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CONFIDENTIAL ATTORNEY-CLIENT
PRIVILEGED MEMORANDUM

DATE: October 1, 2013

TO: Hotel Association of New York City, Inc.
Labor Relations Members
General Managers, Human Resource Directors and Controllers

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: Banquet Servers: New York State Department of Labor Dismissal of Complaint

It should come as no surprise that banquet servers at one of the Association's labor relations member hotels, which is also a large banquet hotel, filed a complaint with the New York State Department of Labor, Division of Labor Standards, that banquet captains should not receive monies from the banquet service charge. The banquet servers alleged that the banquet captains performed supervisory duties and thus, under New York State's Hospitality Wage Order and Section 196(d) of the State's Labor Law, were ineligible to participate in the service charge.

We are pleased to report that the Department of Labor has dismissed the complaint, agreeing with our argument that the banquet captains' predominant duties involved facilitating the delivery of quality service to guests and customers. We supported our position with specific reference to the IWA, National Labor Relations Act, New York State Labor Law and federal Fair Labor Standards Act.

Hotels should not be surprised at the resourcefulness of banquet servers; we have previously reported on their attempts to take hospitality functions away from room service servers. In two cases at the Office of the Impartial Chairperson, we prevailed on behalf of the Hotel and room service servers.

If you have any questions, do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Niki J. Franzitta, Lois M. Traub, Alexander Soric or Robert L. Sacks.

cc: Joseph E. Spinnato, Esq.
Geoffrey A. Mills, Chairman