CHAPTER **TWO**

The Legal Environment of Human Resources Management

CHAPTER OUTLINE

CHECKLIST OF CHAPTER LEARNING OBJECTIVES

As a result of satisfactory completion of this chapter, readers will be able to:

1. Define and describe "employment law," the legislation directly addressing employer–employee relations.
2. Recognize the importance of the government's role in establishing legal requirements affecting HR management.
3. List and briefly describe selected labor-related legislation enacted in the United States by the federal government.
4. Identify the unique issues facing hospitality companies that operate units in countries with legal systems different from that of the United States.
5. Recognize and appreciate the unique HR-related responsibilities of the hospitality unit manager.

Impact on Human Resources Management

In most cases, hospitality unit managers serve as their own on-site legal counsel. As a result, these individuals are looked upon by their employers as well as those reporting to them to make the legally appropriate decisions in a wide variety of work situations. These range from selecting and disciplining employees to preventing harassment in all of its forms, to employee compensation, employee appraisal, termination, and a myriad of other HR concerns.

Hospitality managers responsible for HR management must fully understand that the wrong HR decision can subject their companies (and themselves!) to significant legal liability. Multimillion-dollar jury awards levied to penalize those companies found to be guilty of improper employment practices are common in the United States. As a result, it is critical that those hospitality managers responsible for HR management recognize, and follow, all of the laws that affect their daily HR-related decision making.

Employment Law

1. **Define and describe "employment law," the legislation directly addressing employer–employee relations.**

Employment law: The body of laws, administrative rulings, and precedents that addresses the legal rights of workers and their employers.

Hospitality managers responsible for HR activities at either the unit or company level must understand the importance of **employment law** to their daily activities and decision making.

Employment law in the United States arose, in most cases, as a result of the demands of workers for better working conditions and the right to organize. Whenever these worker demands were deemed reasonable by a majority of society or the courts, legislation was enacted and became part of the accepted employment practices of the country.

Today, employment laws are still proposed by various segments of society in an effort to ensure fairness in the workplace. The societal view of what actually constitutes fairness in the workplace, however, is often controversial and always changing. For example, some employment-related legislation that would have been considered quite radical in the 1800s is today commonly accepted. For example, the now-accepted concept that the rights of female employees should be equal to those accorded to men was certainly not the norm in the 1800s (recall that it was 1920 before women in the United States gained the right to vote!).

In other cases, the citizens of individual states or cities may vary greatly in their own views of what constitutes fairness in employment. Not surprisingly then, employment laws that vary greatly are likely to be enacted in those states and cities.

As a result, you as a hospitality manager must be keenly aware of the individual employment laws that directly affect you, your operation, and your employees. In this text, the legal consideration of many HR practices will be examined, because the impact of employment laws on those practices is so significant.

In this chapter, you will learn about a variety of employment laws that directly affect the management of a hospitality organization's HR efforts, as well as the management of individual restaurants, hotels, and other hospitality operations. In some cases, the laws directly related to employment in the hospitality industry are general (e.g., the federal laws relating to the rights of workers to unionize). In other cases, the laws related to employment may best be understood in the context of a particular segment of HR management. As a result, laws related specifically to employee recruiting (see Chapter 4), compensation (see Chapter 8), performance appraisal (see Chapter 9), and employee safety and security (see Chapter 10) will be closely examined in those individual chapters.

Hospitality managers, even those working full-time in HR management, are not expected to be attorneys. A lack of understanding about HR-related law, however, can easily produce problems that result in those managers requiring the services of an attorney! Experienced managers know that lawsuits and litigation are expensive and time consuming. Most would also agree that the negative publicity associated with highly publicized lawsuits can be a real detriment to their business (and even their careers). For these reasons, hospitality managers at all levels should take great care to ensure that their actions do not inadvertently create legal issues for themselves and their companies.

The Law and Human Resources: Prevention Is Better Than a Cure

In the medical fields, it is widely agreed that it is better to prevent a serious illness beforehand than to treat it after the fact. For example, doctors would advise that it is preferable to prevent a heart attack through proper diet, exercise, and the elimination of smoking than to perform a bypass operation on a patient after a heart attack has occurred. In the case of prevention, the doctor advises the patient, but it is largely up to the patient to put into practice the physician's recommendations. In a similar vein, it is far better for hospitality managers to understand the laws that relate to HR management than to expose their organizations to the fines and litigation that can result from violations of the law. Therefore, a basic understanding of how employment law is enacted, as well as how current law affects HR management, is absolutely essential.

IT'S THE LAW!

"Deb," a food and beverage server, is accused of stealing money from the purse of a peer in the food and beverage department. Management is convinced that Deb took the cash, but she denies it. Can Deb be required by management to submit to a lie detector test? In most cases, the answer is no.

Societal views about what should be legal at work change constantly. In most cases, issues related to the rights of workers and employers seek to balance the best interests of each group. In some cases, the resulting legislation is, at best, a tenuous compromise. For example, the Employee Polygraph Protection Act of 1988 (EPPA) generally prevents employers from using lie detector tests, either for preemployment screening or during the course of employment, with certain exemptions.

Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act. In addition, employers are required to display the EPPA poster in the workplace for their employees.

Should employers have the right to require employees to take lie detector tests? Since 1988, they have not, nor will they have it *again* unless and until the societal view supports such a right. Regardless of your position on this specific issue, it is very clear that employment laws will continue to directly influence what those in HR management can and cannot do in all segments of the hospitality industry. As a result, an understanding of laws such as this one is critical!*

*The EPPA prohibits most uses of lie detectors by employers on their employees and job applicants. The Employment Standards Administration's Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the EPPA. For more information, call 1-866-4USWAGE or go to *www.dol.gov*.

The Government's Role in the Management of Human Resources

2. Recognize the importance of the government's role in establishing legal requirements affecting HR management.

If you manage a hospitality business, you have many partners in your HR-related activities and decision making, because the hospitality industry is regulated by a variety of federal, state, and local governmental entities. They enforce the many regulations that spell out the ways you must operate your businesses, as well as how you are required to carry out your HR efforts.

Hospitality managers interact with governmental entities in a variety of different ways, and they must observe the procedures and regulations established by the government. Managers must fill out forms and paperwork, obtain operating licenses, maintain their property to specified codes and standards, provide a safe working environment, and, when required, even open their facilities for periodic inspections.

It should come as no surprise that a society, working through its governmental structures, will implement and often revise its rules of employee–employer conduct and responsibility. Society is in a constant state of change, and that has significant implications for those working in business, especially in the hospitality industry. To illustrate, consider the hospitality industry in the United States in 1850. At that time, you would certainly not find a law requiring a specific number of automobile parking spaces to be designated for a restaurant's or hotel's disabled workers.

The world of the 1850s contained neither the automobile nor (importantly) the inclination of society to grant special parking privileges to those who were disabled. In today's society, we have both. What changed? First, the physical world changed. We now have automobiles and the necessity of parking them. More significant, however, is the fact that society's view of how disabled individuals should be treated has changed. Parking ordinances today require designated "Disabled" parking spaces, which are generally located close to the main entrances of buildings to ensure easy access. Not only is it good business to employ those with disabilities, but current laws mandate that the hospitality manager must do so. In this case, employment of the disabled (and parking requirements) grew out of a law created by the federal government, the Americans with Disabilities Act (ADA). It is mentioned here to illustrate that laws evolve just as society evolves. It is important to know current law, but it is just as important to understand that you must keep abreast of changes in the law to ensure that facilities you operate are managed legally.

Just as the federal government has played and will continue to play an important regulatory role in the hospitality industry, so too do the various state governments. It is important to understand that the states serve both complementary and distinct regulatory roles. The roles are complementary in that they support and amplify efforts undertaken at the federal level, but they are distinct in that they regulate some areas in which they have sole responsibility.

