Special Human Resources Issues for Food & Beverage Operations

Areas of Concern and Strategies for Limiting Liability

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As a partner in Blackwell Sanders' Labor & Employment and Hospitality departments, Brad's practice focuses on the areas of labor and employment law, OSHA compliance, and environmental issues. He regularly counsels hotel owners on their labor and employment matters, including multiple properties in four states during union organizing drives. In his litigation of cases in the labor and employment law arena, Brad has obtained numerous defense judgments for national companies. In addition, Brad is listed in the 2003-2007 editions of the *Best Lawyers in America* and was named a "Super Lawyer" by *Missouri & Kansas Super Lawyers 2005* magazine.

Brad is a member of the Academy of Hospitality Industry Attorneys. He represents the Adam's Mark Hotels, as well as other employers in the hospitality industry in their employment related litigation and human resources counseling. Brad is a frequent speaker on various labor and employment law related matters. He has defended over 150 charges and civil actions filed against hotel owners and operators.

After obtaining his B.A., *cum laude,* from the Furman University, Brad obtained his Juris Doctorate from St. Louis University where he was the Editor-in-Chief of the Saint Louis University Law Journal. Brad has been with Blackwell Sanders since 1980.

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As an attorney in Blackwell Sanders' Labor & Employment and Hospitality departments, Megan concentrates her practice on employment litigation and labor matters. Megan has a national and international litigation and counseling practice involving employers in the U.K., Mexico, and more than 20 states, including the District of Columbia. Megan represents clients in all phases of complex employment and commercial disputes involving claims of discrimination, harassment, wrongful termination, breach of contract, and violations of restrictive covenants. She represents private employers in state and federal court, as well as in administrative actions, arbitrations, and other alternative dispute resolution proceedings. She also counsels employers and corporations on a variety of employment-related and business strategy issues.

Megan focuses a large portion of her Labor & Employment practice on the defense of employers in the food and beverage industries. She represents Applebee's International, Inc., the Miracle Restaurant Group, and Choice Hotels, International, as well as other employers in the hospitality industry. Megan is also a frequent speaker on various human resources and employment litigation matters.

After obtaining her B.A., with honors, from the University of Missouri, Megan obtained her Juris Doctorate from the Boston College School of Law, focusing her studies in the area of labor and employment law. Megan is presently pursing her Masters Certificate in Human Resources Studies from the Cornell University School of Labor and Industrial Relations and is certified as a Senior Professional in Human Resource by the Society for Human Resources Management.

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I. SCOPE OF ARTICLE

Employers in the hospitality industry experience a host of human resource and employee management problems that require focused employer attention and skills, namely in the areas of addressing and limiting liability related to employee complaints, specialized wage and hour issues, and a host of other employee relations concerns. This presentation shall provide you with summary of some of the major human resource concerns typical for food and beverage related industries and tips and techniques employers may use to handle those human resource problems.

II. AREAS OF CONCERN AND STRATEGIES FOR MANAGING THE SAME

A. One of the Biggest Threats: Harassment Complaints in a Food & Beverage Environment.

The antidiscrimination laws, such as Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and state and local statutes and ordinances bar discrimination in the "terms, conditions, or privileges of employment" but do not explicitly address harassment. The courts and the Equal Employment Opportunity Commission (the "EEOC"), however, interpret these definitions to bar not only discrimination as it is traditionally understood, but also harassment (a form of discrimination) to the extent it rises to the level of creating a hostile environment.

Hostile work environment harassment, includes speech or conduct that is "severe or pervasive" enough to create a "hostile or abusive work environment based on race, religion, sex, national origin, age, disability, veteran status, or, in some jurisdictions, sexual orientation, political affiliation, citizenship status, marital status, or personal appearance, for the plaintiff and for a reasonable person. Many hostile environment harassment claims involve allegations of offensive speech, and/or physical touching, vandalism or discriminatory job assignments. Given the close working environment of food and beverage operations, those employers tend to be particularly susceptible to such claims.

Because hostile work environment claims are the product of a series of events or actions, employers may not have a clear idea of the best approach to preventing a claim of and limiting exposure to such claims. Recent developments in hostile work environment case law indicate employers greatly decrease their risk of liability by taking certain actions both before and after an alleged incident of harassment occurs. The following provides suggested measures for employers to take to avoid or limit liability based on hostile work environment claims and summarizes recent hostile work environment cases highlighting such measures.

