

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 MEMORANDUM

DATE: April 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 Law Practice Group

RE: Night Shift Differential

We previously advised that the U.S. Department of Labor (“DOL”) contacted both the Union and the Hotel Association and advised that the language in IWA Article 51(C)(1) and Division A CBA Article IX (e), exempting night shift differential pay from the calculation of overtime, violates the Fair Labor Standards Act for work weeks in excess of forty (40) hours.

As a result, the Union distributed RFI’s to Hotels asking for wage and hour information to calculate monies due to affected employees.

We understand that the Union has begun to notify Hotels of the amounts claimed owed and that they have provided a Voluntary Settlement Agreement (“VSA”) for the Hotels to sign.

Do not sign the VSA at this time.

1. Paragraph 1 of the VSA purports to obligate the Hotel to include night shift differential in all overtime calculations, not just for overtime after forty (40) hours of work. We understand that some Hotels have a practice of including night shift differential pay in all overtime situations, even for night shift hours falling between 35 and 40 hours. If your Hotel does not pay in this matter, please contact Jaclyn Ruocco at Kane Kessler, at jruocco@kanekessler.com
2. We understand that the DOL will want to check the Union’s figures. We have also requested that the Union supply us with their calculations in order to verify their accuracy.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Lois M.

Traub, Alexander Soric, Jennifer Schmalz, Jaclyn Ruocco, Robert L. Sacks, or Michael C. Lydakis.

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