The administrative structure or specific entity name will vary by state, but the regulatory process will be similar. It is also important to note that state and locally passed employment law and regulations may affect the actions of hospitality managers even more often than will federal regulations. Codes and ordinances established at the state or local level can often be very strict and may be strictly enforced. The penalties for violating these laws can be just as severe as those at the federal level.

Unemployment compensation: A benefit paid to an employee who involuntarily loses his or her employment without just cause.

Generally, each state regulates significant parts of the employee–employer relationship occurring within its borders. Items such as worker-related **unemployment compensation** benefits, worker safety issues, and at-work injury compensation fall to the state entity charged with regulating the workplace. In addition, in most states, this entity will also be responsible for areas such as employment assistance programs for both employees and employers.

Regardless of the state in which you will be working, it will be important to know and follow your state's regulations related to workplace safety and for properly documenting and reporting any work-related injuries. In each state, worker safety and **workers' compensation** will usually be monitored by a workers' compensation agency, commission, or subdivision of the employment security agency.

Workers' compensation: A benefit paid to an employee who suffers a work-related injury or illness.

Garnish (ment): A court-ordered method of debt collection in which a portion of a worker's income is paid directly to one or more of that worker's creditors.

In most communities, some agency of the court system (sometimes called a "Friend" of the court) will have the responsibility of assisting creditors in securing payment for legally owed debts. These debts can include a variety of court-ordered payments, such as child support payments. In cases such as these, a hospitality manager can be ordered by the court to **garnish** an employee's wages.

The importance to the hospitality industry of local and city governments can be illustrated by examining the actions of the Santa Fe, New Mexico city council. In 2006, the city of Santa Fe initiated the nation's highest minimum wage rate: a city-wide mandated $9.50 per hour. Santa Fe's wage covers all businesses with 25 or more employees. The city's minimum wage is scheduled to rise to $10.50 per hour in 2008, pending another vote by the same city council that overwhelmingly supported the increase to $9.50. By contrast, the federal and New Mexico minimum wages are both lower. The city has had the United States' highest minimum wage since establishing the rate at $8.50 per hour in 2004. Regardless of the local hospitality industry's initial support of, or opposition to, this specific piece of employment legislation, its impact on the Santa Fe hospitality industry is clearly significant.

As you have now learned, employment laws in the United States may be enacted at the federal, state, or local levels. At each of these levels, the laws reflect the desires of citizens and, ultimately, their elected officials and courts. Most hospitality professionals would agree that all workers are best protected when employers, employees, and governmental entities work together to protect wages, benefits, pensions, safety, and health. In most cases, that is the societal intent when passing and enforcing employment-related legislation.

Today, there are literally hundreds of thousands of laws that affect the operation of a hospitality property, and the number increases annually. These laws are implemented and enforced by a variety of governmental entities. In the next portions of this chapter, you will learn about some of the most historically significant of these many employment rules and regulations.

A Manager's Review of Significant Employment Legislation

3. **List and briefly describe selected labor-related legislation enacted in the United States by the federal government.**

In the view of many historians, the beginnings of the most significant employment legislation passed at the federal level can be traced largely to the New Deal era of the 1930s. However, several important pieces of legislation were passed in the very

early 1900s. One of the most noteworthy was the Clayton Act of 1914, which legitimized and protected workers' rights to join **labor unions.** Then, in 1926, Congress passed the Railway Labor Act (RLA), requiring employers to bargain collectively and prohibiting discrimination against unions. It applied originally to interstate railroads but, in 1936, it was amended to include airlines engaged in **interstate commerce.** The Norris-LaGuardia Act, passed in 1932, was the first in a series of laws passed by Congress in the 1930s that gave federal sanction to the right of labor unions to organize and strike.

Labor union: An organization that acts on behalf of its members to negotiate with management about the wages, hours, and other terms and conditions of the membership's employment.

Interstate commerce: Commercial trading or the transportation of persons or property between or among states.

Perhaps the most important labor legislation of the 1930s was the National Labor Relations Act (NLRA) of 1935, more popularly known as the Wagner Act, after its sponsor, Sen. Robert F. Wagner (NY-D). The NLRA was applicable to all firms and employees engaging in activities affecting interstate commerce. The law's impact included coverage of hotel and restaurant workers, and they and most other workers were guaranteed the right to organize and join labor movements, to choose representatives and bargain collectively, and to strike. It also expressly prohibited employers from:

- Interfering with the formation of a union
- Restraining employees from exercising their right to join a union
- Imposing any special conditions on employment that would discourage union membership
- Discharging or discriminating against employees who reported unfair labor practices
- Refusing to bargain in good faith with legitimate union leadership

The NLRA spurred the growth of unions, whose total membership grew from 3,584,000 members in 1935 to 10,201,000 by 1941 (the eve of World War II).

THE CIVIL RIGHTS ACT OF 1964 (TITLE VII)

Perhaps the single most significant piece of legislation affecting the workplace was passed in the aftermath of a true American tragedy. The assassination of John F. Kennedy in November 1963 resulted in the Lyndon Baines Johnson presidency. On November 27, 1963, addressing the Congress and the nation for the first time as president, Johnson called for passage of a wide-sweeping civil rights bill as a monument to the fallen Kennedy. "Let us continue," he said, promising that "the ideas and the ideals which [Kennedy] so nobly represented must and will be translated into effective action." In June 1964, Congress passed the Civil Rights Act of 1964, the most important piece of civil rights legislation in the nation's history and, on July 2, 1964, President Johnson signed it into law.

Title VII: The specific section of the Civil Rights Act of 1964 that outlaws discrimination in employment in any business on the basis of race, color, religion, sex, or national origin.

This Civil Rights Act of 1964 contains several sections, but for hospitality employers, the most important of these is **Title VII.** Title VII of the Civil Rights Act of 1964 outlaws discrimination in employment in any business on the basis of race, color, religion, sex, or national origin. Title VII also prohibits retaliation against employees who oppose such unlawful discrimination.

Human Resources Management: CURRENT EVENTS 2.1

THE HOTEL AND RESTAURANT UNION

Hospitality workers in the United States have a long history of unionization. Although the hospitality industry as a whole is not, nor has it ever been, heavily unionized, the Hotel Employees and Restaurant Employees Union (HERE), a U.S. labor union representing workers of the hospitality industry, first formed in 1891.

In 2004, HERE merged with the Union of Needletrades, Industrial, and Textile Employees (UNITE) to form UNITE HERE. Major employers contracted in this union include several large casinos (e.g., Harrah's, Caesars, and Wynn Resorts), hotels (e.g., Hilton, Hyatt, and Starwood), and Walt Disney World. HERE and later UNITE HERE were affiliated with the AFL-CIO until September 2005, when the General Executive Board of UNITE HERE voted to leave the AFL-CIO and join with the Change to Win Coalition.

Congress passed the Fair Labor Standards Act (FLSA) in 1938. The main objective of this act was to eliminate "labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and well-being of worker." The act established maximum working hours of 44 per week for the first year, 42 for the second, and 40 thereafter. Minimum wages of 25 cents per hour were established for the first year, 30 cents for the second, and 40 cents over a period of the next six years. Interestingly, as of July, 2009, employers must pay covered employees a minimum wage of not less than $7.25 per hour. Hospitality employers may pay employees on a piece-rate basis and, under specific conditions, may consider tips as part of wages (see Chapter 8).

The Fair Labor Standards Act also prohibited child labor in all industries engaged in producing goods in interstate commerce. The act set the minimum age at 14 for employment outside of school hours in nonmanufacturing jobs, at 16 for employment during school hours, and at 18 for hazardous occupations.