1. Damages in Harassment Cases Continue to Be Substantial.

- *Baker v. John Morrell & Co.*, 2004 U.S. App. LEXIS 18627 (8th Cir. Sept. 3, 2004). This case involved sexual harassment, hostile work environment and retaliation. The Court of Appeals affirmed a jury verdict for the plaintiff, which included nearly $840,000 in compensatory damages and $650,000 in punitive damages.

- *Rowe v. Hussman Corp.*, 2004 U.S. App. LEXIS 18139 (8th Cir. Aug. 26, 2004). This case involved sexual harassment. The Court of Appeals affirmed a jury verdict for the plaintiff, which included $500,000 in compensatory damages and $1,000,000 in punitive damages.

2. A Proactive Key To Limiting Liability.

In *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998) and *Farragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998), the Supreme Court held that an employer is liable for actionable hostile environment sexual harassment by a supervisor with immediate (or higher) authority over the employee. If no tangible employment action has been taken (such as demotion or undesirable reassignment) the defending employer may raise an affirmative defense to liability. To successfully raise the defense, the employer must establish: "(a) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."

While proof that an employer had an anti-harassment or anti-discrimination policy with a complaint procedure is not necessary in every instance as a matter of law, the fact as to whether such a policy existed at the time of the alleged harassment will be addressed in any case when litigating the defense. An employer who is able to assert that such a policy and complaint procedure existed at the time will have a significantly lower risk of exposure than an employer without such a policy in place.

When assessing employer liability with respect to a hostile work environment claim, the courts also considers the remedial actions, if any, the employer took in response to receiving notice of alleged acts of harassment. As demonstrated in the cases cited below, courts consider evidence of remedial actions in instances where the alleged harassment was at the hands of either a supervisor or non-supervisory employee. In non-supervisory cases, the employer is liable only if it was negligent, that is, only if it knew or should have known of the harassment and failed to take reasonable corrective action. *See McKenzie v. IDOT*, 92 F.3d 473, 480 (7th Cir. 1996); *see also Perry v. Harris Chernin, Inc.*, 126 F.3d 1010, 1013-4 (7th Cir. 1998).

a. Prevention.

In light of the United States Supreme Court's recent decisions regarding employer liability for a hostile work environment, it is imperative that employers take affirmative steps to prevent and remedy harassment in the workplace. Of course, such steps make good business sense and are simply the right thing to do. **The following are two steps that every employer should take to *prevent* harassment and discrimination in the workplace.**

(1) Have a written policy prohibiting all types of harassment.

- The policy should be in written or computerized form.

- The policy should be distributed to every employee upon hire.

- Utilize and maintain documented acknowledgement from every employee that he/she has received the policy and has read it and understands it.

- Do not limit the policy to sexual harassment; include all forms of discriminatory conduct.

- The policy should provide a scheme or direction for reporting incidents of harassment/discrimination.

- Do not limit the contact person for reporting incidents of harassment to the alleged victim's direct manager or management chain; consider utilizing a designated individual/position as a contact person.

- The policy should include a notice that confidentiality will be maintained.

- The policy should include a statement that any employee who reports incidents of harassment or discrimination, or who participates in a related investigation, will not experience retaliation as a result.

(2) Provide mandatory anti-harassment training to your employees, particularly management level employees.

- The training can be done internally or an employer can utilize outside services.

- Document every individual's participation in the training.

- The training should include all forms of harassment/discrimination.

- The training should be substantial in temporal length, minimum half-day.

- Periodic re-training or updates are advisable.

b. Remedy.

Taking these preventative steps does not mean that harassment and discrimination in the workplace will be eliminated. Once an employer becomes aware of purported harassment or discrimination, an employer must affirmatively act. **The following are steps employers should take as part of their duty to *investigate and remedy* the situation.** Not only are the following steps necessary to avoid liability, they also indirectly work to prevent harassment and discrimination as well.

(1) The investigation.

- Remember, an employer has an obligation to investigate once it becomes aware of potential harassment/discrimination; a formal "complaint" is not necessary to trigger the employer's obligation.

- Do not honor a victim's request that the employer not do anything about it.

- The investigation must occur immediately and conclude (as far as an initial determination) within a reasonable time; regardless of the justification, any delay in conducting or completing the investigation will appear far worse and unjustified in subsequent litigation.

