



Best practices for discipline and discharge in the hotel industry

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It happens to everyone sooner or later. Perhaps you have an employee who is consistently late, placing an unfair burden on her co-workers. Or one of your staff catches another stealing from a guest's room. Perhaps two of your employees get into a shouting match – or worse – in the lobby and in front of guests. It's an unfortunate fact that, no matter how good of an atmosphere the workplace may be, sooner or later an employee will break the rules and need to be disciplined or even discharged. When this sad situation inevitably arises, hoteliers find themselves facing potential liability on several fronts. On the one hand, if the discipline or discharge is handled wrong, the hotel could face legal liability in the form of a defamation or discrimination claim. On the other hand, hoteliers must enforce the rules, for the sake of both their guests and their other employees. Fortunately, there are some simple principles that can go a long way toward limiting potential legal liability.

Have clear policies

Sure, it may seem like common sense that fighting or dishonest conduct is unacceptable. But if the policy isn't written down, it will be hard to argue that employees "should have known" after they are disciplined for breaking an unwritten rule. Distributing an employee handbook – and getting signed acknowledgments from all staff members – will eliminate the possibility that an employee might succeed in arguing that they didn't realize they were doing something wrong. Many hoteliers may want to institute a progressive discipline procedure and give examples of conduct that will be considered unacceptable. This is fine, but make sure the language clearly states that the list is not exhaustive, and include some catch-all provisions so that staff members understand that unprofessional conduct of any kind will not be tolerated. Of course, hoteliers should make sure that the progressive discipline policy also notes that employment is at-will, and reserve the right to separate an employee at any time, for any reason or no reason at all.

Document, document, document

Whether the problem is with poor performance, attitude, or actual violations of work rules, it is important to identify problems early and keep a written record. Make sure that the hotel has in place a system for documenting *all* problems, and include the documentation in an employee's personnel file. Even "verbal" counseling sessions should be memorialized with a note to the file or a counseling form. This is important for several reasons. First, it puts a staff member on notice that her performance or compliance with employment policies is not at an acceptable level, and it gives her a chance to improve. After all, who wouldn't prefer that an employee improve and become a valued member of the team? Second, in the event that the employee does not improve her performance or come into compliance with employment policies, hoteliers will find that having a written record of counseling sessions and performance issues may come in handy down the road

– especially if the employee later files a charge or complaint related to her discipline or discharge.

Keep sensitive information "on the down low"

Whether in a performance appraisal or during a counseling session, it's very likely that eventually an hotelier may express unfavorable information about a staff member. The intentions may be good – for instance, to motivate the employee to improve his performance – but shar-



ing such information can be dangerous. An employee who learns that his supervisor shared negative information about him with others may pursue a claim for defamation, false light, invasion of privacy, or other torts. To guard against this possibility, make sure that sensitive or negative information is shared only on a “need to know” basis. If you have reason to doubt that a particular individual needs to know sensitive employee information, keep mum and consult your hotel’s legal advisor.

Handle discharges compassionately

No matter how sensitive you as a manager are to the above, the discharge meeting will be unpleasant. However, there are ways to help the meeting run as smoothly as possible under the circumstances. First of all, make sure that you have a witness present, and have that person take notes! The notes may become evidence if the staff member files a claim, so make sure they are detailed and correct. Second, understand that while the employee may become emotional, you as the manager shouldn’t. Don’t attempt to debate the reasons for the termination or argue with the employee. Keep the meeting short and businesslike. Additionally, hoteliers may consider offering severance in exchange for a general release of all claims related to employment. If so, have a severance agreement ready for the employee to take with him; don’t pressure him to sign it on the spot! It’s fine if he’s ready to sign, but he has the right to think over the offer and consult with an attorney. If the hotel does plan to offer severance and request a release, make sure that you have the hotel’s lawyer draw up the paperwork. An attorney will be able to give you a release that protects the hotel and complies with all legal requirements.

Most importantly... BE CONSISTENT!

The easiest way to get sued is to treat one staff member differently. Failing to follow procedures consistently will invite discrimination claims. Even if you didn’t intend to discriminate, you still may find yourself on the losing end of a lawsuit if you follow procedures in a lackadaisical manner. For example, if two front desk employees are both rude to guests, but you only discipline one, you may find yourself having to prove that the difference wasn’t because one was a man and one was a woman, or because they were different races, national origins, or religions. By contrast, if you do find yourself facing a discrimination claim after disciplining an employee and you can present evidence that other employees – from different protected classes – were disciplined for the same infraction, you will have helped your case tremendously. Moreover, not only is it practical to be consistent, but it’s *fair*. If you demand a certain standard of performance from one housekeeper, demand it from all. If you discipline one bellperson for violating a rule, discipline everyone who violates the same rule. If you discharge one concierge for a policy infraction, discharge others who commit the same infraction. This practice will head off potential disparate treatment claims and send a message to staff that the rules will be enforced fairly and consistently.

Following the above “best practices” may not completely eliminate all claims or lawsuits, but it will create an environment in which employees know what is expected of them and are confident in the hotel’s commitment to treat them fairly. And if you do find yourself the recipient of a lawsuit or charge of discrimination, having a clear policy, a well-documented file, and evidence of consistent treatment of all employees can only help. ✧

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