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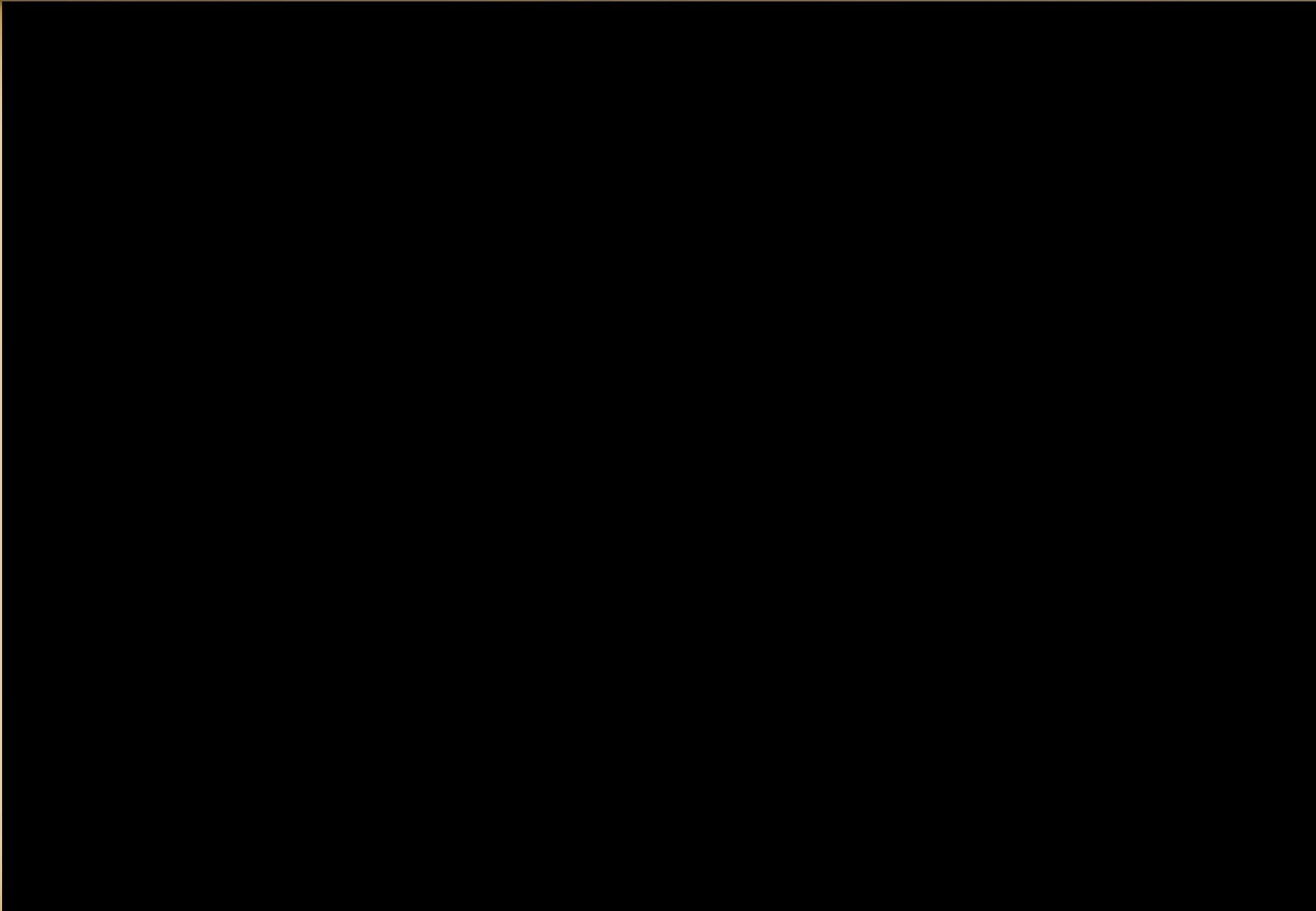
*The Art
of Hospitality*





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Employment Practices Liability Insurance (EPLI)

**Sexual Harassment
Discrimination
Wrongful Termination**



How Risky is the Workplace?