- An unbiased person(s) should conduct or lead the investigation.

- Document every allegation of harassment or discrimination at the outset; have the victim prepare a statement or sign a statement prepared by the employer.

- Investigate every allegation, no matter how trivial some may appear.

- Every potential witness should be interviewed or contacted individually; still, be aware of the alleged harasser's rights and perspective.

- Stress confidentiality and non-retaliation to all involved; retaliation claims are the most difficult to defend.

- Document every step of the investigation and the facts uncovered.

- Maintain records of the investigation, but not in personnel files, particularly the victim's file; the exception is disciplinary action taken.

- Reach a conclusion.

(2) Remedial Action.

- Relay your findings and the steps taken to the victim; the victim need not know the precise remedial steps, but provide assurance and notice that steps have been taken.

- An employer need not conclude that harassment or discrimination occurred.

- A finding by the employer that prohibited conduct occurred is not an admission that unlawful harassment or discrimination under federal or state law has occurred.

- Do not punish the victim in any manner; for example, while separating the victim and the harasser might be an acceptable step (as a part of an acceptable resolution), transferring

the victim rather than the harasser is typically unacceptable; the exception is where the victim specifically requests it.

- The punishment should fit the crime.

- Encourage the victim to report any future prohibited conduct, regardless of the conclusion reached in the investigation.

- Consider non-disciplinary steps, including re-training or additional anti-harassment training, and issuance of a letter reiterating the employer's anti-harassment policy.

c. Offers of Judgment.

An employer-defendant may also take a proactive approach to litigation—particularly where plaintiff's counsel has a case with minimal damages, but intends to "work" the case to generate high attorneys' fees and expenses—through the use of an Offer of Judgment.

Rule 68 of the Federal Rules of Civil Procedure provides, in relevant part:

Offer of Judgment. *At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the cost incurred after the making of the offer.*

When determining whether to offer judgment, an employer-defendant should consider:

- An offer of judgment is not filed with the Court at the time it is extended; it would only become public record if accepted.

- If accepted, "judgment" will be entered on behalf of the plaintiff (although an offer of judgment may specifically state that the defendant does not admit liability).

- Ambiguity in an offer of judgment will be construed against the drafter. Thus, defense counsel must meticulously address such issues as attorneys' fees, costs, equitable relief, etc.

- Although many states (including Kansas and Missouri) allow offers of judgment, the Federal Rules of Civil Procedure only expressly apply in federal court and thus, when in state court, counsel must insure proper compliance with state rules.

- At best, successful use of an offer of judgment may allow a defendant to recover certain costs and/or to cut off a plaintiff's right to attorneys' fees incurred after the offer. A successful offer of judgment will not allow an employer-defendant to recover its attorneys' fees. *Marek v. Chesney,* 473 U.S. 1, 105 S. Ct. 3012 (1985)

d. Illustrative Cases.

- *McCurdy v. Arkansas State Police*, 375 F.3d 762 (8th Cir. 2004). This case involved an isolated instance of sexual harassment committed by a supervisory employee against the plaintiff, a non-supervisory employee. The plaintiff immediately reported the harassment, and the employer properly responded, discharging the harasser. The Court affirmed summary judgment in favor of the employer, finding that the employer took prompt and effective remedial action. The Court essentially modified the affirmative defense and held that even though the plaintiff complained immediately, and the harasser was a supervisory employee, the employer was entitled to utilize an affirmative defense and was not strictly liable for the harassment.

- *Lester v. Natsios*, 290 F.Supp.2d 11 (D. D.C. 2003). A retired employee sued her former employer, asserting numerous claims, including hostile work environment, of race, sex, age, and disability discrimination under Title VII, the ADEA, and the Rehabilitation Act. The court granted the employer's motion for summary judgment. The employee based her hostile work environment claim on three separate and unrelated incidents: (1) acts of "vandalism" that involved cutting and slashing of office plants and coffee cans; (2) a highly offensive anonymous letter with references to the Ku Klux Klan that was left on the desks of several African-American employees; and, (3) an incident involving a supervisor who dressed up as a plant for Halloween and then snipped scissors at employees in a conference room. The court pointed out that the employee was not a victim of the vandalism and failed to report the Halloween costume incident. With respect to the letter, the court recognized its severely offensive nature, but did not hold the employer liable because the employer "indisputably carefully investigated, albeit without success" the incident.

