

# Labor & Employment Hospitality Practice

Practice Overview





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Dealing with labor disputes, defending wage and hour lawsuits, complying with immigration and workforce authorization laws, handling OSHA and environmental issues, and defending discrimination claims are but a few examples of the myriad labor and employment legal issues facing hospitality industry participants. At the same time, hospitality companies are highly sensitive to economic and competitive market conditions, and the demands placed on these companies in the current environment are significant. By proactively and strategically addressing labor and employment-related challenges, hospitality companies can successfully advance their business goals while mitigating risks.

**At Seyfarth Shaw LLP's Labor and Employment Hospitality Practice, we have a deep institutional knowledge of the labor and employment matters that affect this segment of the economy and bring this expertise to bear in our representation of hospitality clients across the United States.**

## National Platform

Our national hospitality team, with over 50 employment attorneys, ensures seamless, consistent representation across jurisdictions. This cohesive, networked practice is able to spot industry issues and trends, helping hospitality employers prepare and respond accordingly. Backed by the strength of one of the largest and most respected labor and employment departments, we provide strategic solutions to complex issues facing employers in the hospitality industry by understanding each client's business objectives.

Seyfarth's attorneys have represented hundreds of hospitality clients in the full range of labor and employment issues, from negotiating collective bargaining agreements for large multiemployer groups to defending against claims of discrimination, wage-hour violations, or denial of disability accommodations. Seyfarth's attorneys also have extensive experience handling discrimination claims made by customers and guests, including those arising under Title III of the Americans with Disabilities Act. We have a deep institutional knowledge of the labor and employment matters that affect this segment of the economy and bring this expertise to bear in our representation of hospitality clients across the United States.

## Experience and Resources

Seyfarth attorneys have deep experience assisting hotel, management, restaurant, entertainment, and other hospitality clients with the complex issues they face. Our representation in this unique area includes:

- Hotels and hotel chains
- Restaurants and restaurant chains
- Hotel management companies
- Owners of hotel properties, such as REITS and PEFS
- Resorts and spas
- Gaming, casinos, and racing establishments
- Clubs and golf courses
- Amusement parks

- Theatres, orchestras, and performing arts organizations
- Professional sporting facilities

By utilizing the latest technology and Seyfarth's vast knowledge bank to share best practices, research tools, and model documents and provisions, we are able to deliver high-quality results quickly and efficiently. Over the course of many years, our hospitality attorneys have developed networks and relationships with major players and trade associations in all segments of the hospitality industry around the country, which enables us to leverage their respective national and localized knowledge and experience on behalf of our clients to help them reach their objectives.

## Proactive Solutions

We focus on a proactive approach to anticipating and helping clients solve problems before they become major litigation or community relations issues. Many of the services we provide hospitality clients — from assessments evaluating union vulnerability and wage and hour and employment law compliance to management training, consulting on independent contractor issues, and positive employee relations — are strategically designed to help companies mitigate risks and ensure compliance from the outset. In addition, we routinely offer seminars, including webinars and briefings, as well as substantive client alert mailings that keep our hospitality clients up to speed on the current status of the law.

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## Service Offerings

We have extensive experience in all aspects of our hospitality clients' labor and employment needs:

- **Wage and hour matters**, including both audits and training in this highly technical area of law to avoid and defend litigation involving both individual or class claims; key areas of concern for this industry in which Seyfarth attorneys have deep experience include: meal/rest breaks, tip credit requirements, minimum wage and overtime, and the impact of the provision of meals on wage calculations
- **Traditional labor law services**, including union avoidance through positive employee relations, union vulnerability audits, union organizing campaigns, union corporate campaigns, neutrality/card-check issues, unfair labor practice litigation, collective bargaining and labor contract administration, multiemployer bargaining and association membership, grievance arbitration, interest arbitration of labor contracts, and preparing for and dealing with picketing, strikes, lockouts, and other economic tactics
- **Immigration programs and workforce authorization compliance**, including the full range of work permit and visa application program management. Seyfarth's Workforce Authorization Team (SWATeam) also provides assistance in developing and implementing immigration compliance policies and best practices (including E-Verify) and preparing for and responding to work site visits, I-9 inspections and related compliance and enforcement actions by government agencies
- **Environmental safety and health services**, including assisting clients in compliance with all aspects of OSHA regulations (e.g., hazard communication, emergency evacuation, ergonomics, laundry operations) and defense of OSHA citations and compliance with environmental laws and regulations including Title V and wastewater permits
- **Affirmative action plan development and affirmative action compliance**, including assistance during OFCCP audits, defense of complaints filed with the OFCCP, plus adverse impact and pay equity analyses, which can be conducted apart from the (government-required)



