

At Your Service

The E-Newsletter of RIW's Hospitality and Retail Services



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Calendar

May 11, 2016 | Around the Restaurant Industry in 150 Minutes Seminar | Canton, MA
RIW attorney Bethany Grazio will speak at this event.
web.themassrest.org/events/Around-the-Restaurant-Industry-in-150-Minutes-Seminar-215/details

May 11, 2016 | Cocktails and Conversation: Wynn Casino Case Study | Boston, MA
www.naiopma.org/events/Cocktails-and-Conversation-Wynn-Casino-Case-Study-418/details

June 6, 2016 | The 24th Annual Restaurant Trends Seminar
GUESS WHO'S COMING TO DINNER...Setting the table for a winning concept | Boston, MA
RIW is a co-founder and sponsor of this event.
www.rtseminar.com

August 10, 2016 | Boston Magazine Battle of the Burger | Cruise Port Boston
<http://www.bostonmagazine.com/cueandburger/>

UPDATE: Final Publication of Department of Labor Proposes FLSA Regulations to Increase the Salary Threshold for Exempt Employees is Imminent.



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On June 30, 2015, the U.S. Department of Labor announced its proposed revised regulations related to the Fair Labor Standard Act's "white collar" exemptions, which apply to executive, administrative, professional, outside sales and computer employees. The publication date of the final regulations remains uncertain, but a growing consensus is that they are likely to be released some point in the next four weeks (i.e. May or June 2016). It is still anticipated that the revision's effective date will be 60 days after publication. This indicates that employers will need to be in a position to implement its compliance plans by as early as mid to late July.

In order for an employee to qualify for a white collar exemption, his or her salary and job duties must satisfy certain threshold criteria. The current salary threshold, last updated in 2004, is \$455 per week (or \$23,660 per year). The proposed changes would more than double the current threshold by indexing the salary level to the 40th percentile of earnings for full-time salaried workers. The DOL projects that when the revisions would go into effect the new salary threshold would be increased to \$970 per week (or \$50,440 per year).

The DOL also proposes to increase the salary threshold for "highly-compensated" employees from \$100,000 per year to \$122,148 by indexing the salary level to the 90th percentile of earnings for full-time salaried workers. These salary thresholds will thereafter automatically update on an annual basis to prevent the levels from becoming outdated.

Given the impending rule publication, Employers should review now what changes these regulations will make to the classification of their exempt employees. Inevitably, employers will likely need to reclassify some employees to nonexempt or drastically increase their salary in order to meet the threshold requirements. Recognizing ahead of time which employee class(es) will change will be vital for employers to control or eliminate increased costs going forward.

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EXPANDING YOUR BUSINESS – DON'T FORGET ABOUT THE BRAND!

TRADEMARK CONSIDERATIONS



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You have a successful product or service, and now you have an idea for expansion. Whether you are considering a new location, or a new product or services line, once you determine that the proposed expansion makes good business sense, the next step is to make sure your brand, or trademark, is available for the new use. Some key considerations:

1. U.S. Expansion - If you already federally registered your trademark with the USPTO (United States Patent and Trademark Office), then for expansion geographically within the U.S., you should be fine, because a federal trademark registration gives you nationwide rights. The registration can be used not only to stop “common law” (unregistered) use that post-dates your first use, but also use which started before your use but after your filing date. This applies no matter where the use is – for example, one of Boston restaurant clients recently stopped use of its mark in Miami. Another Boston restaurant enforced its rights in San Francisco and Arizona. A registration can also be used to limit uses which *pre-date* your use or filing date (“senior use”) to the specific geographic area of that use. If your mark is not already federally registered, you should do that as soon as possible. A registration is a valuable tool and asset, because in addition to conferring nationwide rights in terms of use and enforcement, the USPTO database also acts as a notice system to others and therefore often prevents similar uses - not to mention a registered mark is worth more than an unregistered mark should you have a business valuation for M&A or financing purposes. Either way, you should still do a search to make sure that no one has started use of your mark elsewhere in the country, and specifically in your proposed new locale. If you do find other uses of your mark or anything confusingly similar, you will need to enforce your trademark rights, or risk losing them.

2. Foreign Expansion – Trademarks are territorial, which means that a registration in the U.S. does not mean you have rights in Canada, or Europe, or anywhere else. Therefore, if the expansion is in another country, then you will need to register there. Keep in mind that while the U.S. recognizes common law use – 99% of other countries do not. No registration, no rights. This is another good reason to have a U.S. federal registration – you can use it as the basis for foreign applications, making the process much easier.

3. Product or Service Expansion - Perhaps you have a restaurant, and now you want to sell food products such as a sauce or salad dressing, or perhaps you are a hotel and want to offer tour services, or open a spa. If you did a trademark search before using your mark, then hopefully that turned up any uses within your “natural zone of expansion” and you already know the mark is clear for the additional goods or services. If not, then a search is now necessary, both on the USPTO site and common law to see if there are any existing uses for your mark or a similar mark for the new products or services. If the mark is available, then you should apply to register it for the new product or service. If you see possibly infringing uses, you may or may not be able to enforce your rights. If you have a federal registration, then you have a better chance. If not, then you may need to consider a different brand for the expanded use.