- *Newsom v. Anheuser-Busch Companies, Inc*, 286 F.Supp.2d 1063 (E.D. Mo. 2003). A former employee sued a recruiter and her employer, alleging hostile work environment and retaliation in violation of Title VII. The court granted the recruiter's motion for summary judgment but denied the employer's motion, determining that a genuine issue of material fact existed as to whether the employer acted sufficiently promptly to correct the situation when female employees first complained about constant offensive behavior and harassment by certain male employees in January of 2001, and the company did not take action, despite additional complaints, until March of 2001.

- *Fairbrother v. Conn. Dept. of Mental Health and Addiction Services*, 306 F. Supp. 2d 154 (D. Conn. 2003). An employee sued the State of Connecticut, Department of Mental Health and Addiction Services, alleging a sexually hostile work environment and retaliation in violation of Title VII. Following the entry of a jury verdict in favor of the employee, the employer moved for judgment as a matter of law or a new trial. The judge

granted the motion, finding that the employee's statements were not corroborated by her colleagues, and that she had failed to report the alleged harassment pursuant to the Department's sexual harassment policy, which included the manner by which to process a claim.

- *Snyder v. Guardian Automotive Products, Inc.*, 288 F.Supp.2d 868 (N.D. Ohio 2003). A former employee sued her employer in Ohio state court, alleging she was subjected to gender-based hostile work environment in violation of Ohio's antidiscrimination statute, wrongful discharge, and negligent supervision and hiring. The employee additionally brought a claim of loss of parental consortium on behalf of her children. The employee based her hostile work environment claim in part on an allegation that her supervisor made inappropriate comments regarding her clothing and told "dumb blonde jokes" in her presence. The court granted the employer's motion for summary judgment, finding that the employee had failed to establish a prima facie case of hostile work environment. Specifically, the court found that the employee had complained about her supervisor to another supervisor, and, as a result, the alleged harassing supervisor was transferred to another department and eventually terminated. The court stated "by transferring [him], [employer] acted entirely properly and met its obligation under the law.

- *Shramban v. Aetna*, 262 F.Supp.2d 531 (E.D. Penn. 2003). Plaintiff, a white, Jewish female from Moldavia, sued her employer and supervisor, alleging discrimination on the basis of race, sex, religion, and national origin. In addition, she advanced claims alleging retaliation and hostile work environment, and asserted a claim of aiding and abetting discrimination under state law. The court granted summary judgment in favor of the employer, based largely on the fact that the employer's human resources department investigated and responded to each of employee's complaints, including allegations (1) she was forced to work overtime, and (2) her supervisor made humiliating, derogatory comments regarding her ethnicity and religion. The court found that the employer promptly responded to her complaints and the employee's transfer to a different office was consistent with company policy and an appropriate resolution.

- *Curtis v. Citibank, N.A.*, 2003 WL 21511832 (2nd Cir. 2003). Several employees brought Title VII race and sex discrimination claims against their former employer, alleging hostile work environment, disparate treatment, and retaliation. The employees based their hostile work environment claim on an incident involving an email containing comments about "eubonics." The court affirmed the district court's grant of summary judgment in favor of the employer. With respect to the hostile work environment claim, the court refused to impute the email to the employer and therefore did not hold the employer liable because the employer promptly investigated the employees' complaints, and, within three weeks of the complaints, disciplined the responsible employees with termination or final warning, installed a banner on its email system warning of such abuses, and notified all employees of the incident, the disciplinary measures taken, and the company policy against offensive conduct.

- *Wilson v. Dana Corporation*, 210 F.Supp.2d 867 (W.D. Ky.2002). Six employees brought Title VII claims against their employer, alleging hostile work environment and

racial discrimination, as well as one claim of retaliation. The employer's motion for summary judgment was granted with respect to the hostile work environment claims of all six employees. The court did not hold the employer liable, in part because the employer promptly removed offensive poster and graffiti and warned those allegedly responsible that offensive conduct would not be tolerated, indicating that the employer "did not ignore complaints, but generally responded in some fashion."