Equal Employment Opportunity Commission (EEOC): The entity within the federal government assigned to enforcing the provisions of Title VII of the Civil Rights Act of 1964.

In 1972, the passage of the Equal Employment Opportunity Act, a revision to the Civil Rights Act of 1964, resulted in the formation of the **Equal Employment Opportunity Commission (EEOC).** The EEOC enforces the antidiscrimination provisions of Title VII. The EEOC investigates, mediates, and sometimes even files lawsuits on behalf of employees. Businesses that are found to have discriminated can be ordered to compensate the employee(s) for their damages in the form of lost wages, attorney fees, and other expenses. Title VII also provides that individuals can sue their employers on their own. In most cases, an individual must file a complaint of discrimination with the EEOC within 180 days of learning of the discrimination or lose the right to file a lawsuit.

The following general areas fall under the enforcement jurisdiction of the EEOC:

- Race/color discrimination
- Age discrimination
- National origin discrimination
- Pregnancy discrimination
- Religious discrimination
- Portions of the Americans with Disabilities Act
- Sexual harassment

The impact of the EEOC on the daily tasks of the hospitality manager is clear. Consider, for example, the hotel manager who seeks to schedule a Christian worker on Christmas Day when, of course, the hotel is open. The question that may arise is whether the needs of the manager, who must staff the hotel, should take precedence over those of the worker, who desires a day off on the basis of his or her religious convictions.

Title VII prohibits employers from discriminating against individuals because of their religious beliefs when hiring and firing. It also requires employers to, when possible, accommodate the religious practices of an employee or prospective employee, unless doing so would create an undue hardship on the employer. Flexible scheduling, voluntary substitutions or swaps, job reassignments, and lateral transfers are examples of ways to accommodate an employee's religious beliefs. The question of whether a manager could reasonably accommodate the request of a Christian worker to be off on Christmas Day is complex. The point to be remembered, however, is that managers are not free to act in any manner they desire. The federal government, through the requirements of the EEOC, plays an important role in the HR-related actions of management. Title VII and additional laws enforced by the EEOC are listed in Figure 2.1.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

In the late 1970s, courts began holding that **sexual harassment** is also prohibited under the Act, and in 1986, the Supreme Court held in a lawsuit (*Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)) that sexual harassment is sex discrimination, and

Laws Enforced by the Equal Employment Opportunity Commission

- Title VII of the Civil Rights Act
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967 (ADEA)
- Rehabilitation Act of 1973, Sections 501 and 505
- Titles I and V of the Americans with Disabilities Act of 1990 (ADA)
- Civil Rights Act of 1991

FIGURE 2.1: Laws Enforced by the Equal Employment Opportunity Commission

thus is prohibited by Title VII (more detail about this human resource issue is provided in Chapter 10).

Title VII has since been supplemented with legislation prohibiting pregnancy, age, and disability discrimination (see the Americans with Disabilities Act of 1990). Title VII only applies to employers who employ 15 or more employees for more than 19 weeks in the current or preceding calendar year.

The Civil Rights Act of 1964 makes it illegal for employers to discriminate in hiring and in setting the terms and conditions of employment. Labor unions are also prohibited from basing membership or union classifications on race, color, religion, sex, or national origin. The law also is clear in its prohibition of employers retaliating against employees or potential employees who file charges of discrimination against them, refuse to comply with a discriminatory policy, or participate in an investigation of discrimination charges against the employer.

Affirmative action: A federally mandated requirement that employers who meet certain criteria must actively seek to fairly employ recognized classes of workers. (Some state and local legislatures have also enacted affirmative action requirements.)

In later amendments, the Civil Rights Act was expanded to include **affirmative action** requirements. Affirmative action constitutes a good-faith effort by employees to address past and/or present discrimination through a variety of specific, results-oriented procedures. This is a step beyond an equal opportunity law such as Title VII that simply bans discriminatory practices. State and local governments, federal government agencies, and federal contractors and subcontractors with contracts of $50,000 or more, including colleges and universities, are required by federal law to implement affirmative action programs. For those foodservice and hotel managers working in colleges, universities, hospitals, and many other settings, affirmative action plans are required.

Hospitality employers can utilize a variety of techniques for implementing their affirmative action plans. These include:

1. Active recruiting to expand the pool of candidates for job openings
2. Revising selection tools and criteria to ensure their relevance to job performance
3. Establishing goals and timetables for hiring underrepresented groups

Bona fide occupational qualification (BFOQ): A specific job requirement for a particular position that is reasonably necessary to the normal operation of a business, and thus allowing discrimination against a protected class (e.g., choosing a male model when photographing an advertisement for beard trimmers).

Originally, affirmative action activities were intended to correct discrimination in the hiring and promotion of African Americans and other people of color. Now, affirmative action protections are being applied to women, and some government jurisdictions have extended affirmative action provisions to older people, the disabled, and Vietnam-era veterans. The goal of most affirmative action programs is to broaden the pool of candidates and encourage hiring based on sound, job-related criteria. The intended result is a workforce with greater diversity and potential for all.

In some very limited cases, Title VII permits a **bona fide occupational qualification (BFOQ)** to be used to discriminate among workers.

In a rather famous case, Hooters Restaurants came under fire after the EEOC made allegations that it had violated Title VII of the Civil Rights Act by discriminating against men. In 1992, seven men argued that Hooters discriminated against them when it refused to hire them as wait staff. It was true that Hooter's chose to hire only female servers, bartenders, and hosts. As a defense, Hooters attempted

to use female sexuality as a BFOQ. Hooter's, however, markets itself primarily as a restaurant. In this case, the courts looked at the essential nature of the business. Hooters portrays itself to the public as a restaurant; therefore, Hooter's BFOQ did not hold up in court, because being female is not a requirement for the job of serving food. It is important to understand that the government, through the EEOC, and not an individual hospitality business, can authorize the legal use of a BFOQ.

In addition to the Civil Rights Act of 1964, many states also have their own civil rights laws that prohibit discrimination. Sometimes, state laws are more inclusive than the Civil Rights Act, in that they expand protection to workers or employment candidates in categories not covered under the federal law (such as age, marital status, sexual orientation, and certain types of physical or mental disabilities). State civil rights laws may also have stricter penalties for violations, including fines and/or jail time. For example, it is illegal in California for an employer to discriminate against an employee because of that employee's sexual orientation or perceived sexual orientation.

The Civil Rights Act of 1964 does not specifically prohibit this type of discrimination. It is important to remember that HR managers working in the hospitality industry must be aware of all civil rights laws in effect in the location where they are working. While a state or local law is not permitted to take away employee rights granted at the federal level, they are allowed to add to them. Thus, as in the California example, an employee group not protected by federal law may be granted protection by a more favorable (to the employee) local law.

It is important for hospitality managers to understand that, in the general case, federal (as well as many state and local) laws are intended to define and prevent inappropriate **disparate treatment** of employees based on a non-job-related characteristic.

Disparate treatment: The claim that, in the same situation, one employee was treated differently than other employees.

Disparate (adverse) impact: The claim that an employer's action, though not intentionally discriminatory, still results in unlawful discrimination. Also known as *adverse impact*.

Disparate treatment is a basic concept in employment discrimination cases. Lawyers classify employment discrimination cases as either disparate treatment cases or **disparate (adverse) impact** cases.

In a disparate treatment case, the employee's claim is that the employer treated him or her differently than other employees who were in a similar situation. For example, both Sara and Randy are late for work one day, and the employer fires Sara but does not fire Randy. If the reason Sara was fired is that she is female, then the employer has engaged in disparate treatment because of sex, which would be a violation of Title VII. If, however, Sara had been late ten times in the last ten days, and Randy had not previously been late despite having worked for the company for five years, the termination (because it was job related) would be lawful.

