

At Your Service September 2015

By RIW on September 30, 2015

At Your Service

The eNewsletter of RIW's Hospitality and Retail Services Group



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Calendar

- September 19, 2015 – **Island Creek Oyster Festival** – South Boston, MA
- September 20, 2015 – **Boston Local Food Festival** – Boston, MA

Planning for Changes in the Ownership of Your Restaurant



by Kelly Caralis, Esq.

Every closely held restaurant with two or more partners should anticipate and plan for events that could alter the ownership of the restaurant, such as the departure, death, disability, bankruptcy, or divorce of one of the partners. One common way to do this is by implementing buy-sell provisions in the restaurant's operating agreement if the restaurant is a limited liability company, or in a separate shareholder agreement if the restaurant is a corporation. Simply put, buy-sell provisions set forth the rights and obligations of the partners to buy the shares of another partner when certain events occur. Most partners overlook these types of provisions when forming their restaurant business because they find them uncomfortable to talk about and plan for, especially in the early stages of a business relationship. However, entering into buy-sell provisions at the beginning of your business relationship can save you both money and angst in the long term. It may help to think of buy-sell provisions as a sort of

“premarital agreement” between you and your partners setting forth the orderly terms of your “separation” before any hard feelings toward each other start to surface. That being said, if you and your partners did not contemplate buy-sell provisions during the “premarital” stage of your business relationship, you should consider them before you need them.

Below are some basic questions and answers for you to review and discuss with your partners as you consider the topic of buy-sell provisions:

1. What types of events will trigger a buy-sell? Events that commonly trigger a buy-sell include when (i) a partner who also works for the restaurant retires, voluntarily resigns or is terminated for cause, or (ii) a partner dies or is unable to continue his or her duties due to disability, or (iii) a partner declares bankruptcy or gets divorced and his or her ex-spouse stands to receive an partnership interest in the restaurant, or (iv) a partner wants to sell his or her share of the restaurant to an outside third party. You can include all or any of these events in your buy-sell provisions.
2. Should the buy-sell be mandatory or optional? After deciding which trigger events to include in your buy-sell provisions, partners will need to then decide which events result in a mandatory purchase or an optional purchase at the election of the remaining partners. For example, if the death of a partner triggers a buy-sell right in the other partners and the partners or the restaurant have purchased life insurance policies on the life of the deceased partner, then the purchase of the deceased partner’s share would likely be mandatory upon the death of the partner. Alternatively, if there is no life insurance on the deceased partner’s life, the partners may decide to make the purchase optional at the election of the remaining partners. Click [here](#) to read more.

Department of Labor Proposes FLSA Regulation to Increase the Salary Threshold for Exempt Employees



by **Dave Robinson, Esq.**

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. These long-awaited revisions are in response to President Obama’s March 2014 Memorandum directing the DOL to “modernize and streamline” the regulations on exemptions from overtime requirements. The DOL expects that its revisions would extend overtime protections to almost 5 million white collar workers in the first year.

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 by 2016, 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 automatically update on an annual basis to prevent the levels from becoming outdated.

Of note, the DOL has not made any specific proposals to change the required duties to qualify for the white collar exemptions. Instead, the DOL has asked for comments on

questions concerning whether any changes should be made. The DOL is also considering whether to allow nondiscretionary bonuses to satisfy some portion of the salary requirement. The comment period for these and any other matters pertaining to the DOL's proposed revisions began on July 6, 2015 and will close on September 4, 2015.

Although the Final Rules will not take effect until 2016, Employers should review 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.

Special thanks to Jessica J. Perkowski for her assistance.

David Robinson is an associate of Ruberto, Israel & Weiner and a member of the firm's **Litigation; Hospitality Practice Group; and Employment Groups**. Dave can be reached at dwr@riw.com.

Marketing Corner



If You Hear Something... Do Something

Customer complaints or suggestions should always be taken seriously.

Some are in fact quite serious e.g., cold food, late food, an item that disagrees with them... foreign object, etc.

Some may be more frivolous, but no matter, a diner's opinions and experiences should always be respected. And in some cases compensated... discount off next meal, take something off the bill, round of drinks etc.

Make sure they feel their concerns were heard. So they leave with a good feeling and come back, and as importantly, not spread a negative experience around.

RIW Client News

RIW congratulates **Blue Ox** and Matt O'Neil as **2015 Boston Magazine Battle of the Burger** Champion. Pictured below is **Michael Rosen** with Matt O'Neil and Matt celebrating with his wife Joanna.



Tavern in the Square Group opened a new mexican-themed restaurant in South Station, Boston called Tavitax/A Mexican Joint, on August 24, 2015.

Wahlburgers opened in Lynnfield and will also open in Fenway this month. Pictured below are **Bethany Grazio** and **Kelly Caralis** with chef Paul Wahlberg at the Lynnfield opening party.



Congratulations to PAGE Ventures on the purchase of 26 Dunkin Donuts stores in the Buffalo area.

Row 34 opened in Portsmouth New Hampshire on May 24, 2015.

Congratulations to **Liquid Art House** on their one year anniversary. Pictured below is owner, Ruta Laukien with RIW's **Lou Katz** and **Howie Altholtz**.



RIW Events/Participation

Michael Rosen and **David Robinson** are speaking at the National Retailers Tenants Association Annual Conference on September 27-30, 2015. The event is taking place at the Orlando World Center Marriott in Florida. [Details.](#)

Pictured below are Lou Katz; Howie Altholtz; Chis Litterio; Michael Rosen; and Brad Croft along with Boston magazine Publisher Kristen Standish at the **2015 Boston Magazine Battle of the Burger** event which took place on Wednesday, August 12, 2015.



Brad Croft moderated a panel **BISNOW's Boston Retail: The Impact of the Ground Floor & What Tenants Want**. The event took place on July 29, 2015 at the Westin Boston Waterfront.

Joe Magner, **Howie Altholtz** and **Chris Agostino** are pictured below at Boston magazine's **2015 Best Fest 2015** event which took place on July 21st at Boston City Hall Plaza.



RIW is a sponsor of the Boston magazine 2015 Power of Ideas event. **Russ Stein** will moderate a hospitality panel. Details to follow.

Industry Trends

- **On the Brink: The Four Biggest Food Trends of 2015**
- **What Exactly is the Hospitality Industry?**
- Three online retail trends for 2016

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.

Published by Ruberto, Israel & Weiner. **Kelly A. Caralis, Esq.**, Editor.

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