettes, compared to just 20 percent of workers 50-64 years old.

The director of the agency's Office of Applied Studies said the research suggests that educating the general public on the dangers of smoking in the workplace could be an ideal way to reduce the rate of smokers.

He also stated that tailoring antismoking programs to individuals based on their professions may help individuals assess and address their smoking. ■

LIABILITY (continued from page 1)

drivers complete a driving safety course.

Domino's contended that Zzeeks was not subject to its complete control, stating that the franchise agreement plainly indicates the parties are independent contractors, and that the relationship is not one of principal or agent. Domino's also explained that pursuant to the franchise agreement, Domino's has no relationship with Zzeeks' employees and has no rights, duties or responsibilities with regard to their employment with Zzeeks. The franchise agreement provides that Zzeeks is solely responsible for recruiting, hiring, training, scheduling, supervising and paying all persons working at the location, and that Zzeeks acknowledged and understood that it — not Domino's — was responsible for operating the store and directing its employees.

The Court of Appeals recognized that in the context of a franchise relationship, franchisees expect franchisors to establish certain standards for uniformity of operations since it is that uniformity that makes the franchise valuable. Here, Domino's went beyond simply setting standards and instead retained sufficient control over certain day-to-day operations of Zzeeks to establish an agency relationship.

However, the appeals court ultimately held that Domino's was not vicariously liable, determining that despite Domino's exertion of considerable control over its franchisees, it did not have the right to control the physical details of the conduct that caused alleged injuries to Viado, namely the manner in which Mathias carried out his driving duties.

According to the court, the fact that Domino's imposed age limits or other hiring limits on drivers was separate from controlling the physical details of the driving. Viado alleged he was injured because of Mathias' driving, not due to any negligence regarding the hiring process. Despite requiring its franchisee's delivery drivers to undergo driving training, Domino's did not reserve control over the physical details of driving once the training is complete. Because Viado did not contend that Mathias' participation in a training program was the conduct that injured him, Domino's was not liable.

Moreover, the court held that Domino's requirements that drivers obey the rules of the road, wear seat belts, and not use cell phones while driving did not render it liable. Instead, the court reasoned that such generalized standards allowed for day-to-day control to remain with Zzeeks. Similarly, simply because Domino's reserved the ability to protect its interest under the franchise agreement by terminating or suspending a franchisee's operations for violations of driving-related standards, this did not undermine the unambiguous allocation of control to the franchisee. Accordingly, the appeals court dismissed Domino's from the action.

Although recognizing a franchisor's ability to enforce uniform standards and operating procedures without subjecting itself to general liability for the acts of its franchisees, *Viado* should not render franchisors complacent. Caution should be taken in the franchise agreement to plainly and clearly establish the parameters of the franchise relationship, and franchisors should ensure that any required franchisee training is completed to minimize claims of franchisor negligence.

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

Managers failed to respond to worker's harassment complaints

Court said management may have contributed to hostile environment

Completing a prompt investigation and taking immediate corrective action after an employee complaint of harassment can go a long way toward protecting a company if the victimized employee later files a complaint. In the reverse, failing to address and rectify a hostile work environment could result in an expensive court case. *Washington v. Hilton Hotels Corp. d/b/a Hampton Inn, et al.*, No. 2:07-2694-CWH (D. S.C. 09/17/09).

Lori Washington worked as a housekeeper at the Hampton Inn. She claimed that shortly after she began working at the inn, maintenance worker Hovannes Petrosyan began to make sexually suggestive comments and unwanted advances toward her. Washington said that when Petrosyan said he would only take out the trash in exchange for a kiss, she reported his behavior to her supervisor. However, Washington said the supervisor did not address the problem.

When she again reported that Petrosyan was acting inappropriately, Washington said her supervisor and the other managers refused to take action and even teased her about Petrosyan's comments, despite the fact that she told them his conduct made her uncomfortable. A month later, Washington said Petrosyan grabbed her as she bent down to pick up towels while cleaning a room and that he became more aggressive. On one occasion he grabbed her from behind, rubbed her breasts, and attempted to kiss her before she broke away and ran out of the room. She said she reported the incident, but when no action was taken, she filed a police report and Petrosyan was arrested and charged with assault and battery.

When Washington returned to work, she was removed from her permanent work station and said her coworkers treated her like a criminal for reporting Petrosyan. She said her doctor advised her not to return to work because of emotional problems stemming from the assault, and she filed a complaint against her employer.

Hampton argued that Washington failed to show that she was subjected to a hostile work environment and said conflicting versions of her testimony should not be considered to create an issue of fact. Hampton said Petrosyan's behavior was not "so objectively offensive as to alter the terms and conditions" of Washington's employment, and said that although Petrosyan's conduct was annoying and offensive, much more is required to bring it to the level of unlawful sexual harassment.

The court disagreed, finding that Washington was repeatedly subjected to Petrosyan's sexual comments, inappropriate gestures, lewd behavior and groping. The court also noted that Washington's job was made more difficult when her supervisors failed to reprimand Petrosyan or stop the offensive conduct, but instead "acted in such a way that one might conclude they facilitated the abusive work environment."

