



Exercise caution when receiving complaints from employees about discrimination

*Another great article from The Rooms Chronicle, the #1 journal for hotel rooms management! ***Important notice: This article may not be reproduced without permission of the publisher or the author.*** College of Hospitality and Tourism Management, Niagara University, P.O. Box 2036, Niagara University, NY 14109-2036. Phone: 866-Read TRC. E-mail: editor@roomschronicle.com*

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Practically every hotelier is aware that there are anti-discrimination laws that prohibit employers from discriminating against employees based on a variety of “protected categories.”

Overview of anti-discrimination laws

Federal law prohibits discrimination on the basis of race, color, religion, sex, national origin, age, veteran status and disability. These protections are afforded through the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Uniformed Services Employment and Reemployment Rights Act of 1994 and the Americans with Disabilities Act of 1990.

Hoteliers should also be aware of any state, county or city anti-discrimination laws that could apply to them. Many of these state and local anti-discrimination laws are broader than their federal counterparts. Thus, in addition to the categories discussed above, hoteliers may be prohibited from discriminating against employees on the basis of other protected categories such as sexual orientation or family status. The prevalence and applicability of these more encompassing laws are dictated based on where the hotel or resort is located.

No retaliation

Anti-discrimination laws also prohibit hoteliers and other employers from retaliating against individuals for reporting discrimination (whether the claimed discrimination was against the individual or a coworker) or participating in an investigation regarding whether discrimination occurred. The protection against retaliation can be triggered in any number of ways. For example, an employer cannot retaliate against an employee for filing a charge of discrimination with the federal anti-discrimination agency known as the Equal Employment Opportunity Commission, or a state or city anti-discrimination agency. Similarly, an employee who participates in an anti-discrimination agency’s investigation regarding possible discrimination cannot be retaliated against.

Keep in mind however that an employee does not need to report discrimination to a government agency in order to be protected. Hence, an employee who complains about discrimination during a conversation with his or her supervisor cannot be retaliated against either.

It is important to remember that a complaining employee does not have to be “right” in order to be protected from retaliation. For example, consider an employee who files a charge of discrimination with an anti-discrimination agency. The hotelier is forced to spend \$10,000 defending himself. Ultimately, the agency determines that the hotelier did not discriminate against the employee. Can the hotelier then lawfully terminate the employee for not being a “team player” and needlessly costing the hotel a lot of money?

The answer is an unequivocal “No”. Except in the most egregious of cases, an employee is protected from retaliation even if his or her claims of discrimination turn out to be wrong.

What constitutes retaliation?

Although the question would appear relatively straightforward, there is disagreement over what does, and what does not, constitute retaliation. In order to prove retaliation, an employee must show that his or her employer took an “adverse employment ac-

Important Reminder!

All U.S. hotels and resorts with ten or more employees are required by law to display OSHA Log Summary Form 300A from February 1st – April 30th where employees will have easy access to viewing it. OSHA Log Summary Form 300A is a summary of work-related injuries and illnesses for the previous calendar year.

<http://www.osha.gov/recordkeeping/RKforms.html>

tion.” Some employer actions, such as terminations, suspensions, denying leave, pay cuts, and demotions are clearly adverse employment actions.

The harder questions arise when the employer action is more “subtle,” but still alters the employment relationship in a way that the employee does not like. For example, is it retaliation if the employee is paid the same and retains the same benefits but is transferred to a less glamorous job, or a position with more demanding requirements? Some courts say these actions constitute retaliation, others say they do not. Because of the lack of consensus, the Supreme Court has stated it will address this issue next year, so stay tuned.

Hoteliers’ bottom line

Employees often have more success proving retaliation than discrimination. Some think the reason is that it is human nature for managers to want to “get back” at individuals who have accused them of discrimination, especially when they feel wrongly accused. While it is understandable that a manager may feel hurt or angered in such a situation, retaliating against an employee could well expose the hotel to liability.

In order to ensure that all employees, including the management and supervisory team understand that retaliation is not allowed, every hotel’s anti-discrimination policy set forth in its employee handbooks and personnel manuals should contain a section assuring employees that they will not be retaliated against for reporting discrimination. To further help uncover and stop any possible retaliation, consider including language in the anti-discrimination policy that employees who feel they are being retaliated against should report any possible retaliation to a member of upper management or human resources.

In much the same way that many business organizations appoint and task a small handful of identified individuals to serve as grievance intake officers for alleged actions of sexual harassment, consider doing the same for complaints associated with workplace retaliation. Yet, still convey to all personnel that they can always report retaliation to any member of upper management or human resources.

Finally, as a member of upper management, take all complaints and reports of retaliation or job-related discrimination seriously. Perform the appropriate investigation and due-diligence in a timely and confidential manner, and take immediate corrective action where it is warranted. Failure to complete any of these tasks appropriately will place the hotel at risk for potential liability and likely prohibit it from later being able to amount an affirmative defense, if needed. ✧

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