

HOSPITALITYLAWYER.COM PRESENTS:

THE **HOSPITALITY LAW**
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FEBRUARY 10th - 12th, 2014

TOP 10 EMPLOYMENT LAW RISKS IN THE HOSPITALITY INDUSTRY

Dana Kravetz, Michelman & Robinson

PRESENTERS



**Dana Kravetz – Firm Managing Partner,
Michelman Robinson**

- **chairs the Firm's Labor and Employment Law Department & the Strategic Planning Committee**
- **specializes in both employment counseling and litigation with an emphasis in the commercial, regulatory, insurance, and financing industries**
- **advises management on state and federal employment acts (such as EEOC, FEHA, ADA, ADEA, WARN, etc.), hiring, firing and wage and hour compliance in the areas of employment law for management**

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TOP 10 EMPLOYMENT LAW RISKS IN THE HOSPITALITY INDUSTRY

Wage Hour: Class Actions

- **Hospitality Industry Class actions: 4x more than 2000**
- **“Bet the Company”**
- **Exempt Status Decisions Create Scalable Risk**

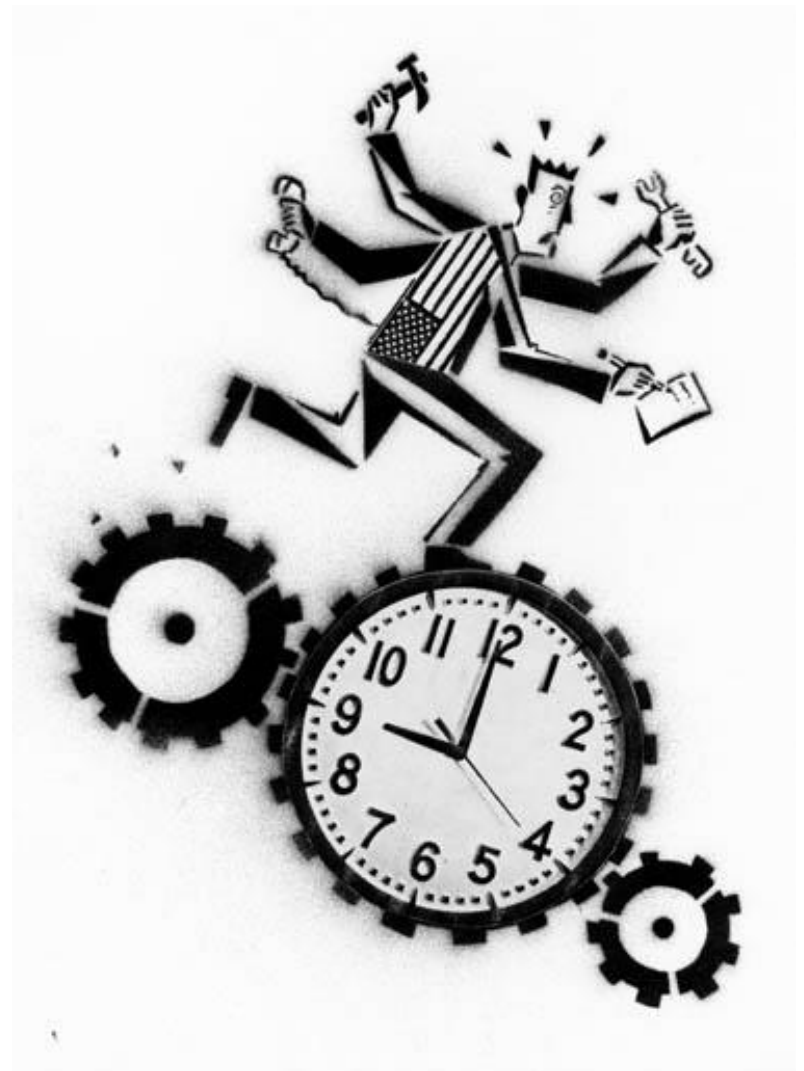
Wage Hour: DOL

- **New DOL Chief: “Fissured Industries” – rely on a variety of employment relationships**
 - Subcontracting, TPM, Franchising, Contractors, etc.
- **DOL actively auditing: 5,100 cases against hotels and motels since 2009, more than 16.1 million in back wages for more than 30,000 workers**
- **DOL Wage Hour Division Acting On its Own**
- **Technology, e.g., ., DOL Smart Phone Application**



