

## At Your Service November 2013

By RIW on November 10, 2013

# At Your Service

The eNewsletter of RIW's Hospitality and Retail Services Group



November 2013  
Volume VI, Issue V

### CALENDAR

- November 18, 2013 – Boston Magazine's Taste 2013 – Boston Children's Museum, Boston
- November 18, 2013 – New England Restaurant Networking's Fall event to benefit Community Servings' Pie in the Sky fundraiser and to toast the reopening of Forum – Boston

### Affordable Care Act (ObamaCare) Is Here. Is Your Business Prepared?



by David W. Robinson, Esq.

Halloween has come and gone, but the fear of the Affordable Care Act ("ACA"), affectionately dubbed "ObamaCare," remains in the hearts and minds of many business owners. Given the current composition of Congress, it appears that the ACA is here to stay for at least the time being. This article will provide some useful tips to prepare for the days ahead.

#### Compliance starts now.

Although implementation of the "Play or Pay" mandate was delayed until 2015, some of the ACA's provisions are already in effect. For example, as of October 1, 2013, most employers are required to notify their employees about the availability of health insurance and subsidies to help pay for coverage. If you have not sent out this Notice, it should

be done immediately. A template Notice created by the Department of Labor is available here: <http://templatelab.com/FLSA-with-plans/>. Additionally, the DOL's website provides many helpful tips for providing notice.

Additionally, as of January 1, 2014, compliance of health care plans begins in earnest. For example, plans with lifetime and annual caps and/or exclude pre-existing conditions will be out of compliance. Employers must act now to ensure that their plan complies with the provisions of the ACA provisions that become effective in 2014. [Click here](#) to read more.

---

## Best Practices for Hiring and Firing Employees



by **Mike J. Duffy, Esq.** and **Bethany A. Grazio, Esq.**

Hiring and firing decisions can present significant challenges and stress for business operators and managers. Much of this stress comes from not knowing whether a particular decision regarding an employee is going to lead the business into trouble or even into a lawsuit. While there are few guarantees against potential future claims, there are practices employers can use to minimize risks and limit claims. This article highlights certain best practices in hiring and firing decisions and can help steer employers during the process.

### Hiring

In addition to finding employees who are the right fit for the job, one of the major legal issues relating to the hiring of employees is discrimination. Generally, employers cannot base decisions not to hire someone on the basis of a protected status, including race, ethnicity, sex, disability, religion, age, gender and sexual orientation. Protected class criteria generally should not play a role in the hiring decision, and an employer should avoid obtaining such information in the application and interviewing process if it is avoidable. Specifically, once an employer has gathered information that pertains to a protected class status regarding a candidate for employment, it is difficult for the employer to assert a defense of "ignorance" in response to a discrimination in hiring claim based on that information.

More and more employers are using social media and other internet searching to screen and recruit candidates. One of the risks in using social media screening is the same as set forth above—by looking at social media, and especially Facebook, an employer may learn that a candidate is in a protected class. While this practice has its pitfalls, the business reasons to do this screening usually outweigh the potential risks. Employers can take additional steps to mitigate those risks by insulating the hiring decision-makers from any protected status information. For example, social media screening can be conducted by an outside service provider or by an HR representative or other manager in the company who passes only relevant, non-discriminatory information to the hiring decision-maker in the form of a report.

Some employers have taken social media related diligence one step further and have required Facebook passwords from a potential hire, or have required them to log onto the site during an interview. This practice is precarious at best, and in many cases may not be lawful. Some states have passed legislation prohibiting employers from asking for such information, and obtaining this type of information may also violate the Stored

Communications Act and the Fair Credit Reporting Act. [Click here](#) to read more.

---

## Industry Trends

New research shows consumers want a side of technology with their meals

6 ways retailers can jump into sustainability

---

## Marketing Corner



Customers like to see and do appreciate your business operating as ONE UNIT. It pays to instill that spirit in all employees.

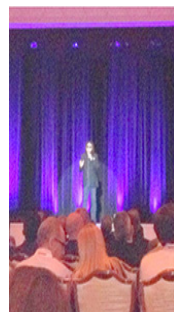
Nothing should ever be, 'not my job'.

Everyone should be keeping an eye out for customer needs that arise even outside their own areas of responsibility... and either help out, or quickly find someone who can.

---

## RIW News

Restaurant Trends sponsors RIW; Cafco Construction; and The Boston Restaurant Group welcome the Boston Business Journal as Media Sponsor of the 22nd Annual Restaurant Trends Seminar. Event details to follow. For past event details visit: [www.rtseminar.com](http://www.rtseminar.com).



Pictured are RIW hospitality partners **Lou Katz** and **Russ Stein** at leisure on Lake Mead outside of

Las Vegas on eve of national **Restaurant Finance and Development Conference** during week of November 5, 2013. Gene Simmons of the musical group Kiss was a featured speaker at the event.

---



RIW was a host of Restaurant Strategies, Marketing & Best Practices in Managing Restaurant Employees Seminar. RIW attorneys **Mike Duffy** and **Bethany Grazio** spoke at the event which took place on October 8, 2013 and was also hosted by **The Restaurant and Business Alliance** and the **Phantom**

**Gourmet**. Event photo features RIW attorneys **Dave Robinson**; **Howie Altholtz**; **Mike Duffy**; and **Bethany Grazio** along with Dan Andelman and Dave Andelman of the Phantom Gourmet.

RIW attorneys **Lou Katz** and **Dave Robinson** spoke at the National Retail Tenant Association's Annual Meeting. The event took place September 22-25, 2013 in Florida.

Congratulations to our client Tavern in the Square. The chain plans to open four new locations. [Click here](#) to read the Boston Business Journal article.

Congratulations to our clients for opening the following new restaurants this Fall: Santana Rae's in Methuen; Gather in the Seaport District; The Local Restaurant in Wayland; and the Stockyard Restaurant in Brighton.

---

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](#).

## INDUSTRY GROUP ATTORNEYS

**Kelly Caralis**, *Mergers & Acquisitions and Leasing*  
[kac@riw.com](mailto:kac@riw.com)

**Bradley Croft**, *Construction Law*  
[blc@riw.com](mailto:blc@riw.com)

**Michael J. Duffy**, *Litigation*

[mjd@riw.com](mailto:mjd@riw.com)

**Stacey Friends**, *Trademarks and Branding*  
[sfriends@riw.com](mailto:sfriends@riw.com)

**Bethany Grazio**, *Mergers & Acquisitions and Financing*  
[bag@riw.com](mailto:bag@riw.com)

**Louis Katz**, *Mergers & Acquisitions and Leasing*  
[lck@riw.com](mailto:lck@riw.com)

**Joe Magner**, *Litigation*  
[jnm@riw.com](mailto:jnm@riw.com)

**David Robinson**, *Litigation*  
[dwr@riw.com](mailto:dwr@riw.com)

**Michael D. Rosen**, *Commercial Real Estate; Zoning; Land Use; Leasing & Financing and Green Initiatives*  
[mdr@riw.com](mailto:mdr@riw.com)

**Russell Stein**, *Mergers & Acquisitions and Leasing*  
[rns@riw.com](mailto:rns@riw.com)

---

## ARCHIVES

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

Published by Ruberto, Israel & Weiner. **Kelly A. Caralis, Esq.**, 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. © 2015 Ruberto, Israel & Weiner, P.C.**

POSTED IN: **AT YOUR SERVICE, HOSPITALITY PRACTICE GROUP**