- EPL cases represent about 30% of all civil actions
- 75% of all suits against employers are EPL
- Probability of the plaintiff winning in FY 2010 was 67% (State Actions 63%)
- Median settlement in 2011 was \$90,000 up by 20%
- Statistics show that an employer is more likely to face an employment related claim than a general liability or property claim.



Protected Class

Groups protected from employment discrimination, by law.

These groups basis are: sex; any group which shares a common race, religion, color, or national origin; people with physical or mental handicaps ; and people over 40.

Every U.S. Citizen is a member of some protected class, and is entitled to the benefits of EEO law.



#1 Hotel groups to pay \$365,000 to settle EEOC harassment lawsuit

A Hotel general manager was accused of having “persistently harassed and denigrated women, including those who were minorities and had strong religious beliefs.”

Female employees were subjected to the constant use of racial slurs and derogatory sex-based and racial comments.

Among other incidents cited, the general manager threw a stapler at one employee, and told another she was nothing but a welfare mother and should abort her pregnancy.



#1 Hotel groups to pay \$365,000 to settle EEOC harassment lawsuit

The companies that owned the hotels, where the manager and the 11 victims were employed, agreed to pay \$365,000 to settle the harassment lawsuit.

The terms of the settlement also include an agreement that the employer immediately fire the general manager.



Laws Allowing Individual Liability (Partial List Only)

1. Civil Rights Act of 1866 – Original Racial Discrimination Law
2. Americans with Disabilities Act (ADA), Title II – Retaliation only actions
3. Public and Private Sector Whistleblower
4. Fair Labor Standards Act (FLSA) - Public Employers Only
5. Family Medical Leave Act (FMLA) - Public Employers Only
6. ERISA & HIPAA
7. Equal Pay Act (EPA)
8. State Laws



#2 EEOC Charges Hotel with Sexual Harassment

In the complaint, three female employees claimed they were subjected to sexual comments, advances, and unwelcome touching, by the hotel's general manager, over a period of more than one year.

When the employees complained to the hotel's corporate office the employer failed to properly investigate or stop the harassment.

The corporate office responded the EEOC notice, but did not notify their carrier. During the investigation, the general manager discharged one of the victims when she refused an unwelcome sexual advance.



#2 EEOC Charges Hotel with Sexual Harassment

Monetary settlement of \$120,000

The carrier declined the claim for late reporting.



#3 Hotel Charged by EEOC in Religious Discrimination Lawsuit

An employee's request to not work during her Sabbath was initially honored, by the employer.

The ownership of the hotel had since decided to bring in a management company to run the hotel.

Following the change in management, the employee's accommodation was refused and the employee was fired.



#3 Hotel Charged by EEOC in Religious Discrimination Lawsuit

The settlement included \$45,000 in monetary relief to the plaintiff.

The company agreed to enforce policies, re-visit training procedures, and provide reports to the EEOC regarding future requests for religious accommodation.

The hotel ownership was left to defend itself because they were not added to the management company's policy.



#4 Lawsuit Filed after a Pregnant Hotel Manager Gives Birth in Hotel Guestroom

A manager at a trendy hotel filed a lawsuit against her employer after she was denied maternity leave and delivered her baby in a hotel guest room.

The hotel offered no assistance, afraid that it would disrupt its Friday night club scene. The manager was left alone, until her husband arrived and delivered the baby while talking with their doctor over the phone.

Upon her return to work, the manager was notified that she was docked for the time that she missed and had her duties stripped away from her.

The former manager alleges she was terminated after being falsely accused of stealing from her office and was told by a supervisor that she didn't fit into the "culture of the hotel". According to the suit, that meant that she did not possess the physical attributes to work at that hotel.



