



HOSPITALITY AND FOOD SERVICE UPDATE: FALL 2005

This bulletin provides an update on employment issues for organizations involved in the hospitality and food service industries. Please contact us if you have any questions about these decisions or about their effects on your business.

How The AFL-CIO Rift May Affect You

Labor is looking more disorganized than ever with the recent divide in the AFL-CIO. This rift highlights philosophical conflicts over the future of the labor movement. Three unions – the International Brotherhood of Teamsters, the United Food and Commercial Workers (UFCW), and the Service Employees International Union (SEIU) – have officially left the AFL-CIO and formed an organization called the Change to Win Coalition. The Coalition may be especially important to watch within the hospitality and food service industries because these powerful and quickly-growing breakaway labor organizations have frequently targeted such industries for organizing efforts based on improving wages, gaining health insurance, and retirement benefits. The Coalition views its mission less as preserving jobs in danger of disappearing, like the AFL-CIO, and more as boosting the prospects of people in low-paying and low-benefit jobs. These splinter unions are less interested in obtaining political clout and more interested in aggressively organizing local service workers into unions.

The Change to Win Coalition's first annual meeting is scheduled for September 27 in St. Louis. UNITE HERE, another union which specifically targets hospitality and food service workers, has also disaffiliated from the AFL-CIO and may use the convention to announce its affiliation with the Change to Win Coalition. The Coalition is also expected to re-emphasize its dedication to aggressively organizing workers into unions. The primary philosophical rift between the Coalition and the AFL-CIO involves the Coalition's plan to refund significant portions of all membership dues back to local unions for organizing efforts. The Coalition also intends to focus on uniting same-industry workers and facilitating union mergers.

The full impact of the rift in labor is uncertain at this time, but employers, especially in areas heavily targeted by Change to Win Coalition members, such as the food service and hospitality industries, should monitor changes in labor's structure and strategy that might affect them. A trend to observe is that modern corporate campaigns often involve negotiating

"neutrality agreements" with employers. These agreements offer labor peace in exchange for a commitment not to oppose union organization of workers. Coalition unions will probably utilize less provocative, more informative campaigns while pushing such neutrality pacts. These unions likely will begin organizing in earnest around the end of 2005 or the beginning of 2006 and they probably have until the end of 2006 – the congressional elections – to show that theirs is a successful strategy.

Arbitration Agreements Invalidated

A federal appellate court recently provided an almost step-by-step list of faulty practices and procedures involving arbitration agreements in the context of restaurant employees. In Walker v. Ryan's Family Steak Houses, a federal Court of Appeals case decided on March 9, 2005, several employees filed a complaint about wage and hour violations and the employer attempted to compel arbitration based on the arbitration agreements signed by the plaintiffs. Courts typically favor arbitration agreements, but may refuse to enforce them if they are poorly executed or include over-reaching provisions. First, the Court found that Ryan's had not provided anything of value in exchange for the agreements and that it had only provided an illusory promise to arbitrate. Next, Ryan's did not take all necessary steps to ensure that the employees' waiver of their right to a jury trial was both voluntary and knowing. The Court also found that Ryan's and its employees had no real meeting of the minds on the subject of the agreements necessary for formation of a proper contract.

Arbitration agreements may be useful and appropriate for defraying the time and money associated with litigation, but if your organization is going to introduce such an agreement, make sure you get it right. The text and administration of the agreements must comply with the law, which may vary from region to region. This case effectively illustrates the possibility of negative results from an ill-drafted and badly enforced policy.

New York State Health Department Announces Smoking Study Results

A Research Triangle Park study of hospitality workers in New York State shows that the state's two-year old law barring smoking in indoor public places, including restaurants and hospitality-related businesses, appears to have had the intended effect of

protecting employees from exposure to secondhand smoke. Within one year of the effective date of the law, the study found a 78 percent reduction in levels of nicotine byproducts in saliva of the studied workers. The number of hours that hospitality workers were exposed to secondhand smoke also declined by 98 percent. Furthermore, hospitality workers reported a significant decrease in eye, nose, and throat irritation, though there was no decrease in upper respiratory symptoms such as wheezing, coughing, or shortness of breath. The results of this project are related to findings in another recent study that, in the last several years, the number and restrictiveness of state laws regulating smoking in private workplaces have increased. Both studies' findings may impact costs for employees' health and related issues.

This Hospitality and Food Service Update was prepared by Daniel Hurst, an attorney with the law firm of Lehr, Middlebrooks, Price & Vreeland. He can be reached for questions/further information at dhurst@lmpv.com or at 205-323-9274.

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