

A pineapple is positioned on the right side of the image, standing upright in a field of green grass. The background is a bright blue sky with soft, white clouds. The overall scene is bright and natural.

# THE HOSPITALITY LAW CONFERENCE

April 24 - 26, 2017 • Houston, Texas

When Patrons Attack:  
Employment Law Risk  
and the Disruptive  
Customer

POST &  
SCHELL<sup>PC</sup>  
ATTORNEYS AT LAW



# Andrea M. Kirshenbaum

Principal, Hospitality & Retail Practice Group  
Post & Schell, P.C.

- Chair of Firm's Wage and Hour Practice Group
- Defends employers nationally in federal and state court litigation involving all major employment statutes
- Provides proactive counseling and guidance regarding the full range of employee relations challenges that employers confront



# Darren M. Creasy

Principal, Hospitality & Retail Practice Group  
Post & Schell, P.C.

- Principal in Firm's Employment & Employee Relations Practice Group
- Employment litigation defense practice focused on civil actions arising under all major employment statutes
- Helps clients formulate litigation avoidance and defense strategies



# Did you know?

- **Third-parties (including guests, customers, and occasionally foul-mouthed parrots) can harass your employees?**
- **You could be held responsible for third party harassment if you take no corrective action?**



# EEOC Regulations



Employers are responsible for third party harassment where the employer (or its agents or supervisory employees) either knew or should have known of the conduct and failed to take immediate and appropriate corrective action.

# Lessons from Red Olive

- Thompson v. Panos X. Foods, Inc. d/b/a/ Red Olive (E.D. Mich. April 22, 2016)
- Server harassed repeatedly by the same guest (an older male) at two different restaurants. Conduct was lewd and suggestive but not outlandish.

# Lessons from Red Olive

- Prior supervisor at a different restaurant told the guest his behavior was inappropriate, and that if repeated he would be asked to leave
- Red Olive supervisor allegedly laughed and took no remedial action
- Court distinguished the supervisors and denied Red Olive's summary judgment motion on HWE claim



# Mitigating Risk

- **Ensure that your anti-harassment and discrimination policies cover third-party harassment**
- **Confirm that third-party harassment is covered by your EPL insurance**
- **Take complaints seriously, investigate, and don't retaliate**
- **Document employee reports/complaints and management's response**

# Mitigating Risk

- **Take prompt remedial action!**
  - Reassign staff,
  - remove the offending person (or parrot)
  - Bar repeat offenders from the property
- **Report to security/police as appropriate**