#4 Lawsuit Filed after a Pregnant Hotel Manager Gives Birth in Hotel Guestroom

The manager filed a discrimination lawsuit seeking \$10 million



Evolution of Non-Discrimination Laws

Federal Statutory Laws

1. Civil Rights Act - 1964
2. Equal Pay Act (EPA) - 1963
3. Age Discrimination in Employment Act (ADEA) -1967
4. Americans with Disabilities Act (ADA) - 1990
5. Uniformed Services Employment and Reemployment Rights Act (USERRA)

State Specific Law

1. Defamation-Libel-Slander
2. Contractual Interference
3. Invasion of Privacy
4. Negligent Hiring-Supervision-Retention
5. Emotional Distress
6. Economic Advantage (Statutory or Common Law Claims)



#5 Food & Beverage Disagreement Proves Costly for Employer

Sally & Jim, who both worked in F & B, had a disagreement during their shift. During their disagreement they overlooked seating an African American guest, then ignored him after he was seated. The guest finally left after complaining. Following the incident Sally & Jim were told they would not be scheduled for the same shifts in the future.

Within a few days of the incident Sally presented a Dr.'s note stating she needed time off, due to anxiety. When she returned to work, she resumed her regular schedule.

Jim learned that Sally continued to work her regular schedule. He complained to his supervisor about the reduction of hours and pay caused by the change to his schedule, after the incident with Sally. Despite his complaints, Jim's supervisor took no action and eventually Jim quit his job.

The guest filed a discrimination suit against the hotel & restaurant.



#5 Food & Beverage Disagreement Proves Costly for Employer

Jim's lawsuit alleged Constructive Discharge, Gender-biased Discrimination and Retaliation. The employer agreed to a settlement of \$85,000

The guest's lawsuit was not covered due to a third party discrimination exclusion.



#6 Post-Injury Settlement is No Accident

A maintenance employee at a large hotel slips and has a minor fall, while at work. The employee reports the fall to his supervisor, but refuses medical treatment. A few days later, the employee complains his ankle is swollen and is referred to the hotel's designated clinic, for treatment.

While at the clinic, a specimen is obtained to conduct a "routine drug test". Two weeks after the employee visits the clinic, the employer is contacted and provided with the employee's positive drug screen results.

Hotel management meets with the employee and terminates employment based on the positive drug screen results, without regard for the employee's explanation.



#6 Post-Injury Settlement is No Accident

The maintenance employee claimed the positive test result was related to a prescribed medication for a previously undisclosed medical condition.

The claim for discrimination and wrongful discharge was settled for \$220,000.



#7 “No Match” Letter Termination Results in Settlement

A hotel manager received a “No Match” letter, for an employee and responded by presenting the letter to the her and demanding that she “get legitimate employment documents before she gets fired or deported”.

The manager refused to accept the new documents, telling the employee she could not be scheduled for work, based on the documents provided.

The documents now contain the Employee’s new surname, but management took the position that since the employee did not change her name on her employment records, these documents are not applicable.

The employee, continuously employed for over 6 years, with favorable reviews and no disciplinary history, was terminated for insubordination and failure to follow company policy.



#7 “No Match” Letter Termination Results in Settlement

The employer settled the claim for wrongful termination and discrimination claim at \$155,000



Critical Issues

1. Wrongful termination definition must address actual and constructive
2. Third Party Coverage
3. Be aware of Impactful Exclusions
4. Be sure ALL interested parties are covered (Owners, Managers, EE's, Franchise)
5. Avoid Late Reporting
6. Full prior acts/ Retro date
7. Be aware of the Knowledge Date/Warranty Statement
8. Definition of Injury/Wrongful Act must not address only wrongful actions of Federal and State laws; Common law actions must be addressed
9. Go to www.chubb/business/csi/chubb2141.html or google Chubb EPL Loss Prevention Guidelines Manual.



Hotel Group Pays \$365,000 to Settle a Harassment Lawsuit – Are You Covered?

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