



## Employee handbooks and confidentiality: A potential pitfall for hoteliers

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In a decision with consequences for thousands of hoteliers, a federal court recently determined that an employee handbook with a broadly worded confidentiality provision could violate federal law if it prohibits employees from discussing wages and benefits with co-workers.

### The issue at hand

A federal court recently decided that an employer's confidentiality policy violated the National Labor Relations Act because an employee (even an employee who does not belong to a union) could read one broadly-worded section as a prohibition against discussing wages and benefits with co-workers. Previously, only specific provisions in an employee handbook which outright prohibit the discussion of wages and benefits with other employees were illegal. This new decision expanded the reach of federal labor law to the point where all hoteliers are advised to address this issue in their handbooks by explicitly stating that employees are allowed to discuss wages and benefits among themselves, as well as with third parties who are not competitors of the hotel.

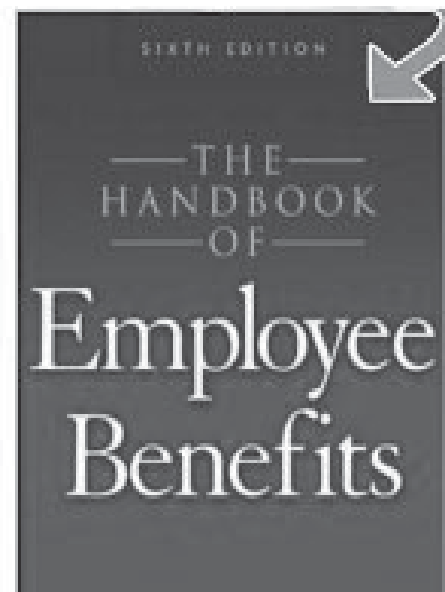
The provision at issue in the case stated broadly, "We honor confidentiality. We recognize and protect the confidentiality of any information concerning the company, its business plans, its partners (how the company referred to its employees), new business efforts, customers, accounting and financial matters." The handbook's "Discipline Policy" warned employees that they could be punished for, "Violating a confidence or unauthorized release of confidential information."

A labor union trying to organize the employees at the company filed unfair labor practice charges with the National Labor Relations Board, stating that the quoted language from the handbook violates the provision of federal labor law which prohibits employers from interfering with an employee's right to discuss the terms and conditions of their employment with others. The Administrative Law Judge agreed and concluded that the language prohibiting the disclosure of "any information concerning...partners" could be reasonably construed by employees as unlawfully restricting their right to discuss their wages and other terms and conditions of employment. This decision was ultimately upheld by a federal court after several appeals.

### What this means for hoteliers

It has now become clear that even policies that were not intended to restrict an employee's right to discuss wages and benefits with other employees may be found to be unlawful. Additionally, as union organizing efforts towards hoteliers continue to increase across the country, it is likely that unions will attempt to use such policies to pressure hoteliers – as well as to create employee unrest through claims that employers are trying to keep employees from discussing their working conditions.

Hoteliers are advised to review their employee handbooks and written policies to determine whether their confidentiality rules are potentially subject to attack by employees or a union. If so, hoteliers should narrowly tailor their confidentiality policies in order to balance an employer's clear interest in



## Hot tip

One of the most important reasons to create and disseminate an employee handbook is to ensure that staff members understand what Management expects of its employees. Toward this end, include a section such as *Standards of Conduct* that detail desired behavior, such as dress and timeliness, as well as the hotel's policies on sexual harassment, racial and sexual discrimination, use of alcohol, drugs and tobacco in the workplace (including pre-employment screening and post-accident testing), and disciplinary procedures.

protecting confidential information versus an employee's rights as protected by federal labor law. And as always, it is strongly recommended that employee handbooks and other essential employee-related documents (e.g., blank job applications, personnel appraisal forms, etc.) be thoroughly reviewed by the hotel's legal counsel before being distributed. ✧

*(Krupin O'Brien LLC's national practice exclusively represents employers and management, including hoteliers, in the fields of labor relations, employment law, business immigration and related litigation. Kara M. Maciel is an associate with Krupin O'Brien LLC, where she represents management before courts and administrative agencies on labor matters and employment-related litigation, as well as counsels employers on diverse employment and labor matters. She has extensive experience litigating before various federal and state courts defending clients against claims arising under Title VII, ADA, FMLA, and ADEA, as well as state and local law. E-mail: [kmm@krupinobrien.com](mailto:kmm@krupinobrien.com).)*