

Corporate Counsel Tools *In a Flash*

*Legal tools to aid leaders, executives, and lawyers in the
hospitality industry*

Presenter



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- Commercial litigator with emphasis in transportation and hospitality law, representing international insurance, transportation, and hospitality organizations
- Frequent author and speaker

SCOPE OF PRESENTATION



- Other industries
- Corporate/insurance issues
- Setting aside judgments
- Evidentiary factors

WHERE THERE'S SMOKE: YOU'RE FIRED



THE 'CLEAN OFFICE AIR' SMOKING DEVICE

TAKING THE “HOSPITAL” OUT OF HOSPITALITY

Florida

Georgia

Massachusetts

Missouri

Ohio

Pennsylvania

Tennessee

Texas



WHY TEST?



193 billion US \$ annually in health care expenses and productivity loss

Smoking employees cost \$3,391.00 more/yr in health care and lost productivity

EMPLOYMENT CONCERNS: ADA & HIPAA

Am I disabled?

Medically or legally?



EMPLOYMENT CONCERNS: ADA

Disability Discrimination



Nicotine Testing

EMPLOYMENT CONCERNS: HIPAA



“Somehow your medical records got faxed to a complete stranger. He has no idea what’s wrong with you either.”

EMPLOYMENT CONCERNS: HIPAA



- ★ Health status
- ★ Medical condition
- ★ Claims experience
- ★ Receipt of health care
- ★ Medical history
- ★ Genetic information
- ★ Evidence of insurability
- ★ Disability

EMPLOYMENT CONCERNS: HIPAA

Q. How can a group health plan maintain a premium differential between smokers and nonsmokers and not be considered discriminatory?

A. The plan's nonsmoking program must meet 5 requirements for wellness programs that require satisfaction of a standard related to a health factor.

EFFECT ON HOSPITALITY INDUSTRY



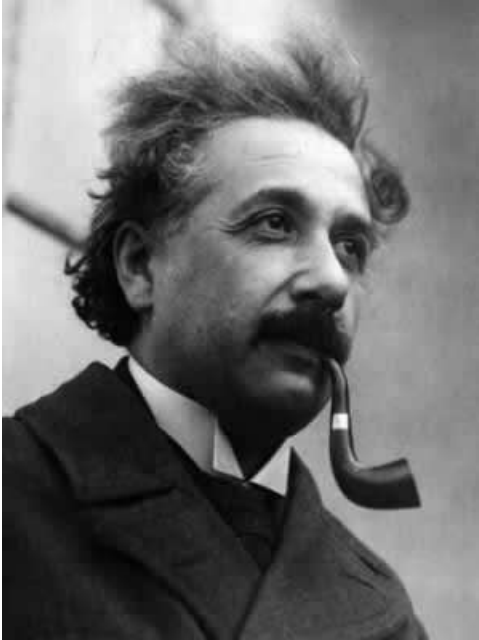
“People in the hotel and food service industry are most likely to smoke.”

- CDC Report, September 2011

EFFECT ON HOSPITALITY INDUSTRY

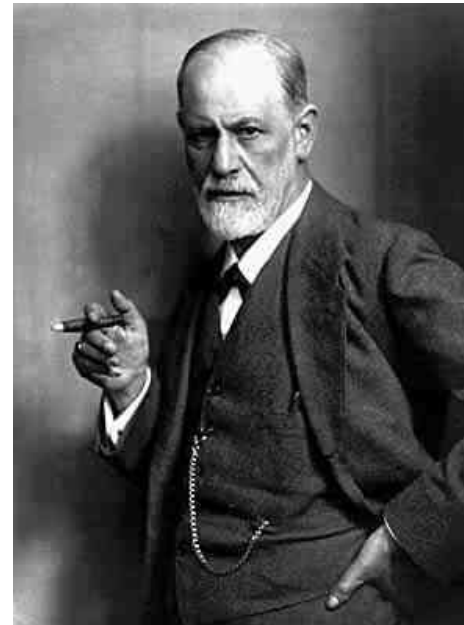
“If enough of these companies adopt these policies and it really becomes difficult for smokers to find jobs, **there are going to be consequences**,” said Dr. Michael Siegel, a professor at the Boston University School of Public Health, who has written about the trend. “Unemployment is also bad for health.”

EFFECT ON THE HOSPITALITY INDUSTRY



Consider this:

if renowned scientists
Albert Einstein or,
Sigmund Freud
applied for a job at
Massachusetts Health
Association, Baylor
Hospital, or Cleveland
Clinic today, none of
them would be hired.



EFFECT ON THE HOSPITALITY INDUSTRY



If the hospitality industry adopts similar policies, John F. Kennedy, Bill Clinton, and Barack Obama wouldn't have even landed an interview as a bellhop.



SETTING ASIDE JUDGMENTS



MISNOMER V. MISIDENTIFICATION

WHO
ARE
YOU?

UNAUTHORIZED SIGNATURE



"Never delegate authority; delegate liability."

NOTICE OF DEFAULT

PAJ v. Hanover



National Fire Ins. v. Crocker



Gibbons-Markey v. Texas Medical Liability Trust

PAID V. INCURRED RULE



DANGEROUS CONDITIONS AS A MATTER OF LAW



DANGEROUS CONDITIONS AS A MATTER OF LAW

Scott and White Memorial Hosp. v. Fair, 310 S.W.3d 411 (Tex. 2010)



DANGEROUS CONDITIONS AS A MATTER OF LAW

Seideneck v. Cal Bayreuther Assoc., 451 S.W.2d 752 (Tex.1970)



DANGEROUS CONDITIONS AS A MATTER OF LAW

H.E. Butt Grocery Co. v. Resendez, 988 S.W.2d 218 (Tex.1999)



FRANCHISEE/FRANCHISOR INSURANCE



IMMIGRATION STATUS: ADMISSIBLE?



**"YOUR HONOR, MY CLIENT DEMANDS A
JURY OF HIS PEERS - ALL THE JURORS
HAVE TO BE ILLEGAL ALIENS, TOO!"**

IMMIGRATION STATUS: ADMISSIBLE?

Not admissible to
impugn character for
truthfulness:

NY

Illinois

Texas

California

Pennsylvania

If admissible, excluded
as prejudicial

NY

CA

Texas

Delaware

Wisconsin

Virginia

FOR MORE INFORMATION

For a complete copy of the fact pattern, power point, and paper of
Corporate Counsel Tools in a Flash,
please feel free to take a flash drive home with you.

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