

## At Your Service May 2015

By RIW on May 30, 2015

# At Your Service

The eNewsletter of RIW's Hospitality and Retail Services Group



PRACTICES

Restaurant & Hospitality

May 2015  
Volume VIII, Issue I

### Calendar

- **May 11, 2015 – 23rd Annual Restaurant Trends Seminar.**  
**OPPORTUNITIES EVERYWHERE... An industry on the move**  
**Time: 2:00 – 5:00PM, Revere Hotel, Boston**  
[Register](#)
- May 13-17, 2015 – **Nantucket Wine Festival** – Nantucket
- May 27, 2015 – **2015 MRA Restaurant Symposium** – The Colonnade Hotel, Boston

### Three Reasons Why Massachusetts Employers Should Update Their Employee Handbook in 2015



by **Dave Robinson, Esq.**

One of the greatest difficulties in employment law is its ever changing nature. If courts aren't changing what was previously a bedrock principal of law, the legislature (or even voters) pass new laws for employers to comply with. In Massachusetts, 2014 was a banner year for employment related legislation, passing three new laws that affected commonly held employment policies. If you have not dusted off your employee handbook in the last year, it is very likely out of compliance and should be updated.

Here are the three statutes that need to be addressed:

### **Employment Leave for Victims and Family Members of Abusive Behavior Act**

This act was signed into law on August 8, 2014 and became effective immediately. It requires that employers with 50 or more employees provide up to 15 days of unpaid leave to employees or their family members who are victims of abuse. The statute specifically requires employers to notify each employee of their rights under this act, which may be done by including a compliant policy in the handbook.

### **Parental Leave Act**

On January 7, 2015, Governor Patrick signed into law the Parental Leave Act ("PLA"), which expands the scope of the Massachusetts Maternity Leave Act ("MMLA"). The MMLA previously provided female employees of employers with six or more employees with eight weeks of unpaid leave in connection with the birth or adoption of a child. The PLA expands the MLA to allow male employees to utilize up to eight weeks of leave. The statute also increases the amount of job protected leave to not more than eight weeks, unless the employer clearly informs the employee in writing prior to the leave and prior to any subsequent extension of the leave.

### **Sick Leave Statute**

Last November, Massachusetts voters approved a ballot petition requiring employers with 11 or more employees (full and part time) to provide up to 40 hours of sick time to all of their employees. Additionally, the statute requirements will create compliance issues (accrual, verification, etc.) that will likely cause most existing PTO/sick leave policies to be out of compliance. Employers are required to comply with this statute by July 1, 2015.

For additional information or to review a company's handbook contact Dave at (617) 742-4200 or [dwr@riw.com](mailto:dwr@riw.com).

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## **50 Ways to Leave Your Subcontractor**



by **Brad Croft, Esq.**

In the beginning, it was a fairytale relationship: young and growing GC meets capable and experienced subcontractor. Everything seemed so effortless then – the bids fell exactly into place, the schedule was always met, the work was flawless and payments were never a problem. Then, slowly, things began to change.

At first you chalked it up to innocent mistakes – a missed item here or under-ordered materials there. But then the mistakes became more common and carried greater potential risks – the wrong insurance certificate or a call from the local union rep about a few missed benefit payments. Most recently, it's as though the sub has just given up. Refusing to sharpen its numbers. Woefully understaffing the job. Failing to pay lower-tier subs and allowing liens to hit the project. Perhaps they're directing their affections to a new GC or maybe they're just taking you for granted, assuming you'd rather deal with their shortcomings than have to go back out on the bidding scene.

Whatever the reason, it's clear that the bloom is off the rose. The shine is off the apple. It's time to part ways.

So now what?

Terminating a subcontractor is typically contentious. Most subs believe they either performed properly or should have been given another chance to remedy the problem. The

way in which the GC approaches termination of a subcontractor can be the difference between a clean, healthy break and a long, drawn-out separation and the inevitable heartache and price tag that comes with it. Click [here](#) to read full article.

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## Security Deposits and Restaurant Leases



by **Christopher A. Agostino, Esq.** and **Michael D. Rosen, Esq.**

High startup costs represent a barrier to entry in many industries, but none more so than in hospitality and retail. One large outlay that confronts most new restaurant operators is the cash security deposit for a lease. While landlords may be quick to demand cash security deposits from restaurant tenants – the more cash the better – a restaurant operator may be well served by suggesting a stand-by letter of credit as an alternative. A letter of credit in lieu of cash frees up capital at a critical point in the lifespan of any restaurant and may provide benefits to both landlords and tenants during the tenure of a long-term retail lease.

Restaurant tenants may also see the benefit of a letter of credit if a landlord becomes insolvent. Commercial landlords are generally allowed to commingle tenants' security deposits with their own funds; therefore, if a landlord encounters financial difficulty its tenants' security deposits are at risk. At any given time, a cash security deposit could be converted by the landlord for its own use or taken by an attaching creditor or the landlord's bank. If the landlord's depository bank is also a secured creditor, the bank could simply reach into the landlord's operating account and take the funds without notice or demand to the tenant. Moreover, if the landlord files for bankruptcy protection, a tenant's claim for return of its security deposit could stand in line with other general unsecured creditors, absent expensive legal wrangling to prove a constructive trust or other priority claim to the funds. It may be possible to address some of these issues in a negotiated subordination, non-disturbance and attornment agreement between the tenant, the landlord and its bank, but a tenant could avoid landlord insolvency issues altogether through use of a letter of credit. So long as the tenant is not in default under the lease, a properly drafted letter of credit should be outside the scope of any claims or liens asserted by landlord's creditors. While these issues may seem remote, turmoil in the real estate market in the not too distant past is proof positive that these possibilities should at the least be understood and considered, depending the landlord in question. Click [here](#) to read full article.

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## Marketing Corner

### Put it in writing

Lawyers always want to put everything in writing. But in this case we think it just makes great customer relations sense. Diners are always impressed with a servers' ability to rattle off a whole list of specials by memory. Sometimes the details just go easily in one ear and out the other. So in consideration of those distracted diners, it might be appreciated if the server could leave a printed copy of specials behind on the table. That's a real help to the customer and will reduce the number of times a server needs to come back to repeat themselves.

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## RIW Client News

- **Santouka Ramen** opens new location in Harvard Square, Cambridge.
- **Woods Hill Table** opens in Concord.
- **Loco Taqueria & Oyster Bar** opens South Boston location.

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## RIW Events



Pictured left are **Russ Stein** with wife Rebecca and Lou Katz and wife Jean attending the Barbara Lynch Foundation Boston Homeless event.

RIW's **Bethany Grazio** and Michael Duffy presented a panel discussion at the New England Food Show featuring RIW clients and industry leaders Dylan Welsh (Five Horses Tavern) and Patrick Renna (Boloco) concerning "Five Critical Employment Issues Facing the Restaurant Industry."

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## Industry Trends

- **Why the biggest hotel brands offer up a few independent gems**
- **Three food trends turning the industry upside down**
- **Retail news & trends**

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Ruberto, Israel & Weiner attorneys have comprehensive knowledge and expertise in the areas of law in which they practice and the industries served. Attorneys in RIW's Hospitality Practice Group have provided legal services to industry clients for over 30 years.

Additionally, our attorneys organize seminars, lecture, write articles, participate in trade associations, and serve on Boards of Advisors for retail, food and hospitality industry companies.

For a full description of our Hospitality Practice Group, including a list of representative clients, [click here](#).

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## Archives

[Click here](#) for past articles on a range of issues including: Finance; Leasing; Data Security; Succession & Estate Planning; Disputes; Construction; and Branding.

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