As you can see, doing your trademark homework can help you expand smoothly and without unnecessary legal problems and expenses. Searching and registering the mark to reflect your current and proposed use gives you the information and rights you need to move ahead with confidence – before creating labels, signs, packaging, marketing materials, and other items for the new product, service, or location.

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Feedback Survey

How are we doing with this newsletter? Is there more (or less) information that you would like to receive. Please take our quick, 5 question survey to let us know how we are doing to meet your newsletter needs:

<https://www.surveymonkey.com/r/D7PV6DJ>

Industry Trends

Inside restaurant delivery's volatile landscape

<http://nrn.com/technology/inside-restaurant-deliverys-volatile-landscape>

Hospitality's big haul: It's salad days for Boston's hotel industry

<http://www.bizjournals.com/boston/print-edition/2016/01/22/the-hotel-sector-has-seen-its-share-of-booms-and.html>

3 Attention-Getting Ideas We Stumbled Upon

<http://www.restaurantbusinessonline.com/opinions/peter-romeos-reality-check/3-attention-getting-ideas-we-stumbled-upon#page=0>

RIW Client News

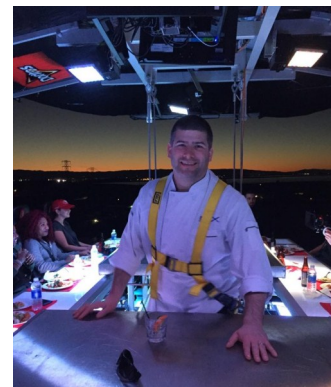
Congratulations to RIW client Wahlburgers on the opening of their Orlando and Toronto Airport locations.



Congratulations to RIW client Jake N Joes's on the opening of their new location in Woburn, MA.

Congratulations to RIW clients Mike Conlon and Eric Aulenback on the opening of Capo in South Boston.

Pictured to the right is RIW client and chef/owner Matt O'Neil from the Blue Ox, "hanging" out at the Super Bowl during a *Dinner in the Sky* event, as part of the Doritos® Bold 50 World Record #1: Highest Suspended Football Party.



Marketing Corner



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Lighten Up...

While mood and ambience can enhance the dining experience, it's important for guests to easily read/see the menu. Dimly lighted environments can make that difficult. Cellphones now have apps that can help... but just in case, it is a good idea to have some sort of illumination like a min-flashlight available for diners who may be having a hard time.

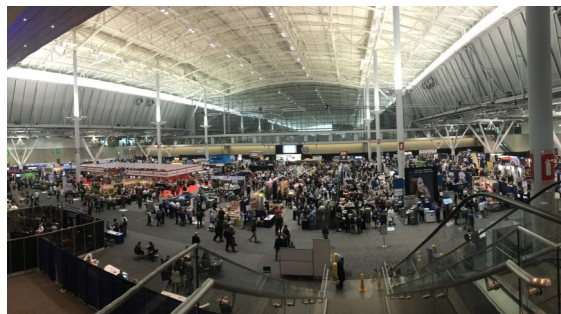
RIW Events/Participation

RIW attorney Michael Rosen moderated a panel on Restaurant Development at Bisnow's Restaurant Development Summit on January 20th. Pictured is Michael Rosen with the panelists, Jeremy Sewall, Chef & Partner, Island Creek Oyster Bar & Row 34, Leo Fonseca, CEO, Stephanie's Restaurant Group, Steve Silverstein, CEO, Not Your Average Joe's, and Lori McWeeney, VP, Samuels & Associates.



Also in attendance at this event were RIW's Lou Katz, Howie Altholtz, Bethany Grazio, Kelly Caralis, and Mike Duffy.

RIW attorneys and staff attended the Annual New England Food Show hosted by the Massachusetts Restaurant Association from March 13-15th. Pictured are Howie Altholtz and Mary DesBois attending the event. Also in attendance were Lou Katz, Michael Rosen, Bethany Grazio, and Dave Robinson.



The MRA also hosted an Awards Dinner which took place during the evening of March 14th. In attendance at this event were Lou Katz, Bethany Grazio, Chris Agostino, Dave Robinson, Russ Stein, and RIW Clients Ed McCabe and Adam Amontea from Cafco Construction, Ruta Laukien from Liquid Art House, and Rob Weintraub and Nicole Yoshikane from Select Oyster Bar.

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 and Retail Services 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 and Retail Services Group, including a list of representative clients, please visit our website at www.riw.com.

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Kelly Caralis, Editor

This material is intended for informational purposes only and is not meant to be construed as legal advice. For a comprehensive understanding of the issues raised in this material, please contact a qualified attorney of your choice.