

## Club Legal Compliance and Liability Issues

As with any small business, a private club must deal with a number of legal compliance and liability issues. Some that are directly related to employment and staff (such as the Fair Labor Standards Act, Hiring/Firing, Workers' Compensation, Sexual Harassment, and Youth Employment) are made more challenging by the sheer number of employees, the youthful nature of the workforce, and the typical levels of turnover in the industry. A brief discussion of each follows:

### State Alcohol Laws

Individual States establish and enforce laws pertaining to the licensing and sale of alcoholic beverages. In addition to adhering to these laws that govern on and off premise sales, the hours alcohol may be served, the age of servers, purchasing, and in some cases the disposal of empty bottles, there are strict requirements and penalties for over-serving patrons and serving underage persons.

In recent years there have been a number of highly-publicized cases involving liability for the deaths of individuals killed by drunk drivers. The courts have held that the serving establishment and the server may be held liable when they over-served an individual who then got behind the wheel and killed someone.

### Youth Employment

The States and Federal Government have passed laws regarding youth employment. These laws specify industries and professions in which youth employment is banned or restricted. Further, some States still require youths to obtain a work permit before beginning work and all States specify the hours that youths of particular ages may work, as well as banning youths from working with various types of dangerous equipment. A recent high-profile lawsuit against Wal-Mart resulted in a large fine for allowing underage persons to work with cardboard baling equipment.

### Sexual Harassment

Sexual harassment is a significant concern in the hospitality industry because of the youthful, mixed gender work force and the late working hours involved.

### Hostile Work Environment

Often, but not always related to sexual harassment and/or discrimination, ensuring that the workplace does not become a hostile environment for any employee requires continual vigilance on the part of club management.

### EEOC/Discrimination

The Civil Rights Act of 1964, commonly referred to as Equal Employment Opportunity, requires employers to provide equal employment opportunities and bans discrimination on the basis of race, color, religion, age, sex, national origin, disability, or veteran status. This law covers all aspects of the employment relationship, including hiring, training, promotion, job assignments, compensation, discipline, termination and application of all of the club's policies, procedures and benefits.

## **Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act provides civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. While private clubs are exempt from certain provisions of the ADA, local building codes require incorporation of ADA-compliant facilities in all new construction or facility renovations.

## **Occupational Safety and Health Act (OSHA)**

The Occupational Safety and Health Act of 1970 establishes standards and enforcement mechanisms for ensuring safe workplaces. This legislation and the federal and state agencies established to implement and enforce it have created a comprehensive array of requirements affecting the small business. At the core of a business' responsibilities are ensuring a safe workplace, reporting and investigating all accidents and incidents, training of staff in safe work practices, and recordkeeping to protect against claims of negligence.

## **Uniformed Services Employment and Reemployment Rights Act (USERRA)**

Certain requirements are place upon employers whose employees are members of the Armed Forces Reserves or National Guard called to active duty or meeting their annual service requirements.

## **Fair Labor Standards Act (FLSA)**

The Fair Labor Standards Act addresses a number of compliance issues associated with payroll recordkeeping, overtime, exempt versus non-exempt status, and various other compensation-related requirements.

## **Family Medical Leave Act (FMLA)**

The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 workweeks of unpaid, job-protected leave a year, and requires employers to maintain group health benefits at employee expense (if elected by the employee) during the leave. The details of this act require careful administration.

## **Hiring/Firing/Wrongful Termination**

Hiring, counseling, dealing with misconduct and work performance, and terminations are fraught with legal issues and can become a major headache for the club that does not take reasonable and appropriate steps to train its management staff.

## **Workers' Compensation**

Employees injured on the job are entitled to Workers Compensation. This State-administered program is specific in accident reporting procedures and level and length of benefits. Employers with high incidence of Workers' Comp claims can expect to pay higher insurance premiums.

## **Unemployment**

This Federally-mandated, but State administered protection for employees who become unemployed through no fault of their own, can become an expensive program for employers who are lax in

documenting employee discharges or who do not consistently challenge claims without merit. The higher an employer's unemployment experience, the higher the tax rate.

### **Hazardous Material Handling & Storage**

Clubs utilize a wide number of hazardous materials such as pesticides, herbicides, and fertilizers in turfgrass management; chemicals to test, treat, and balance the water in swimming pools; and various cleaning compounds used in housekeeping, maintenance, and kitchen warewashing. In addition to training employees in the correct handling, cleanup, and storage of these chemicals, each facility is required to maintain up-to-date Material Safety Data Sheets (MSDS) on each hazardous material.

### **Food Sanitation**

In this day and age food sanitation is sometimes taken for granted by diners, but ensuring food safety requires careful training of staff and constant vigilance on the part of food service managers. Not only can food-borne illness open the club to liability issues, but the damage caused by an outbreak can be damaging to the club's reputation and bottom line.

### **Public Health – Aquatics**

There are significant safety, public health, hazardous material, and liability issues associated with operating aquatics facilities. Without prepared operating standards, policies, and procedures, as well as a thoroughly trained staff and carefully documented testing and treatment of water quality throughout each day, clubs are exposing themselves to water-borne contaminants, injuries due to toxic chemicals, and death by drowning.

### **Summary**

The legal compliance and liability issues involved in club management are significant, requiring a General Manager who is alert to all of the ramifications and trains subordinate managers thoroughly and consistently. Even with sufficient initial training, there is always the need for ongoing refresher training to ensure that all concerned are up-to-date and fully aware of their responsibilities.

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