In a disparate impact case, the claim is that the employer has a practice that has a much bigger impact on one group than on another. For example, the employer won't hire janitors unless they are high school graduates. This might have a much bigger impact on selected minority group candidates as a whole than on whites as a whole and may not truly be a job-related requirement. Disparate impact policies are also illegal and point to the importance of HR managers carefully reviewing all employment policies to ensure they do not inadvertently lead to charges of disparate treatment or disparate impact.

Human Resources MANAGEMENT ISSUES (2.1)

"I'm sorry, Danielle," said Jetta Goh, the owner and manager of the Golden Dragon restaurant. Ms. Goh had placed a classified ad for a server in the employment section of the local newspaper. The response was good, and Danielle Hidalgo, the daughter of a Mexican citizen and an American citizen who was born and raised in the United States, had applied, as well as many others. Danielle was an excellent server with an outstanding work history. She was learning, via the telephone, however, that another candidate of the same ethnic background as Ms. Goh had been selected for the job.

Ms. Goh continued: "You know, Danielle, people come to the Golden Dragon for an Asian dining experience; they expect Asian servers. That's why I only hire a certain type person for front of the house positions, but there could be a spot for you in the back of the house. Are you interested?"

1. Do you think Ms. Goh has violated the Civil Rights Act of 1964?
2. Would your opinion change if Ms. Goh maintained that she did not discriminate because of race because she had, in the past, hired Chinese, Korean, Hmong, and Vietnamese workers as servers?
3. As an HR specialist in hospitality, what would you advise Ms. Goh to do in the future? What would you advise Ms. Hidalgo to do now?

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

The Age Discrimination in Employment Act of 1967 (ADEA) was initially passed to prevent the widespread practice (at that time) of requiring employees to retire at age 65. As worker life spans increased, it made little sense for employees to be forced to retire when many could and wanted to remain on the job. The ADEA originally gave protected-group status to those workers between the ages of 39 and 65. Since 1967, the act has been amended twice; once in 1978, when the mandatory retirement age was raised to 70, and then again in 1986, when the mandatory retirement age was removed altogether.

The ADEA now protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against people because of their age, with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

In 1986, an important amendment to the Age Discrimination in Employment Act eliminated the mandatory retirement age. *Courtesy PhotoDisc/Getty Images*

The ADEA makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. As a narrow exception to that general rule, a job notice or advertisement may specify an age limit in the rare circumstances where age is shown to be a bona fide occupational qualification (BFOQ) reasonably necessary to the operation of the business. For example, airline pilots may still be required to retire at a certain age because of evidence that increasing age causes a decline in piloting abilities. Customer preference is not a rationale that will result in the granting of a BFOQ by the EEOC. Thus, for example, a male bar owner who determines that his customers like young (and attractive) servers better than older ones would not be allowed to hire only young servers. He would also not be allowed to terminate servers as they became older, even if the bar owner honestly believed it would be good for business.

In fact, the ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth. In the hospitality industry, for example, it may be legally necessary to establish an applicant's age prior to hiring him or her to serve alcohol or to operate certain types of potentially dangerous kitchen equipment. It is important to understand, however, that because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized by the EEOC to make sure that the inquiry was made for a lawful purpose, rather than for a prohibited purpose.

The Older Workers Benefit Protection Act of 1990 (OWBPA) amended the ADEA to specifically prohibit employers from denying benefits to older employees. This law was passed to prevent the practice of reducing employment benefits such as medical insurance based on an employee's age. An employer may reduce benefits

based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers. The ADEA applies to employers with 20 or more employees, including state and local governments. It also applies to employment agencies, labor organizations, and the federal government.

THE PREGNANCY DISCRIMINATION ACT OF 1978

The Pregnancy Discrimination Act of 1978 is actually an amendment to Title VII of the Civil Rights Act of 1964. As a result, discrimination on the basis of pregnancy, childbirth, or related medical conditions now constitutes unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated in the same way as other applicants or employees with similar abilities or limitations. An employer cannot refuse to hire a woman because of her pregnancy-related condition as long as she is able to perform the major functions of her job. Also, an employer cannot refuse to hire her because of prejudices against pregnant workers or the prejudices of coworkers, clients, or customers.

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, an employer can use any legal procedure utilized to consider other employees' abilities to work. For example, if an employer requires employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit the same type of statements.

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer may not prohibit an employee from returning to work for a predetermined length of time after childbirth, nor can a company refuse to allow a "reasonable" amount of unpaid leave time after a baby's birth. Although the law did not specifically establish a definition for "reasonable" time off after a baby's birth, many organizations consider six weeks to be reasonable, and that time frame has been supported by the EEOC. Pregnancy leave does not have to be paid leave, unless the company has a policy of paying employees who are on medical leave. If it does, then the law requires that the pregnant employee be treated identically to an employee on leave for non-pregnancy-related medical reasons.

Employers must hold open a job for a pregnancy-related absence the same length of time that jobs are held open for employees on sick or disability leave. Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Employers must also provide the same level of health benefits for spouses of male employees as they do for spouses of female staff members.

The Pregnancy Discrimination Act also requires that pregnancy-related benefits cannot be limited to married employees. If an employer provides any benefits to

workers on leave, the employer must provide the same benefits for those on leave for pregnancy-related conditions. In summary, hospitality organizations, as well as any other employer, must treat an employee's pregnancy exactly the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits. It is also important to understand that where no benefits are offered to employees, the employer is not required by this law to provide benefits for those who are or become pregnant. The law simply states that, where employee benefits are *already* offered, they must be uniformly offered to those employees who are or become pregnant.

Human Resources MANAGEMENT ISSUES (2.2)

"I don't get it," said Tonya Zollars, the new HR Director for Clubs International, a company that specialized in the operation of golf, city, and other private clubs. Tonya had just finished reading the annual evaluation for Naomi Yip, the sous chef at one of the private city clubs managed by her company. Naomi had been with the organization for five years and was considered one of the company's best and brightest culinary artists. Every evaluation she had received since joining the company was excellent. However, her current supervisor did not, at the end of the evaluation, check the box "Ready for Promotion" that each of her previous supervising chefs had checked.

"Well," said Thomas Hayhoe, the executive chef who completed the evaluation, "You know Naomi's gonna have a baby. She's due in five months. I like Naomi a lot, but maybe it would be better for her right now not to take on the added responsibilities a promotion would require. She told me she's looking forward to spending as much time as possible with her baby, and you know as well as I do that at the next level, 60-plus hours weekly for the executive chef's job are the norm around here."

Clubs International has just been awarded the contract to operate a new and lucrative account, the Hawk Hollow Golf Club. Assume you were advising the company's vice president of operations about the new executive chef's position there.

1. Should Tonya recommend offering Naomi the promotion to executive chef at Hawk Hollow?
2. Based on Chef Hayhoe's evaluation, what would you advise Tonya to say if her own boss opposed her recommendation?
3. Do you feel it would be appropriate to inform the new client (Hawk Hollow) of Naomi's condition so their input could be considered?

THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT OF 1989

The Worker Adjustment and Retraining Notification Act (WARN) is sometimes called the Plant Closing Act. It was enacted in August 1988 and became effective in February 1989. WARN offers protection to workers by requiring employers to provide notice 60 days in advance of the closing of an employment site or in the event of a mass layoff. This notice must be provided either directly to the affected workers or their representatives (e.g., a labor union) and to the appropriate unit of local government. One intent of the law is to allow workers to seek alternative employment options when their employer is committed to closing their employment sites. In most cases, employers are covered by WARN if they have 100 or more employees, not counting employees who have worked less than 6 months in the last 12 months, and exclusive of employees who work an average of less than 20 hours per week. Private, for-profit employers and private, nonprofit employers are covered. Employees entitled to notice under WARN include hourly and salaried workers, as well as managerial and supervisory employees. Business partners such as vendors and suppliers, however, are not entitled to notice under the Act.

