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NYC Passes Displaced Hotel Service Workers and Hotel Service Disruption Notification Act

By Glenn S. Grindlinger and Carolyn D. Richmond

New York City Council passed legislation on September 23, 2020, that would significantly affect New York City hotels and possibly restaurants and other food outlets and retail stores within a hotel property. The legislation would require hotels to retain employees for at least 90 days following a sale of the hotel or other change in control of its ownership or a change in control of a discrete part of the hotel, such as the restaurant. Further, the legislation would require hotels to notify guests of service disruptions that could impact their stays and prohibits hotels from assessing cancellation fees as a result of such service disruptions. The law will go into effect 120 days after it is signed into law by the Mayor.

Displaced Hotel Service Workers

The legislation is substantially similar to the Displaced Building Service Workers Protection Act. Under this new legislation, when there is a change in control of the hotel or “a discrete portion of the hotel,” the hotel must comply with certain notification requirements and the hotel’s successor (or the successor to a discrete portion of the hotel, such as the food and beverage space) must offer employment to the hotel’s current workforce.

The legislation defines a “change in control” as the sale, assignment, transfer, contribution or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of a hotel. The change in control occurs on the date of execution of the document effecting such change. Therefore, a change in control can occur when a hotel is sold (or otherwise transferred) in its entirety to another entity or through merger, consolidation or reorganization. Further, a change in control can occur when only a discrete portion of the hotel

transfers ownership or operation. For example, if a third party vendor runs the hotel’s restaurant and the hotel decides to change the vendor, then this kind of change would likely trigger the change in control requirements under this new legislation even though the hotel itself remains under the same ownership.

Within 15 days of a change in control, the hotel-employer must provide the successor-employer with a full and accurate list of hotel service employees that includes each such employee’s:

- Name;
- Address;
- Date of hire; and
- Employment classification (job title).

A “hotel service employee” is defined as “any person employed [] at an affected hotel during the 365-day period immediately preceding the change in control” or any person who was formally employed at the hotel who retains recall rights under an applicable collective bargaining agreement or under a comparable arrangement. Managerial, supervisory and “confidential employees” (*e.g.*, individuals employed in human resources) are excluded from the definition.

In addition to providing the aforementioned employee list to the successor-employer, the hotel-employer must post the list (where other employment law postings are posted) in a notice to hotel service employees that informs them of their rights under the law and provide a copy to any applicable collective bargaining representative.

During the “hotel service retention period,” which commences upon a change in control and ends on the 90th day after a change in control or the 90th day after the hotel opens (or re-opens) to the public following a change in control, the successor-employer must offer each hotel service employee, in writing, employment for at least 90 days under the terms and conditions set by the successor employer. except that the wage rate must be greater than or equal to the wage rate the employee received immediately preceding the change in control. Should a hotel service employee accept the offer, the individual cannot be terminated except for “just cause” during the hotel service retention period. If the successor-employer determines that fewer employees are needed than are currently employed, the successor shall offer employment to those hotel service employees by order of seniority within job classification.

At the end of the “hotel retention period,” the successor-employer must perform a written performance evaluation for each hotel service employee, which must be maintained by the successor-employer for at least three years. If the employee’s performance is satisfactory, the successor-employer must continue the employee’s job under any lawful terms and conditions of employment set by the successor-employer.

Aggrieved individuals who believe this legislation has been violated can file a claim in court and obtain back pay, liquidated damages equal to the back pay, the monetary equivalent of the cost of benefits the successor-employer would have incurred for the employee under any applicable employee benefit plan, attorneys’ fees, interest, and court costs. Aggrieved individuals can also obtain injunctive relief such as reinstatement.

The legislation does not apply if the successor-employer assumes any applicable collective bargaining agreement, the successor-employer enters into a new collective bargaining agreement prior to the change in control, or the successor-employer agrees in writing to comply with the terms of any applicable collective bargaining agreement even if such agreement is not formally assumed by the successor-employer.

Finally, the law requires the hotel to provide an employee’s weekly wage records to any current or former employee upon request.

Hotel Service Disruptions

The legislation also imposes requirements on hotels that suffer “service disruptions” that affect their guests. A “service disruption” is a condition at the hotel that “substantially affects or is likely to substantially affect any guest’s use of a room or utilization of a hotel service,” including:

- Construction work at the hotel that creates excessive noise that is likely to disturb a guest unless the construction is to correct an emergency condition;
- Infestation of bed bugs, lice, other insects, rodents or other vermin capable of spreading or carrying disease, if such infestation is not fully treated within 24 hours of the hotel becoming aware of the issue;
- The unavailability for a period of greater than 48 hours of any advertised hotel amenity, such as a pool, spa, shuttle service, internet access or food and beverage service;
- The unavailability for a period of greater than 48 hours of any advertised room appliances or technology such as in-room refrigerators, internet or Wi-Fi services;
- The unavailability of any advertised or legally required feature, such as an elevator, wheelchair lift, ramp or accessible bathroom in such room or in the hotel’s common areas;
- The unavailability for a period of greater than 24 hours of any utility, such as gas, water or electricity when the unavailability effects the location of the hotel; or
- Any strike, lockout or picketing activity, or other demonstration or event for a calendar day or more at or immediately adjacent to the hotel.

Within 24 hours of any “service disruption,” a hotel must provide notice to each “third-party vendor” and each guest who has entered into a reservation, booking or agreement with the hotel or a third-party

vendor for the use or occupancy of a room where such service disruption could reasonably impact such room, or the guest's stay or use of a hotel service. The notification must also be provided by the hotel before accepting or entering into a new reservation, booking or agreement. Current guests must also be notified of any service distributions that could impact their stay at the hotel within 24 hours. For purposes of this law, a "third-party vendor" is a vendor with which the hotel has an arrangement to book reservations to stay at the hotel or any other entity that has reserved or entered into any agreement or booking for use or occupancy of one or more rooms at the hotel.

Should there be a service distribution, the required notification must include:

- Information about the nature of the service disruption; and
- The extent to which the service disruption will effect reservations, bookings or agreements to use or occupy a hotel room or service including apprising individuals of their right to cancel or terminate their reservation, booking or agreement for the use or occupancy of such room or service without the imposition of any fee, penalty or charge.

If the hotel provides the notification in a communication containing other information, the notification required under this legislation must be in a "significantly larger font" and different color than the remainder of the communication.

As set forth above, under the legislation, New York City hotels cannot impose any fee, penalty or charge due to a cancellation resulting from a service disruption unless the hotel provided notice of the service disruption before accepting the reservation or booking or entering into an agreement for occupancy of a hotel room or space.

If a hotel violates the Service Disruption Notification provisions, the city can assess fines and penalties of \$500 for a first violation, increasing up to \$5,000 for subsequent violations if a hotel has four or more violations in a two-year period.

Looking Ahead

Assuming this legislation is signed into law by the Mayor, which is widely expected, it is essential that all hotels and those entities that operate discrete portions of a hotel understand their obligations to hotel service employees as well as guests, future guests and third-party vendors. In particular, hotels that intend on selling their properties or changing operators who control a discrete portion of their property need to be extra vigilant in complying with these new requirements. Prior to any sale, transfer or any other change of the employing entity, the successor employer should know its obligations under the legislation before taking over, or risk incurring substantial liability under the legislation's remedies. Further, hotels need to understand the notice provisions required if they suffer service disruptions and that they will no longer be able to assess or retain cancellation fees as a result of such service disruptions. Accordingly, it is essential that hotels familiarize themselves with these new legal requirements.

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