affirmative measures and context under protection of the attorney-client/work product privileges

- **Claims of disability discrimination by customers and guests** arising under Title III of the ADA and state laws such as the California Unruh Act and the Disabled Persons' Act
- **Employment discrimination litigation**, including class action, multiplaintiff, and single-plaintiff litigation under federal and state discrimination laws, from responding to the charge of discrimination, to defending the lawsuit, to handling any appeal
- **International or multijurisdictional employment law work**, including undertaking global compliance and strategic HR projects and the international assignment or transfer of personnel
- **Management training through Seyfarth Shaw at Work®**, including discrimination and harassment, workplace violence, and corporate ethics and compliance training, designed for the hospitality client's culture, business needs, and policies
- **Workplace counseling**, including background checks and compliance with the Fair Credit Reporting Act; the development of offer letters/employment agreements, handbooks and policies; workforce restructuring including contingent worker arrangements, reductions-in-force, and outsourcing arrangements; and addressing mergers and acquisitions issues

## Representative Results

**Obtaining Early Dismissal of a Lawsuit brought by Blind Customers Against Hotel.** On an issue with little precedent, we successfully defended claims of disability discrimination under Title III of the Americans with Disabilities Act and related state law brought by a blind wheelchair user and her legally blind husband, obtaining early dismissal of a lawsuit against one of the world's largest hotel and leisure companies.

**Successfully Defending Employers in Class Action Discrimination Claims.** We obtained partial summary judgment for a restaurant/entertainment employer in an EEOC-initiated, reverse sex discrimination hiring and promotion case. The case was originally cast

as a nationwide case with an enormous threatened exposure. Our motion eviscerated the government case, leaving its claims limited to a single location. The ruling provided our client with the leverage it needed to resolve the case quickly and on its terms.

### **Substantially Lowering the Value of Wage and Hour Case Through Focused Litigation Strategy.**

A hotel client was involved in a pending wage and hour class action in state court and facing potential mandatory treble damages following a recently enacted statute. After obtaining summary judgment on a substantial portion of the case, we adopted an aggressive strategy, moving for a determination as to the retroactivity of the statute. Adopting most of our arguments, the court granted the motion, substantially lowering the value of the case and significantly reducing the hotel's exposure.

### **Responding to "Social Security No Match" Letters.**

For a large national restaurant chain, the SWATeam created policies and procedures for responding to "social security no-match" letters, anonymous tips regarding potentially unauthorized workers, and concerns about fraudulent documentation presented by certain employees. We reduced the chain's legal exposure by ensuring that it took the appropriate investigative steps and terminated the employment of individuals in the proper manner, which allowed the company to reduce its risk of government fines and potentially costly lawsuits.

### **Representing Multi-Employer Groups in Difficult Negotiations.**

We were asked to serve as chief spokesman and strategist in the multiemployer negotiations for a major city's multiemployer group (MEG), consisting of 14 Class A hotels, after the conclusion of a two-week strike and six-week lockout. We worked with the 14 hotels and their parent companies on a common bargaining strategy, sponsored and coordinated public relations communications, responded to the union's national campaign and local hotel boycott and, after two years of contentious and protracted negotiations, reached an acceptable settlement with the union.