An employer must give notice if an employment site will be shut down, and the shutdown will result in an employment loss for 50 or more employees during any 30-day period. In the hospitality industry, many restaurants are too small to be covered by WARN. In many cases, limited-service hotels also employ too few workers to be covered. An exception, however, is common in the case of the sale of larger full-service hotels. Often, the sale will result in partial or full closure of a property to rebrand the hotel with a new **franchisor.** These situations are covered by the WARN Act.

Franchisor: The business entity that has sold or granted a franchise.

When a covered property is sold, the following requirements apply:

1. In each situation, either the buyer or the seller is, at all times, the employer responsible for giving notice.
2. If the sale by a covered employer results in a covered employment site closing or a mass layoff, employees must receive at least 60 days' notice.
3. The seller is responsible for providing notice of any covered employment sites closing or a mass layoff that occurs up to and including the date/time of the sale.
4. The buyer is responsible for providing notice of any covered employment sites closing or a mass layoff that occurs after the date/time of the sale.
5. No notice is required if the sale does not result in a covered employment site closing or a mass layoff.
6. Employees of the seller, on the date of the sale, become, for purposes of WARN, employees of the buyer immediately upon completion of the sale. This provision preserves the notice rights of the employees of a business that has been sold.

"Employment loss" as defined by the WARN Act includes:

1. Termination, other than a discharge for cause, voluntary departure, or retirement
2. A layoff exceeding six months
3. A reduction in an employee's hours of work of more than 50 percent in each month of any six-month period

An employee who refuses a transfer to a different employment site within reasonable commuting distance is not considered to have experienced an employment loss. An employee who accepts a transfer outside this distance within 30 days after it is offered or within 30 days after the employment site closing or mass layoff also is not considered to have experienced an employment loss.

There are some allowable exceptions to the 60-day notification rule. These are:

1. *Faltering company*. This exception covers situations where a company has sought new capital or business contracts to stay open and where giving notice would ruin the opportunity to get the new capital or business. This applies only to property closings.
2. *Unforeseeable business circumstances*. This exception applies to closings and layoffs that are caused by business circumstances that were not reasonably foreseeable at the time notice would otherwise have been required.
3. *Natural disaster*. This applies where a closing or layoff is the direct result of a natural disaster, such as a flood, earthquake, drought, or storm (e.g., New Orleans hotels during Hurricane Katrina in 2005).

If an employer provides less than 60 days' advance notice of a closing or layoff and relies on one of these three exceptions, the employer bears the burden of proof that the conditions for the exception have been met. The employer also must give as much notice as practicable. An employer who violates the WARN provisions by ordering an employment site closing or a mass layoff without providing appropriate notice is liable to each affected employee for an amount including back pay and benefits for the period of violation (up to 60 days).

THE AMERICANS WITH DISABILITIES ACT (ADA) OF 1990

In July 1990, the Americans with Disabilities Act (ADA) was enacted. It now applies to those private employers, state and local governments, employment agencies, and labor unions employing 15 or more workers. The ADA prohibits discrimination against people with disabilities in the areas of public accommodations, transportation, telecommunications, and employment. The ADA is a five-part piece of legislation, but Title I of the Act focuses primarily on employment.

Three different groups of individuals are protected under the ADA:

1. An individual with a physical or mental impairment that substantially limits a major life activity. Some examples of what constitutes a "major life activity" under the Act are seeing, hearing, talking, walking, reading, learning, breathing, taking care of oneself, lifting, sitting, and standing.
2. A person who has a record of a disability
3. A person who is "regarded as" having a disability

Reasonable accommodation: Any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform the job's essential functions.

Employers cannot reduce an employee's pay simply because he or she is disabled, nor can they refuse to hire a disabled candidate if, with **reasonable accommodation,** it is possible for the candidate to perform the job.

Not surprisingly, one of the significant issues regarding ADA is the practical application of the word *reasonable*, when considering how to best accommodate a disabled job candidate or employee. Therefore, a basic understanding of the U.S. court system's continuous defining and refining of the term is critical for hospitality managers.

For example, the courts have held that restructuring a job to shift a minor (nonessential) responsibility for a task from a disabled to a nondisabled employee is a reasonable accommodation. In addition, allowing disabled workers extra unpaid leave when it does not present a hardship to the business is considered a reasonable accommodation. It is important to note, however, that an employer is not required to provide a disabled worker with more paid leave than the employer provides its nondisabled workers.

Modified or part-time schedules are considered reasonable accommodations when they do not cause the employer undue hardship. A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain job tasks are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave.

Certain things are not considered reasonable accommodations and are, therefore, not required. For example, an employer does not have to eliminate a primary job responsibility to accommodate a disabled employee. In addition, an employer is not required to lower productivity standards that are applied to all employees, but the employer may be required to provide reasonable accommodation to enable an employee with a disability to meet the productivity standard. An employer is also not required to provide a disabled worker with personal-use items such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices. In other words, an employer is not required to make a reasonable accommodation when that accommodation would cause an undue hardship on the employer.

Generally speaking, an undue hardship occurs when the expense of accommodating the worker is excessive, or when it would disrupt the natural work environment. Unfortunately, the law in this area is vague. Therefore, any employer who maintains that accommodating a worker with a disability would impose an undue hardship should be prepared to document such an assertion. After investigation, the EEOC will ultimately issue a "right to sue" letter to an employee if it feels an employer is in violation of the ADA.

An employee's request for a reasonable accommodation or the granting of a reasonable accommodation is typically a matter to be discussed only between the employer and the employee. An employer may not disclose that a disabled employee is receiving a reasonable accommodation, because this usually amounts to a disclosure that the individual has a disability. (The ADA specifically prohibits the disclosure of an employee's medical information except in very limited situations, which never includes disclosure to coworkers.)

As a hospitality employer, you may be faced with questions from your nondisabled employees about why a coworker is receiving what is perceived as different or special treatment. The best response to questions of this type is to emphasize that all employees' special needs are accommodated when it is possible to do so. You may also find it helpful to point out that many of the workplace issues encountered by employees are personal and that, in these circumstances, it is your company's policy to respect employee privacy. You may be able to make this point even more effectively by reassuring the employee asking the question that his or her privacy would similarly be respected if it was necessary for him or her to request some type of workplace change for strictly personal reasons. There may not be any pressure from the employer to do so, but employees with a disability may voluntarily choose to disclose to coworkers that they are receiving a reasonable accommodation.

Even with the passage of the ADA, an employer does not have to hire a disabled applicant who is not qualified to do a job. The employer can still select the most qualified candidate, provided that no applicant was eliminated from consideration because of a qualified disability.

Although the law in this area is changing rapidly, the following conditions currently meet the criteria for a qualified disability and are protected under the ADA:

- AIDS
- Cancer
- Cerebral palsy
- Tuberculosis
- Heart disease
- Hearing or visual impairments
- Alcoholism

Conditions that are not currently covered under the ADA include:

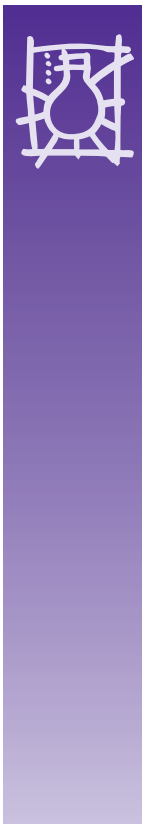
- Kleptomania
- Disorders caused by the use of illegal drugs
- Compulsive gambling
- Sexual behavior disorders

Employers are required to post notices of the ADA and its provisions in a location where they can be seen by all employees. One reason is that the ADA has

changed the way employers may select employees. Questions on job applications and during interviews that cannot be asked include:

1. Have you ever been hospitalized?
2. Are you taking prescription drugs?
3. Have you ever been treated for drug addiction or alcoholism?
4. Have you ever filed a workers' compensation insurance claim?
5. Do you have any physical defects, disabilities, or impairments that may affect your performance in the position for which you are applying?

