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CONFIDENTIAL ATTORNEY-CLIENT
PRIVILEGED MEMORANDUM

DATE: January 9, 2014

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

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

RE: Recent Amendments to New York State Unemployment Insurance Law Requiring Employers to Respond to Claim; Impact on Severance Pay

As a result of recent amendments to the New York State Unemployment Insurance Law, The New York State Department of Labor, Unemployment Insurance Division now requires employers or their agents (e.g., payroll processing services) to affirmatively respond to an unemployment insurance claim by:

- 1) responding to a claim notice within ten (10) days of the date of the notice;
- 2) providing specific reason(s) for an employee's separation from employment, or other issues affecting the claimant's eligibility;
- 3) answering, in good faith, all questions in detail; and
- 4) providing all relevant information and documentation to the DOL in order to allow it to render a correct determination regarding the claimant's eligibility or entitlement for benefits.

An employer who fails to timely or adequately respond to a claim or other information request for information issued by the DOL will have its U.I. account charged for benefits – even if it is subsequently determined that the claimant was ineligible for U.I. benefits and was overcompensated. Moreover, such failure to timely or adequately respond to requests issued by the DOL may cost an employer more than just the cost of overcompensation alone. An employer's compensation rate is calculated using the amount of previous contributions minus the

benefits charged to the employer's account. Overpayments that are not credited to an employer's account may be included in this calculation and result in long-term higher contribution rates.

In addition, prior to January 1, 2014, claimants could receive severance payments and U.I. benefits at the same time. Now, former employees who receive severance payments within thirty (30) days after their employment ended will not be eligible for U.I. benefits in any week that severance pay is paid if it is greater than the maximum weekly benefit (currently \$405 per week). If the severance pay is in a lump sum, it will be allocated on a weekly basis based on the employee's actual or average weekly compensation, and the former employee will not be eligible for U.I. benefits until the severance pay is exhausted. However, severance pay will not affect the U.I. claim if the initial payment of severance pay is made more than thirty (30) days from the last day of employment.

Thus, if an Employer is going to give severance pay to a departing employee, it must now review the timing and amount of the severance as this could prevent the departing employee from collecting unemployment benefits. Employers should anticipate employees or their representatives (attorneys or the Union) asking that the initial or lump sum severance payment be delayed for at least thirty-one (31) days after employment ends. Therefore, release agreements with employees – under the OWBPA or otherwise – will need to be conformed to make clear the date of payment.

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