

Emerging Issues at the Corporate Level:

Danger Spots Beyond Daily Operations

Presenter



David J. Comeaux

– Shareholder, Ogletree Deakins

- Worked in Hotel Management
- Board Certified, Labor & Employment Law
- Nationwide Labor & Employment Firm with Hospitality Industry Practice Group

Overview

- I. Restrictive Covenants

- II. Owner / Manager Relationship in L&E Matters

- III. Acquisitions / Takeovers – L&E Issues

I. Restrictive Covenants

- Confidentiality / Nondisclosure
- Non-Solicitation of Employees
- Non-Solicitation of Customers
- Non-Compete Agreements

Purpose of Restrictive Agreements

- Protection of Information
 - Strategic – developments, markets
 - Trade Secrets – recipes, concepts, designs, business methods
 - Sales – Group contacts, Association Execs
- Protection of Goodwill – the Brand

Generally –

- Disfavored
- Exception to Anti-Trust Laws
- Strict Adherence to Requirements for Enforceable Agreement
- Every State is Different

Be aware of:

- Consideration to Support Agreement
- Reasonableness Requirements
 - Geography
 - Scope
 - Duration
- Blue Pencil?

Enforcing Agreements

- Atypical, Asymmetric litigation
- Injunction – Driven
- Front-Loaded and Expensive

Costs of Not Enforcing Agreements

- Dilution of Impact on other employees
- Embolden Competitors
- Diminish Protection of the Asset

“Collateral Damage” in Enforcement Litigation

- Involvement of Third Parties/Disruption of Relationships
- Effect of possible defeat in litigation
- Disruptive to Team

Recommendations

Carefully consider pros and cons of using
Agreements

Decide in advance under what circumstances
to pursue

Evaluate each situation afresh

II. Owner/Manager Relationship in L&E Matters

Why does it matter?

- Indemnity may not be effective
- Solvency / Availability of other party
- Public relations / the brand

Who is the Employer?

- Owner – payroll accounts
- Manager – direction and control
- PEO – HR administration

Responsibility

- FLSA / Wage and Hour
- Employment decisions
- Conduct by employees

Joint Employment Tests

- Economic reality
- Direction and Control
- FLSA – Acting directly or indirectly in the interest of employer

Recommendations

- Decide whether you care (you may not)
- Documentation should clearly delineate responsibilities
 - Financial
 - Control / approval

III. Acquisitions/Takeovers

L&E Issues

Rights to Hire / Terminate Employees

Plant Closing Laws

Local Ordinances

Collective Bargaining Agreements

Labor Agreements and Relationships

Collective Bargaining Agreements – in place?

Multi-Employer Group?

Relationship to Unions in Other Managed
Hotels

Pay Practices

Exemptions

Methods of calculating OT (include bonuses)

Tip credit / tip pooling

Independent contractors

Employment Policies

Do existing employment policies work?

New state? – may have laws not previously considered.

New developments in the law?

Documentation

- I-9 files (need new ones?)
- Handbook
- Policies
- Personnel files
- Pay and Time records
- Required employee notifications

Recommendations

- Due Diligence before takeover
- Plan employment aspects of takeover
- Immediate Employment Audit

Follow me...

- www.twitter.com/DavidComeaux

twitter



Employment & Labor law news in the Hospitality Industry

Session Evaluation



Scan or Visit TheHLC.co