

KANE KESSLER, P.C.
1350 Avenue of the Americas
New York, N.Y. 10019
(212) 541-6222
fax (212) 245-3009
Direct dial (212) 519-5154
drothfeld@kanekessler.com

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED INFORMATION

DATE: November 18, 2014

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

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

RE: Holiday Week Scheduling Issues

Article 29(D)(3) of the Industry Wide Agreement states that employees shall receive “not less than a normal week’s pay in any week during which a holiday falls.” This has been interpreted by Impartial Chairperson precedent to require the payment of a full week for an employee whose layoff begins during a holiday week. Over the years, we have relied on this IC decision and have cautioned Hotels that layoffs must be implemented during the payroll week preceding the payroll week during which a holiday occurs. In other words, we have advised that if your payroll week begins on Sunday, an employee must be on layoff status (i.e., the employee must have missed a work day(s) due to layoff) on the Saturday preceding the holiday week.

Recently, the Union has challenged this interpretation, asserting that in order to avoid paying an employee for the full week during the holiday week, the employee must be laid off for the whole week in the pay week preceding the holiday week. Under our analysis, as long as the employee is on layoff by the end of the preceding pay week, the layoff may continue through the holiday week. Nevertheless, we anticipate that the Union will continue to press its interpretation.

As a reminder, under Article 29(E)(2), if a Hotel either requires an employee to work on a holiday, if a holiday falls on an employee’s regular day off, or if a holiday falls during an employee’s vacation, the employee may voluntarily take a day off, with pay, in lieu of receiving holiday pay which day off shall be scheduled within 30 days before or 30 days after the holiday, provided that prior written notice together with written consent by the employee is given to the Union. In the event an employee requests an “in lieu day,” you are required to provide a copy of the employee’s written consent to the Union in advance of the day off. It is critical that you retain a copy of the employee’s written consent to the “in lieu day,” and otherwise comply with Article 29(E)(2), in order to protect the Hotel against claims that the “in lieu day” was scheduled by the Hotel without the prior written consent of the employee.

Finally, laid-off employees are entitled to holiday pay, provided the holiday occurs within twenty (20) working days following the beginning of the layoff.

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

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