One very important ADA provision of which foodservice employers should be aware concerns employees and job applicants who have infectious and communicable diseases. Each year, the U.S. Secretary of Health and Human Services publishes a list of communicable diseases that, if spread through the handling of food, could put a foodservice operation's guests at risk. Employers have the right not to assign or hire an individual carrying one of the identified diseases to a position that involves the handling of food, but only if there is no reasonable accommodation that could be made to eliminate such a risk.



Accommodating Disabled Employees

To reduce the risk of an ADA noncompliance charge related to reasonable accommodation, the following steps can be of great assistance.

Steps for ADA Reasonable Accommodation

1. Can the applicant perform the essential functions of the job with or without reasonable accommodation? (You can ask the applicant this question.)

   If "no," then the applicant is not qualified and is not protected by the ADA.

   If "yes," then go to question 2.

2. Is the necessary accommodation reasonable? To answer this question, ask yourself the following: Will this accommodation create an undue financial or administrative hardship on the business?

   If "yes," you do not have to provide unreasonable accommodations.

   If "no," then go to question 3.

3. Will this accommodation or the hiring of the person with the disability create a direct threat to the health or safety of other employees or guests in the workplace?

   If "yes," you are not required to make the accommodation and have fulfilled your obligation under the ADA.

THE FAMILY MEDICAL LEAVE ACT OF 1993

The Family and Medical Leave Act (FMLA) was enacted in February 1993. This law allows an employee to take unpaid leave due to pregnancy, illness, or to care for a sick family member. It was one of the first major bills signed by President Bill Clinton in his initial term. Prior family leave bills had either failed in Congress or been vetoed by the previous President George H. W. Bush. Understanding the FMLA is important for at least two reasons: (1) the actual content and impact of the law; and (2) the history of the FMLA provides managers with a recent (and continuing) example of how employment laws in the United States are proposed, debated in the public arena, and, in many cases, enacted in some form or another.

Currently, the FMLA requires employers of 50 or more employees (and all public agencies) to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth and care of a child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or an immediate family member. For purposes of the FMLA, an immediate family member is defined as a spouse, child, or parent of the employee.

Employees may elect (and employers can require) that any accumulated paid leave due to employees (e.g., paid vacation time or paid personal days off) be used before the employee begins unpaid leave. In all cases, employees are required under the FMLA to make a reasonable effort to schedule any medical treatment so as not to disrupt their employer's business. They must also, when possible, give their employer 30 days' notice of their intent to take FMLA-mandated time off.

Under the FMLA, employers can require that a request for leave be certified as necessary by the healthcare provider of the eligible employee or of the child, spouse, or parent of the employee, as appropriate. When the employer requests it, the employee is required to provide, in a timely manner, a copy of the certification to the employer.

In most cases (there are some very limited exceptions for extremely critical or key positions), an employer must allow the employee to return to the same position he or she held when the leave commenced, to an equivalent position, or to one virtually identical to the employee's former position in terms of pay and working conditions, including status and benefits. Also, the fact that the employee took the leave may not be held against the employee in other ways, including when determining pay increases or during the employee's performance reviews.

Perhaps it is not surprising that the FMLA has proved popular with employees but less popular with employers. According to recent data from the U.S. Department of Labor, 42 percent of workers who have taken unpaid time off under the FMLA have done so to care for their own serious illness; 26 percent have taken time off to care for a new child or for maternity disability reasons; 13 percent have taken time off to care for a seriously ill parent; 12 percent have taken time off to care for a seriously ill child; and 6 percent have taken time off to care for a seriously ill spouse. In some cases, employers have maintained that employees have abused the law by requesting time off for frivolous reasons or in ways that are disruptive to their businesses.

It is highly likely that changes to the current FMLA will be proposed or enacted. The language of the FMLA was originally drafted by the National Partnership for Women and Families (formerly known as the National Women's Defense Fund), a nonprofit organization that seeks to promote "fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family." Groups such as this and others who feel strongly about the issue currently support efforts to expand the provisions of the FMLA. Consider your reactions to some of the suggestions that have been proposed to modify the FMLA:

1. Allow covered and eligible employees to take up to 24 hours of leave per year to participate in their children's academic school activities or literacy training. (Currently, the FMLA allows leave for serious health needs of family members, but it does not give parents unpaid leave and job protection to address their children's educational needs.)
2. Lower the eligibility threshold for employers from 50 employees to 25 or more.
3. Lower the eligibility threshold for employers from 50 employees to 15 or more.
4. Include FMLA benefits for victims (female and male) of domestic violence.
5. Provide federal money to the states to fully or partially replace the lost family income of those individuals who requested and took advantage of the unpaid time off provisions of the FMLA.

Alternatively, business groups also have ideas for modifying the FMLA. They suggest ways to make the law more equitable and to better serve the needs of society (and not just those of the immediately affected workers).

Regardless of your personal position on the value that the FMLA brings to workers and employers, the dialogue on it and other issues related to the workplace and the public interest will continue. The outcome will ultimately shape what HR managers in the hospitality industry and others can do as they operate their facilities.

In future chapters, you will learn about more laws that affect the HR decisions of hospitality managers. As the workplace continues to evolve, legislation affecting it will also likely continue to evolve at the federal, state, and local levels. Therefore, hospitality managers with HR responsibilities should stay informed about pending legislation and actively take part in the public opinion debates that help shape governmental policies. It is for those reasons (obtaining information and making their voices heard) that many hospitality managers become active in one or more professional trade associations.

Figure 2.2 summarizes some of the most important labor-related legislation passed in the United States in the last 75 years. The effects of legislative changes on the manner in which businesses and workers must be managed is significant.

Purpose of Legislation	Bill	Enacted
Legalize labor unions	Wagner Act	1935
Require overtime pay	Fair Labor Standards Act	1938
Mandate equal pay for equal jobs	Equal Pay Act	1963
Prohibit discrimination based on selected worker characteristics	Civil Rights Act	1964
Prohibit age discrimination	Age Discrimination in Employment Act	1967
Protect workers' health and safety	Occupational Safety and Health Act	1970
Allow workers access to their personal files	Privacy Act	1974
Require documentation of legal status prior to employment	Immigration Reform and Control Act	1986
Allow continuation of selected benefits after job loss	Consolidated Omnibus Budget Reconciliation Act (COBRA)	1986
Mandate employee notification prior to business closing	Plant Closing Bill	1989
Prohibit discrimination based on workers' disabilities	Americans with Disabilities Act	1990
Allow workers unpaid leave for selected medical and family matters	Family and Medical Leave Act	1993
Mandate personal responsibility for financial reporting of business results	Sarbanes-Oxley Act	2002

FIGURE 2.2: Selected Significant Labor-Related Legislation

The International Legal Environment for Multinational Hospitality Companies

4. **Identify the unique issues facing hospitality companies that operate units in countries with legal systems different from that of the United States.**

As a hospitality organization grows from one that operates within a single country (and, therefore, within a single legal environment) to one that operates internationally, the HR management function must also grow to consider a new

and broader perspective. As a hospitality company expands, first with single operations (and, perhaps, franchise partners) in other countries to multiunit management on multiple continents, the legal environment in which that company must operate will become increasingly complex.

