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NOTE OUR NEW ADDRESS

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED MEMORANDUM

DATE: September 1, 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: Night Shift Differential and Overtime

Hotels are receiving VSA's from the Union that contain the following sentence:

“That the Hotel and Union agree that night shift differential shall be added to the regular rate for purposes of calculating overtime compensation.”

We have alerted Hotels that this provision would expand Hotels' overtime obligation beyond what is required by the IWA or Division A CBA to include night shift differential in overtime calculations for work hours less than forty (40) per week, for daily overtime, and for 6th / 7th day overtime. It is primarily for this reason that we have advised Hotels not to sign the VSA.

There has been another reason, up to now, that we have advised Hotels not to sign the VSA. As you recall, this entire issue was prompted by a U.S. Department of Labor (U.S. DOL) inquiry. We have notified the U.S. DOL that any settlement must also resolve any U.S. DOL claims that relate to the calculation of night shift differential for overtime due after forty (40) hours of work in a week.

We are pleased to report that the U.S. DOL has agreed upon a procedure by which Hotels may pay back pay with the U.S. DOL's approval that such back wages constitute a waiver of federal overtime claims by the affected employees. Accordingly:

- (a) Hotels that will rely, or have relied, on the Union's calculations should contact Joe Messineo and ask him to forward to David An (an.david@dol.gov) a copy of the calculations with a copy to Jaclyn Ruocco (jruocco@kanekessler.com). The U.S. DOL will review the calculations and notify the parties of its acceptability, following which payment of back wages should be made.

(b) Hotels that will perform their own calculations should forward them directly to David An (an.david@dol.gov) with a copy to Jaclyn Ruocco (jruocco@kanekessler.com). Upon confirmation from the U.S. DOL that the calculations are acceptable, payment of back wages should be made.

Finally, we will notify the Union of our interest to modify the IWA and the Division A CBA to permanently remove the sentence that states “The wage rate on the basis of which overtime compensation is to be calculated shall not include the night shift differential.”

We intend to discuss this matter in detail at the H.R. Directors meeting scheduled for October 17, 2016.

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](#), [Jaclyn Ruocco](#) or [Jennifer Schmalz](#).

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