The court, therefore, denied Hampton's motion for summary judgment. ■

Have policies for handling complaints

When it comes to handling complaints of harassment in the workplace, the first order of business is to look up your hotel or restaurant's policies and procedures and make sure they are followed exactly. If your business does not have procedures in place for investigating employee complaints, it's time to retain an attorney or consultant and write out guidelines. At the least, these policies should include:

- A section in the company handbook or other employee literature that clearly informs employees about the channels available to lodge a complaint. Courts have denied summary judgment to many employers for failing to provide a means for employees to communicate issues they are having at the workplace.
- Details on how to promptly investigate a claim. A thorough investigation is crucial, but ensuring that it is executed in a timely manner is equally important.
- Procedures on disciplining inappropriate behavior. Once an investigation has been completed, and if an employee has been found to be in violation of company policies, managers need to be sure that the employee is disciplined according to established policies and procedures. If your handbook provides for immediate termination for the wrongdoing committed, document everything and move ahead with the termination.
- Steps to ensure that the harassment is not repeated. If the wrongdoing is not severe enough to constitute termination, make sure that the behavior cannot be repeated. For instance, if an employee is being harassed by a coworker, attempt to schedule the workers on different shifts, or place them on duty in different areas of the workplace. ■

Gap between patron knowledge of green and travel behavior

Many hotels, hoping that informing their guests about green initiatives will lead them to adopt more environmentally friendly behaviors, may be fighting a losing battle. According to a study by Virginia Tech's Pamplin College of Business, there's a significant gap between consumers' attitudes toward "green" initiatives in the hospitality industry and their actual behavior.

"It has been argued that if individuals became more knowledgeable about environmental issues, they would become more aware of the problems and be more motivated to act in responsible ways," said students Melissa Baker and Eric Davis. "Prior research, however, has not shown this assumption to be true."

They note that the hospitality and tourism industry is under pressure to become more environmentally friendly as a result of consumer demand, environmental regulation, and managerial concerns based on ethics as well as economics.

But after completing a study of 881 hotel patrons, the researchers found that though 54 percent agreed or strongly agreed that being environmentally conscious while in a hotel will have long-term environmental benefits, only 35 percent stated they would prefer to stay in a green hotel instead of a non-green hotel; 45 percent stated that they would be unlikely or extremely unlikely to stay at a hotel that provided amenity dispensers instead of individual bottles. ■

Check your compliance with federal, state wage and hour laws

In the past few years, the uptick in wage and hour lawsuits against restaurants has been startling. Because of largely confusing state and federal regulations, it can be difficult for managers to know if they are compliant with the law. Understanding these laws and regulations can even be a challenge for labor attorneys.

To help the hospitality industry stay abreast of regulations, attorneys Carolyn Richmond and David Sherwyn and Cornell graduate Martha Lomanno developed *Restaurants at the Crossroads: A State by State Summary of Key Wage-and-Hour Provision Affecting the Restaurant Industry*. This document, from Cornell University's Center for Hospitality Research, provides a compilation of wage and hour laws from every state in the U.S., including the District of Columbia and Puerto Rico, to provide guidelines to help the hospitality industry stay compliant with the law.

"Restaurant and other food-service operators are left to make sense of a myriad of federal, state and local laws and regulations that govern wage and hour and tipping matters in the workplace," the authors wrote. "Many of those laws and regulations are antiquated and, at times, even at odds with each other. As a result, over the last decade, restaurant owners have grown increasingly at risk of being sued in class action lawsuits for violations of minimum wage laws with respect to tip pooling, service charges and overtime."

According to the study, lawsuits have been fueled primarily by five factors:

- A lack of consistency in the application of the Fair Labor Standards Act.
- Outsiders garnering understanding of hospitality industry practices.
- Increased litigation due to the Class Action Fairness Act.
- A "general increase" in class action lawsuits in the industry.
- Increased interest from civil rights groups, particularly as it relates to immigrant labor.

For companies with locations in multiple states, it is even more challenging because requirements vary from state to state. The authors use the example of allowing an employer to use a tip credit against the minimum wage, as is allowed by federal law. While this is an acceptable practice in most states, eight states, along with Guam and Puerto Rico, forbid this practice. And states that will allow the practice have widely varied regulations governing the behavior. In addition, state regulations vary widely regarding payday requirements, meal and rest period rules and premium pay.

State regulations also differ vastly on their definition of a "tip pool," including whether it is considered voluntary. Service charges, and whether they are considered tips, are another point of contention in the courts.

"Treated differently under [Fair Labor Standards Act] and various state laws, service charges have seen an explosion of litigation in the last several years in jurisdictions including Massachusetts, New York and Hawaii," the authors wrote.

While the advice of legal counsel should always be sought when determining whether your hospitality company's practices are in line with federal and state wage and hour laws, to find out what your state's regulations are regarding tip pooling, payday requirements, meal and rest periods and more, visit *www.hotelschool.cornell.edu/research/chr/pubs/roundtableproceedings/roundtable-15132.html#* and download a complete copy of the report. ■

Federal wage and hour provisions

Cornell University's Center for Hospitality Research Report, *Restaurants at the Crossroads*, details the wage and hour laws in each state and also includes information on federal wage and hour provisions. Some of these federal provisions require that:

- Employers of tipped employees pay a direct wage of at least $2.13 per hour if they claim a tip credit. The employee must also regularly receive more than $30 each month in tips to qualify.
- Overtime rates of 1½ the worker's regular hourly rate be paid for any hours worked in excess of 40 in a workweek.
- Employers who use tip pooling ensure that the employees "mutually agreed among themselves" to participate in the pool.
- Employers refrain from considering service charges as tips in determining whether an employee must be paid minimum wage unless the service charges are distributed in their entirety to the employees.

Source: *Cornell University's Center for Hospitality Research.* ■