**Reducing OFFCP Liability.** After the OFCCP preliminarily found a large hotel to have violated an Executive Order, the hotel was faced with potential payments to several hundred individuals, plus the prospect of offering jobs to all or most of the class members. In negotiations with OFCCP, we were able to reduce the hotel's exposure ten-fold. Two dozen class members received nominal payments, with none having to be hired.

**Successfully Negotiating Favorable Settlement in a Government Action.** In one of the largest EEOC pattern or practice lawsuits in the last 10 years, we served as lead counsel in defending and negotiating an extremely favorable settlement of a claim brought against our client—one of the world's largest casual dining restaurant companies. The claim involved approximately 120,000 class members where the government alleged nationwide systemic gender discrimination and promotions.

**Dismissing Overtime Litigation.** We represented our hotel client in a multi-plaintiff collective action for unpaid overtime based on allegations that the hotel failed to properly calculate employees' regular rate of pay. We quickly ensured the client's pay practices were legally compliant and secured a prompt dismissal of the litigation.

**Selling and Acquiring Properties.** We successfully assisted the management company of two major hotels in navigating the labor law implications of the sale of those hotels and the termination of the client's management agreement. In so doing, we successfully managed the communications with unions representing four different bargaining units.

**Meeting the OSHA Challenges of Historic Properties.** We successfully negotiated resolution of OSHA citations related to hazard communications and emergency evacuation for an historic east coast hotel. The historic nature of the building presented unusual safety challenges for the hotel, but we were able to work with independent consultants and OSHA representatives to reach a favorable resolution.

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**Making the Wage and Hour Legal Landscape Better for Employers.** After plaintiffs in wage and hour class actions premised on state tip laws claimed that they were entitled to an additional three years of damages because of related common law breach of contract claims, we obtained three summary judgment decisions for different hotels on these common law claims. Our success substantially decreased the value of plaintiffs' cases and began a clear legal trend lowering the value of similar future cases.

**Guiding Clients Through Closures.** We assisted a major hotel during the closing of its primary food and beverage outlet, which resulted in the termination of numerous unionized employees. Our client completed the process without encountering any grievances or other legal claims.

**Proactively Counseling Clients on I-9 Processes.** The SWATeam recently assisted a large national restaurant chain to revamp its I-9 processes. We assisted the chain to select and implement an electronic I-9 solution, which significantly reduced its risk for civil fines and criminal penalties based on its I-9 files, advised this client regarding the proper completion and storage of the Form I-9, and have provided in-depth training to those responsible for I-9 completion.

**Guiding Clients Through Strike Activity.** Despite the union calling a strike over the Christmas/New Years holiday, we immediately secured a picketing injunction that significantly limited the scope and location of the union's picketing, counseled the hotel through disciplining picketers for picket-line misconduct, advised the hotel on its media communications, helped ensure the hotel lawfully staffed its operation to remain fully

operational during the strike, and then after the union called off the strike, we negotiated an extremely favorable collective bargaining agreement that was virtually the same as what the hotel had offered prior to the strike.

#### **Defending Clients Against EEOC Investigations.**

In the face of an aggressive EEOC investigation, we successfully obtained dismissal of multiple sex discrimination charges filed by several women against the hotel.

## **SeyfarthLean®**

We understand that to create value for our clients, success is not defined by us, but rather by them. That is the essence of our SeyfarthLean initiative. SeyfarthLean is the use of structured team-based collaboration, both internally and client facing, to deliver value. To this end, we have pioneered in the law firm environment the use of Lean Six Sigma and other business processes as tools to plan, organize and manage resources, and deliver results to the client. Our aim is to work together with our clients to control legal costs, provide efficient and proactive legal service, and build a partnership to assure that our solutions fit the client's needs. ■

## **About Seyfarth Shaw**

Seyfarth Shaw LLP ("Seyfarth") was founded in 1945 by three lawyers and has grown to more than 800 lawyers across 13 markets in the U.S. and abroad. We handle issues for our clients in all key areas including labor and employment, litigation, construction, corporate, employee benefits, environmental, government contracts, intellectual property, commercial litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies and various types of funds. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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