

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED MEMORANDUM

DATE: February 16, 2017

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

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

RE: Potential "Day Without Immigrants" Strike February 16, 2017

It appears that the protest movement is proliferating with a general strike called for today, February 16, 2017, and possibly tomorrow and Monday to protest against the policies of the current U.S. administration and to highlight social issues. Because of the likely continuation of this activity, we issue the following guidance.

Given the broad no-strike clause contained in Article 38 of the IWA, we strongly doubt that protests such as these will impact hotels with respect to bargaining unit employees. Furthermore, we have not received any communication from the Union to believe otherwise. The protests may, however, affect non-bargaining unit employees.

While the strikes appear to be a bit broader on the issues and demographics, the February 16 "Day Without Immigrants" protest, as it is being called, has taken place in the past over the course of several years in various parts of the country. In response to past protests, in 2008, the National Labor Relations Board ("NLRB") issued guidance on whether leaving work without permission to attend a political protest is protected activity under the National Labor Relations Act ("NLRA") (the "Guidance"). In general, activity that goes beyond the employee-employer relationship, but still has a direct nexus to employee working conditions, is protected activity under the "mutual aid or protection clause" of the NLRA.

But, even though the activity may be protected, the means by which the advocacy is carried out may not be. **The Guidance states that while a political protest may be related to**

employee working conditions, if the employer lacks the ability to address the underlying grievance, then any economic pressure the employee aims to exert over the employer by calling out of work to attend a protest is not protected. Thus, employers may have the right to discipline employees for failure to give notice of participation in the February 16 strike.

Given the political sensitivities surrounding the strike, however, any disciplinary action could be the subject of potential charges, litigation, and/or media scrutiny. Accordingly, we recommend that employers request that employees give advance notice of participation in the February 16 strike so alternative arrangements may be made and that labor counsel be consulted prior to issuance of any potential discipline.

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

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

This memo is provided for informational purposes only. It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.