- *Reedy v. Quebecor Printing Eagle, Inc.*, 333 F.3d 906 (8th Cir. 2003). An African-American former employee brought a § 1981 action against his employer, alleging he was subject to a hostile work environment and constructively discharged because of his race. The district court granted summary judgment in favor of the employer. The Court of Appeals reversed with respect to the hostile work environment claim, finding a jury could reasonably conclude that the employer failed in its duty to respond appropriately to the alleged harassment. Specifically, the court indicated that the employer's response of painting over offensive bathroom graffiti after the employee complained the first time and later responding "I got if off once, what do you want me to do, tear down the wall?" when the employee complained the second time was "probably worse than no response at all." Note the *Reedy* case is provided as an example of what not to do and of what the courts consider an "appropriate response."

- *Marek v. Chesney*, 473 U.S. 1, 105 S. Ct. 3012 (1985). The defendant submitted an offer of judgment of $100,000, "including costs now accrued and attorney's fees." The offer was not accepted and at trial the plaintiff was awarded $60,000 in damages. Plaintiff moved for an additional award of $170,000 in attorneys fees, which defendant opposed based on the offer of judgment. The parties agreed that the attorneys' fees and costs incurred prior to the offer were $32,000. The court determined that the $100,000 offer exceeded the damages plus pre-offer costs and fees and denied plaintiff's motion for additional attorneys' fees. Thus, the plaintiff recovered a total of $92,000 rather than $230,000.

B. Additional Areas of Concern for Food & Beverage Operators.

Changing work environments, especially with new technologies and the high turnover rate often seen in the hospitality industry, require new human resources techniques. Not only are employees becoming more savvy about their rights and legal remedies but, particularly in food and beverage environments, employers are utilizing smaller human resources staffs that multi-task. Moreover, new employee behaviors, such as the use of camera phones and employee blogging, require employers to adjust their policies and practice appropriately. We propose herein a number of techniques and actions you can engage in to improve your HR systems and structures.

(1) Addition of Policy Reminders to Employee Performance Reviews

(2) Human Resource Audits

(3) Multi-State Employers Should Equip Managers and HR Personnel with State-by-State Information.

(4) Periodic Training of HR Personnel on New Techniques for Conducting Investigations.

(5) Create a Standardized Process for Employee Discipline and Terminations

(6) Train Supervisors on Drafting Performance Appraisals and Other Personnel Documents.

(7) Implement an Exit Interview Process and Utilize the Data

(8) Be Especially Aware of the 10 Most Problematic HR Issues in the Food & Beverage Industries

(a) Untrained or “loose-cannon” managers

(b) Workplace harassment

(c) Retaliation claims by employees and managing the complaining employee

(d) Management of employee absences

(e) Documentation of employee relations issues and use of progressive discipline policies

(f) FLSA and state wage and hour issues

i. Tipping arrangements

ii. Credit card tips

(g) The potentially disabled employee and requests for accommodations

(h) Improper email use by employees

(i) Age discrimination claims

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One of the Biggest Threats: Harassment Complaints in a Food & Beverage Environment

Hostile Environment

- Speech or conduct
- Severe or pervasive
- Based on race, religion, sex, national origin, age, disability, veteran status, or other protected status

Big Verdicts

- Baker v. John Morrell & Co.
  (8th Cir. 2004): $840,000 in compensatories; $650,000 in punitives
- Rowe v. Hussman Corp.
  (8th Cir. 2004): $500,000 in compensatories; $1 million in punitives

Strategies

- Proactive – Pre Charge
- Litigation

Strategies

- Proactive – Pre Charge
  - Policies
  - Training
  - Investigation
  - Remedial Action
- Litigation
  - Offer of Judgment

Policies

- Distributed to every employee
- Acknowledgment of receipt and understanding
- Prohibit all forms of discriminatory conduct
- Clear complaint procedure – with options
- No retaliation

Training

- Train every employee (some form in new-hire orientation)
- Managers and employees may/should receive separate training
- Document participation
- Include all forms of discrimination
- Include complaint procedure

Training

- Include retaliation prohibition
- Training materials should be considered trial exhibits
- Substantial length/content
- Periodic re-training or updates

Investigation

- Knowledge (not complaint) is the trigger
- Cannot always honor request for confidentiality or to “do nothing”
- Timely
- Neutral investigator

Investigation

- Interview complainant (and ask for others)
- Interview accused harasser (and ask for others)
- Interview witnesses
- Reach a conclusion

