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CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED MEMORANDUM

DATE: February 22, 2016

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

FROM: Kane Kessler, P.C.
        Labor and Employment Practice Group

RE: HANYC and NYHTC Meeting with U.S. DOL Re: Night Shift Differential and
        Overtime Pay under the Fair Labor Standards Act and IWA

Last week, we were notified that the United States Department of Labor ("DOL") requested a meeting with representatives of the Hotel Association of New York City, Inc. and the New York Hotel & Motel Trades Council (the "Union") regarding the overtime provisions of the Fair Labor Standards Act ("FLSA") and the impact of such provisions on Article 51 of the IWA, Night Shift Differential.

IWA Article 51(C)(1) (and Article IX(e) of the Division A contract) states that night shift differential is not included in overtime calculations. Accordingly, under the IWA and Division A contract, and consistent with the FLSA, employees who work less than forty (40) hours in a week do not have night shift differential included in their overtime calculation for such hours worked under forty (40).

The FLSA governs, among other things, non-exempt employees' entitlement to minimum wage and to overtime pay for hours worked over forty (40) in a work week. Shift differentials, including night shift differentials, are to be included in calculating an employee's regular rate of pay for FLSA overtime purposes. An example of the calculation is as follows:

> A bellman works three eight-hour day shifts and three eight-hour
> night shifts at $20.00 per hour. The bellman is paid $1 shift
> differential for each hour worked on the night shift. The eight
> hours of overtime are paid based on the bellman's regular rate of
> pay.

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Regular Rate of Pay Calculation

3 days x 8 hours x $20/hour	$480
3 evenings x 8 hours x $21/hour	$504
Total Earnings	$984

Total Hours Worked	48 hours
Regular Rate of Pay (or Straight Time) Divided by Total Hours)	$20.5 (Total Earnings

Overtime Pay Calculation

$20.5 (regular rate) x 1.5 (time and a half)	$30.75

Total Compensation Calculation

40 hours x $20.5 (regular rate)	$820 (straight time earnings)
8 hours x $30.75 (overtime rate)	$246 (overtime earnings)
Total Earnings	$1,066

We think that most Hotels comply with the FLSA in this regard but the DOL has asked for information regarding the same. To that end, and at this time in lieu of an audit or a request by the DOL of a self-audit, the Union intends to distribute Requests for Information ("RFI's") to each Hotel seeking the following information, at a minimum:

(i) Whether the Hotel includes night shift differentials within its overtime calculation and if so, a sampling of payroll documents demonstrating the same, and/or

(ii) If the Hotel does not include night shift differential within its overtime calculation, payroll information regarding every employee that is paid a night shift differential and that has worked overtime in the last two years.

We will provide further advice after the receipt of the Union's RFI.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Robert L. Sacks, Lois M. Traub, Alexander Soric, Michael C. Lydakis, Jaclyn Ruocco or Jennifer Schmalz.

cc: Joseph E. Spinnato, Esq.
Vijay Dandapani, Chairman