Class Actions: Hours Worked

- “On Duty,” “Off Duty,” and “On Call”
- “Off the Clock”
- Changing of time records without consent
- Auto-deductions



Class Actions: Exempt Status

- **Salary and Duties**
- **Glorified Positions, e.g., “Assistant Managers”**
- **“Primary duty”**
- **Relying on administrative exemption as catch-all**
- **Inaccurate (or lack of) job descriptions**



Cyber Liability

- **Cyber Attacks**
- **Cloud Computing Data**
- **Successful attempts inspire the next round of hackers**
- **Class Action Lawsuits Starting**
- **Cyber Insurance Coverage**



Retaliation

- **New Area of Focus for Plaintiff' s Attorneys**
- **Common Blind Spot in Termination**
- **Impact of Internet: opens up information employees can access to engage in protected activity**

Tips

- **Class Actions Increasing**
 - Example: Recent cases involving improper service charges (paying for amounts other than tips without disclosing to customers)
- **Tip Pools**
- **Tip Credits**
- **New DOL regulations vs. Courts**



Classifying Contractors

- **Focus of DOL audits and lawsuits**
- **Affordable Care Act driving many employers to reclassify**
- **Contracts through staffing companies**
- **Can provide fertile ground for Union organizing**

Social Media

- Law Rapidly Evolving
- Policies and Training
- Younger employees unfamiliar with balancing of interests
- NLRB has been very active



Immigration Issues

- **Driven by growth: BLS predicts 16% growth for hospitality industry, 141,000 new jobs by 2020**
- **Approximately 10% of industry estimated to be undocumented**
- **Push by industry for Congress to act**

Immigration

- Handling Questionable Documentation
- Use of E-Verify
- Increased ICE Enforcement/Sanctions

U.S. Citizenship and Immigration Services

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E-Verify

U.S. law requires companies to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. This diverse workforce contributes greatly to the vibrancy and strength of our economy, but that same strength also attracts unauthorized employment.

E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. E-Verify is fast, free and easy to use – and it's the best way employers can ensure a legal workforce.

E-Verify is constantly improving to better serve you. To learn more click here to see [WHAT'S NEW](#).

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This page can be found at: <http://www.dhs.gov/e-verify>

Last updated: 08/15/2013

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- E-Verify Connection Newsletter (317KB PDF)

Multimedia

- Video: Los Derechos de Empleado (Nueva versión corta)
- Video: Employee Rights and Responsibilities (New Short Version)
- Demo: E-Verify Self Check Interactive Preview (837KB PDF)
- Videos: Employee Rights and Responsibilities, Employer Responsibilities and Worker Rights
- Video: How to Enroll in E-Verify
- Video: How to Create a Case

E-Verify Employee Rights

Background Checks



- **Sensitive Positions: guest room entry, spa workers, handling of money**
- **High Turnover in Industry a Factor**
- **Ensure FCRA Compliance**
- **Negligent Hiring Suits**
- **EEOC Guidelines: Blanket Policies/Disparate Impact**
- **Conducting an Individualized Assessment**
- **Adopting a Written Policy**

Increasing Labor Unrest

- **UNITE HERE**
 - Bad Faith Negotiating Tactics
 - NLRB Charges
 - Demonstrations and Protests

- **Card Check vs. Secret Ballot**



Thank You

Dana A. Kravetz, Esq.

818.783.5530

dkravetz@mrlip.com



MICHELMAN & ROBINSON, LLP

ATTORNEYS AT LAW