The rise of global expansion should be no surprise to hospitality managers, because travel, tourism, and an interest in international cuisines have historically been integral parts of the industry. As cooking methods and menu items that are popular in one culture are introduced to another, their popularity often expands. Examples in the U.S. foodservice industry include Coca-Cola, the Atlanta, Georgia-based soft drink company, and McDonald's, the Oak Brook, Illinois-based franchisor and restaurant operator. In the hotel segment, companies such as Hilton and Marriott have long operated hotels internationally.

To more closely examine just one international success story, consider Ray Kroc, who opened the first McDonald's restaurant in Des Plaines, Illinois, in 1955. Today, McDonald's restaurants are operated in 115 countries worldwide and serve more than 50 million customers per day. McDonald's operates or franchises more than 13,500 restaurants in the United States, but an even larger number of stores now exist *outside* the United States. Figure 2.3 presents only a *partial* list of countries in which you could visit one of the more than 30,000 McDonald's restaurants worldwide.

Clearly, the HR function at McDonald's, as well as many other hospitality companies, has significant international dimensions. As the U.S. hospitality business continues to grow, it is natural that more companies will look beyond their own

Argentina	Ecuador	Kuwait	Singapore
Australia	Egypt	Lebanon	Slovakia
Austria	Finland	Malaysia	Slovenia
Bahrain	France	Mexico	South Africa
Belgium	Germany	Netherlands	Spain
Brazil	Greece	Oman	Sweden
Bulgaria	Guatemala	Paraguay	Switzerland
Canada	Hong Kong	Pakistan	Taiwan
Chile	Hungary	Peru	Turkey
China	India	Poland	United Arab Emirates
Colombia	Ireland	Portugal	United Kingdom
Croatia	Italy	Qatar	United States
Cyprus	Japan	Romania	Uruguay
Czech Republic	Jordan	Russia	Yugoslavia
Denmark	Korea	Saudi Arabia	

FIGURE 2.3: Selected McDonald's Locations Worldwide

Human Resources Management: CURRENT EVENTS 2.2

WOMEN'S RIGHTS IN SAUDI ARABIA

The rights of women as professional hospitality managers in Saudi Arabia are very different from those enjoyed by women in the United States. In a society where women constitute the majority of the population and account for more university graduates than men, they have few of the rights that most of Western society usually grants. Women are not allowed to study any subject they desire; law and engineering, for example, are closed to them. In addition, they continue to be barred from jobs that are deemed not suitable to their nature. They cannot vote, travel without the explicit approval of their husband or a male guardian, drive, or work in most government offices. Even when hired in a private office, they usually work in a separate room from men. What has perhaps most attracted the attention of the human rights and feminist groups in the West is the fact that Saudi women must wear an *abayas* (a neck-to-ankle black robe) and cover their hair with a black scarf. Many Saudi women, however, say what they need most is not a debate over what they can or cannot wear. Instead, they want to gain social respect and political equality. Some other women say they prefer the status quo because of their own cultural and religious views.

Regardless of their personal opinions on the issue, it is clear that, for U.S. citizens (male or female) assigned by their companies to work in Saudi Arabia, that Middle Eastern society's view of appropriate roles for working women is an example of the many cultural differences faced by international hospitality managers.

country's borders for expansion and growth. This trend is certainly likely to continue in the areas of restaurants, hotels, and contract and healthcare food services.

Many hospitality professionals work at some point in their careers with a company that does business internationally. There are a variety of reasons why you might be assigned the responsibility of HR management in your company's international operations. These include:

- Your education and past work history give you the experience you need to succeed in the job.
- No local staff (in the foreign country) is currently qualified to assume the responsibility.
- Your responsibilities include the training of local HR staff.
- Local persons are being trained for positions that will ultimately replace the need for your assistance, but they are not yet qualified to assume 100 percent responsibility.

- Your employer wants you and other managers to gain a global perspective.
- It is in the company's best long-term interest to improve the cultural understanding between managers and employees in the company's various international components.
- An international assignment is considered an integral part of your professional development process.
- There is an interest in obtaining tighter administrative control over a foreign division or addressing and correcting a significant problem.
- There are HR operating or public relations issues that require long-term onsite management direction to properly address the issues.

How different are HR-related issues (and their management) in other countries? Consider an item as straightforward as accrued vacation time. In this area, the expectations management may have for its workers and the expectations these workers have for management can differ widely. To illustrate, Figure 2.4 details the amount of paid vacation earned by employees who have worked at least one year in several different countries in which U.S. companies typically do business.

The quality of training and the availability of qualified numbers of employees can be problematic HR issues in many areas of the world. Also, employee and management attitudes toward gender equality, appropriate dress, work ethic, religious tolerance, and minorities' rights are additional areas that can present significant challenges to international HR managers. As you have learned, individual societies create laws that reflect their cultures and values and, because cultures vary, HR-related laws in different cultures are also different.

It is also important to understand that the introduction of U.S. cultural values that are so valued by U.S. citizens does not ensure that individuals working in other countries will readily embrace those values. Some people believe that the expansion of U.S. companies such as Coca-Cola, McDonald's, KFC, Pizza Hut, and others to foreign countries has had an overall negative effect on the local culture of the areas in which they are located. Others, however, believe that the impact of international expansion and development in terms of economic benefits (job creation and the expansion of local entrepreneurship) is extremely positive.

Both groups would likely agree, however, that the past need not dictate the future. International companies may or may not have done all they should have in the past to ensure a positive impact on their operations. All should agree that these companies, through enlightened HR practices, can shape the future through positive activities to improve their own profitability and the quality of life in the communities where they are located.

Expatriate manager: A citizen of one country who is a working manager in another country.

These HR issues require **expatriate managers** to seriously reexamine their personal views of fairness and even morality.

For example, assume that you, as a restaurant manager in a foreign country, pay wages that are considered to be very good in that country, but that are significantly less (in U.S. dollars paid per hour) than those granted to U.S. workers who are doing the same job. Some observers would say your restaurant is providing valuable local jobs at fair wages; others might accuse your company of injustice because of the disparity in wage rates paid. Add to this challenge the fact that, in

Country	Vacation Time Earned
Argentina	14 calendar days
Australia	No law, but 4 weeks is standard
Belgium	20 days with premium pay
Bulgaria	20 business days
Canada	At least 2 weeks, as determined by provincial law
Chile	15 days
China	0
Czech Republic	4 weeks
France	5 weeks
Germany	4 weeks
Hong Kong	7 days
Hungary	20 days
Ireland	4 weeks
Israel	14 days
Italy	Mandated vacation; length determined by employment contract
Japan	10 days paid time off
Mexico	6 days
Poland	18 days
Puerto Rico	15 days
Saudi Arabia	15 days
Singapore	7 days
South Africa	21 consecutive days
South Korea	10 days
Spain	30 days
Sweden	5 weeks
Taiwan	7 days
The Netherlands	4 weeks
Turkey	12 days
UK	European Community directive (4 weeks annual leave)
Ukraine	24 calendar days
US	No national requirement; 2 weeks is common but not mandatory
Venezuela	15 paid days

FIGURE 2.4: Annual Earned vacation time

many cultures, it is traditional to pay men more than women for doing identical work, and you can easily see the type of HR difficulties you may face. It is beyond the scope of this text to address and comment on all of the legal issues of wage and gender inequities and business variations due to the cultures that are routinely

Human Resources Management: CURRENT EVENTS 2.3

SMOKING OR NONSMOKING?

Restaurant managers in the United States have, for the past several decades, been required to provide separate dining space for smokers and nonsmokers. Their employees often could smoke in designated smoking areas or in specially designated employee break rooms.

