

www.nrn.com
October 30th, 2009

Tip pooling a hot topic in NYC

by, Elissa Elan

NEW YORK (Oct. 30, 2009) Proper record keeping of employees work times and a defined position on tip pooling procedures can help protect restaurateurs from a variety of lawsuits that typically add costs and stress to already challenged operations, industry observers said in Manhattan this week.

A town hall meeting, entitled "How to Protect Your Restaurant," was held in response to the myriad lawsuits that have been filed against restaurateurs in New York City, as well as proposed changes to current labor laws. Like California and some other areas nationwide, New York City's labor laws are onerous, and many operators have fallen prey to class-action suits and other legal hiccups, which can be costly to both a business' fiscal health and general community goodwill.

Panelists for the meeting, which was sponsored by Culintro LLC, a restaurant industry membership organization, included Carolyn Richmond of the law firm Fox Rothschild LLP; Will Regan, chief executive of 3Sixty Hospitality, a back-office management consultancy; and Josh Ozersky, an editor for Citysearch New York. They focused on how operators can best avoid litigation.

Regan and Richmond discussed the problems associated with tip pooling, which is an issue Richmond called "the big pink elephant in the room."

While tip sharing is not illegal in New York State, the more difficult issue is getting employees to pool their tips with all employees instead of a select few, or those at the front of the house. Wage amendments are afoot in New York, and a special committee formed by the labor commissioner has been meeting this year to offer suggestions on revising the current labor laws. Richmond was one of many industry experts to offer testimony at the committee's public hearing last summer.

"I think this is going to change in the next three months," she said. "The state probably will allow mandatory pooling."

According to Regan, class-action wage suits are another area for restaurateurs to closely follow. It has only been during the last 15 years that the majority of class-action suits have been filed.

"These cases are easy. Attorneys are not spending 10 years trying to put these cases together," Regan said. "They've realized that these types of cases are really lucrative. The plaintiff may only get a few thousand dollars, but the attorneys get one-third [of the judgment]. The rest is divided up by the hundreds of employees [involved in the suit]."

Richmond agreed, saying that it is typically easy to determine whether a restaurant operator has violated the wage laws. "It's not a 'he said, she said' [situation] like it is with sexual harassment," she noted.

Richmond noted that the largest area of legal activity now included overtime, tip and service charge violations.

To help defend restaurant operations, it is essential for restaurateurs to keep proper shift records, she said.

"Teach your employees how to properly clock in and clock out," she noted. "You have to get the employees used to using a time clock; it's a whole lot cheaper than paying me and the other lawyers."