Remedial Action

- Decide on remedial action
- Notify complainant
- Assure no retaliation
- Encourage follow-up

Offer of Judgment

- Rule 68
- Nothing filed with court unless accepted
- Can cut off attorney's fees – recover costs
- If accepted, will be "judgment"

Additional Areas of Concern for Food & Beverage Operators and Innovative Strategies for Limiting Liability

Introduction

- Changing work environments require new human resources techniques
- Employees are more savvy
- F&B employers are utilizing smaller HR staffs, putting more responsibility on supervisors

Introduction

- New employee behaviors require employers to adjust their policies and practices appropriately
- Techniques and actions to improve your HR systems and structures

Addition of Policy Reminders to Employee Performance Reviews

- Remind employees of their obligations under the employer's equal employment, anti-harassment, and anti-discrimination policies during performance reviews
- Require a separate receipt or a signed declaration at the bottom of the review and attach a copy of the policy to the employee's copy of the review

Addition of Policy Reminders to Employee Performance Reviews

- Have the employee attest that they have not witnessed any behavior in violation of the policy, or if they have, that they have reported it before or during the performance review
- May also have employees reassert their knowledge of their confidentiality or other obligations

Human Resource Audits

- Measure where employer presently stands and what it has to accomplish to improve human resources function
- Systematically reviewing all aspects of human resources
- Benefits an employer by:
  - Ensuring effective utilization of an organization's human resources
  - Reviewing compliance with laws and administrative regulations
  - Instilling confidence in management and the human resources function that it is well managed and prepared
  - Identifying and correcting potential sources of liability

Human Resource Audits

- Covers subjects such as legal compliance, compensation, recruiting, orientation, training, performance reviews, terminations, records retention, and employment polices and procedures.
- Monthly progress report

Equipping Personnel With Multi-State Information

- Wage and hour information, such as break times, overtime rules, pay out of accrued vacation pay, and time to issue last paychecks
- Tipping agreement statutes and case law
- Specialized protected classes established by state human rights acts

Equipping Personnel With Multi-State Information

- State training and workplace testing laws
- Use tables that sort the information by state and category
- Can be provided as part of HR audit

Periodic Training on How To Conduct An Investigation

- Employers learn new lessons during each internal investigation
- HR and management personnel should be kept apprised of new developments in the law that affect investigation techniques

Periodic Training on How To Conduct An Investigation

- Create a primer for the steps personnel should conduct investigations and amend that primer as new lessons are learned
- Regularly train personnel on these practices to ensure compliance

Standardized Processes for Employee Discipline and Termination

- Implement a multi-phase process where specific criteria must be met for discipline or termination to proceed and a multi-tiered approval process is followed
- Draft a standard analysis that is used each time a certain level of discipline is reached or an employee is terminated

Standardized Processes for Employee Discipline and Termination

- Examine the fairness of the termination during that process, as well as the other questions that will likely be asked if the matter should turn into litigation
- Ensure that managers and supervisors are trained on this process and follow it before making discipline or termination decisions

Training Personnel on Document Drafting

- When employee relations issues turn into litigation, cases often turn on documents drafted by supervisors
- Train supervisors to think through employee relations issues and carefully draft appropriate documentation, including internal correspondence and emails

Training Personnel on Document Drafting

- Implement a three-step process: supervisor drafts the document, HR reviews and sanitizes it, and then it is provided to the employee or placed in the file
- Add in a fourth level of review with legal counsel when needed

Implement An Exit Interview Process and Utilize the Data

- Exit interviews offer a fleeting opportunity to find out information that otherwise might be more difficult or impossible to obtain
- May be a written or oral interview, but oral interviews provide the opportunity for follow up questions
- Carefully craft open ended questions that will provide you with valuable data
- Make use of the information gathered

Be Especially Aware of the 10 Most Problematic HR Issues for F&B Operators

- Untrained or “loose-cannon” managers
- Workplace harassment
- Retaliation claims by employees and managing the complaining employee
- Management of employee absences
- Documentation of employee relations issues and use of progressive discipline policies

Be Especially Aware of the 10 Most Problematic HR Issues for F&B Operators

- FLSA and state wage and hour issues
  - Tipping arrangements and credit card tips
- The potentially disabled employee
- Improper email use by employees
- Age discrimination claims
- A focus on operations versus HR functions

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