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CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED MEMORANDUM

DATE: January 6, 2017

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

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

RE: **Hiring Considerations related to the Closing of the Waldorf Astoria**

The announced closing of the Waldorf Astoria New York Hotel is scheduled for March 1, 2017. As a result, hundreds of Waldorf employees will permanently lose their jobs. This situation implicates Hotels' hiring obligations under the Industry Wide Agreement ("IWA") and triggers, in particular, IWA Article 21(A)(2)(c).

Article 21(A)(2)(c) states the following:

"Preference in referring applicants and in employment shall be given to persons who have been previously employed in the hotel industry in New York City, and among such persons **first preference shall be given to employees whose employment was terminated by reason of the closing of hotels** covered by this Agreement and thereafter to other hotel employees who are on permanent layoff status from hotels covered by this Agreement."

While it is our intention to review IWA Hiring obligations at the upcoming February 6th Human Resources Director meeting, we wanted to remind Hotels of the principles that must be applied in hiring.

As we have discussed in prior Human Resources Director meetings, our opinion on the meaning of preference is that where all discernible hiring criteria are equal, the preference applies. We have also taken the position that Article 21(A)(2)(c) is distinguished from Article 21(A)(2)(i), which permits an Employer to "fill a vacancy from among its employees, including employees in other hotels of the Employer's chain".

Due to this large increase in the Article 21 hiring pool, we expect the Union to be more aggressive in questioning your hiring decisions, especially as it pertains to the hiring of applicants from outside sources, where experienced employees from a “closed shop” are applying for positions which have relatively basic skill requirements.

For years we have advocated the use of objective-based testing, such as multiple-choice exams, as an effective way to ensure that an applicant who is entitled to this preference can in fact perform the duties required by the job¹. This approach allows Hotels to differentiate among applicants based on legitimate criteria and will be useful in defending against Article 21, Hiring, claims by the Union or discrimination claims by individual employees.

In making assessments among applicants, other legitimate objective, job-based considerations include:

- failing a pre-employment drug test;
- fraudulent employment information or omissions of a material nature.

As we have always recommended, keep a record of the objective business reasons for approving and rejecting applicants, including the following:

1. Date that job opening was posted with the Hiring Hall (keep your fax confirmation)
2. Date of any follow-up, whether by phone, fax or mail (keep your fax confirmation)
3. Date that the posting was closed (it is advisable to do this by fax so that you have a record)
4. The names of all candidates referred by the Hiring Hall or obtained from other sources
5. The disposition of each candidate’s application and the objective reason why a candidate may not have been hired

Applications and all other hiring documentation must be kept at least 3 years.

If you have any questions, please do not hesitate to contact [David R. Rothfeld](#), [Robert L. Sacks](#), [Lois M. Traub](#), [Alexander Soric](#), [Michael C. Lydak](#), [Jaelyn Ruocco](#) or [Jennifer Schmalz](#).

cc: Vijay Dandapani, President and CEO
Hervé Houdré, Acting Chairman

¹ The Hotel Association distributed sample multiple-choice questions and answers on November 16, 2015.