Effective June 1, 2006, smokers across much of eastern Canada (including those working in the hospitality industry) are only permitted to smoke outside. Prior to that time, smoking was already banned from most workplaces across Canada, but the ban in Ontario and Quebec extended the ban to public places in general, including bars, restaurants, and schools. The ban also required employers to close designated employee smoking areas.

Canada is considered a global leader in its efforts to reduce smoking. It was the first country to require graphic warnings on cigarette packages. Nine of the country's 13 provinces and territories have now passed smoking bans prohibiting cigarettes in the workplace and public buildings, bars, and restaurants. The law is wide-reaching but still falls short of the efforts of Ireland, Norway, New Zealand, Bhutan, Uruguay, Scotland, Bermuda, and Puerto Rico, (as well as New York City) all of which have total smoking bans in restaurants and bars.

The diverse opinions about smoking held by those in the hospitality industry mirror those of society in general. Beginning with Westin Hotels and followed by Marriott, Comfort, Hyatt, and others, complete hotel-wide smoking bans are increasingly becoming standard practice in the United States. It is clear that managers who operate properties in different parts of the world (and even in different communities within the United States) will encounter variations in employment-related laws. The smoking versus nonsmoking issue is just one example.

experienced by expatriate managers. It is important to remember, however, that those expatriate managers who most succeed do so by demonstrating a genuine knowledge, respect, and understanding for the legal culture of their host country.

It is important for those working in HR to understand that U.S.-based employers who employ U.S. citizens in locations outside of the country are still subject to the majority of employment laws designed to protect those workers. The antidiscrimination (and many other) laws of the United States will not, however, apply to noncitizens of the United States who work in facilities operated outside of the United States.

Conversely, multinational companies based outside of the United States with properties inside the United States are subject to the same U.S. employment laws as

are U.S. employers. As a result, in many cases, a significant HR role to be played by U.S. managers is that of teaching internationally trained expatriate managers working *in* the United States about the important components of U.S. employment law.

The Special Role of the Hospitality Unit Manager

5. Recognize and appreciate the unique HR-related responsibilities of the hospitality unit manager.

Unit manager: The individual with the final on-site decision-making authority at an individual hospitality operation.

Regardless of whether a hospitality manager's assignment is within his or her own country or outside its borders, **unit managers** are perhaps the single most important factor affecting an operation's short- and long-term profitability and success. These managers are generally the on-site leaders of their operating units and are held directly responsible for the actions of the employees and supervisors who report to them. In fact, the unit manager's job in the hospitality industry is so important that the primary focus of this text is the HR-related information that must be known and applied by the individuals holding these key positions.

Hospitality management has always been a challenging profession. Whether in a casino, a school lunch program, a five-star hotel, a sports stadium concession program, or a myriad of other environments, hospitality managers are required to have a breadth of skill not found in many other areas of management. Hospitality managers are in charge of securing raw materials, producing a product or service, and selling it—all under the same roof. This makes them very different from their manufacturing counterparts (who are in charge of product production only) and their retail counterparts (who sell, but do not manufacture, the product). Perhaps most important, hospitality managers have direct contact with guests, the ultimate end user of the products and services supplied by these managers' operational teams.

The hospitality industry is also unique because the first industry job for many managers was often an entry-level, hourly paid position rather than a salaried management assignment. For example, in the table service restaurant segment, nine out of ten salaried managers started as hourly employees. Hospitality unit managers are also a diverse group. According to the U.S. Department of Labor, "eating-and-drinking" places employ more minority managers than any other industry. Three out of five first-line supervisors of food preparation and service workers are women, 16 percent are of Hispanic origin, and 14 percent are African American. In 2003, more than one-quarter (26 percent) of foodservice managers were foreign born. As you can see, a very diverse group of unit managers are responsible for the key aspects of ensuring that operations adhere to a company's policies and the employment laws that pertain to them.

In this chapter, you have learned how evolving employment legislation reflects an American society that has changed the way in which employers manage employees. The often mentioned "social contract" between employer and employee is—most hospitality industry professionals would agree—exactly that: a contract.

Like all contracts, it spells out the obligations undertaken by all contractual parties. Hospitality personnel at the unit management level represent their company in this contract, and they must understand it. Because contracts are legal documents, violations typically result in repercussions for one side or the other. In the business world, this can mean loss of job for an offending employee. For employers, violations can create adverse publicity, the loss of significant time and money to address legal issues, or, in egregious cases, the closure of their businesses. A major goal of this text is to provide unit managers with up-to-date information they need to responsibly fulfill their HR-related obligations to their employers, employees, society, and, most important, to themselves.

Historically, most students of hospitality management have been taught how to supervise employees. The rationale was that, by better understanding and motivating staff members, a better workforce would emerge. The reasoning is that good managers become recognized as such by first being good supervisors. It is true that some concepts, including communications, motivational theory, and team building, that have traditionally been addressed using this supervisory approach to human resources management have value. However, those unit managers and others who do not understand the legal requirements and responsibilities that underpin these concepts are at a huge disadvantage to their peers who recognize these and related legal issues. For example, managers may know exactly what they want to do to build an effective workforce, but they may lack an understanding about what they are legally allowed to do, required to do, or even prohibited from doing! The result can be that, time after time, well-intentioned unit managers may unwittingly create difficulties for their organizations and themselves because they do not understand the ever-changing terms of the employment contract.

Written company policies can be fairly easily relayed to unit managers, but it is simply not possible for you as a unit manager to know every governmental regulation that could affect your segment of the hospitality industry, and some laws change regularly. Changes in major federal laws are typically well publicized, but you cannot be sure that the policies of all federal agencies, state regulators, and local governments will be readily known. As a result, hospitality industry journals and publications (many of them delivered online) can be of real assistance in helping you follow legislation at the national level. Reading about the hospitality industry will not only make you a better unit manager, but will let you keep up with changing regulations as well. For those managers employed by a national chain or management company, the company can be an excellent source of information on changing regulations. One valuable service provided by franchisors to franchisees is regular updates on regulatory agencies and their work.

As a hospitality manager, it is important for you to stay involved in the hospitality trade association that most closely represents your industry segment. The National Restaurant Association (NRA), the American Hotel and Lodging Motel Association (AH&LA), the American Dietetics Association (ADA), and others like them regularly provide their membership with legislative updates. Many of these organizations have state, regional, or local chapters that can be invaluable sources of information. On a local level, chambers of commerce, business trade associations,

and personal relationships with local police, fire, and building officials can help a unit manager keep up-to-date with changes in municipal regulations.

As a professional hospitality manager, it is also critical that you take an active role in *shaping* the regulations that affect your industry. As you have learned in this chapter, societies will, through their governments, pass regulations that they believe are in the best interests of the communities they represent. Problems can arise, however, when those who do not understand the hospitality industry propose legislation that will result in costs or infringement upon individual rights that far exceed the societal value of implementing the proposed regulation. In these cases, all hospitality professionals must make their own views known.

Human Resources MANAGEMENT ISSUES (2.3)

"So that's it," said Tom Bollenbeck, the regional manager for Boston Blackie's, a chain of barbecue houses popular in the Southeastern United States. Tom had just explained to Travis Ware that the Boston Blackie's restaurant Travis had managed for the three years since it opened would be closed in eight weeks.

"You have done a great job here, Travis," said Tom. "And, like I said, when we finish construction of the new store in Crossville, you will have the manager's position there. Bigger store, more money! But I need you to keep this store operating well until the end of the month when our lease runs out."

Travis was troubled when he left the meeting with Tom. His employees, he knew, were one of the major reasons his boss was so pleased with his work. They were a great team, but the new store in Crossville was 100 miles away—much too far for them to commute. Travis also knew that if he told his current employees about the impending closure of their restaurant, the best of them would immediately start looking for other jobs, and they would easily get them. That would mean real difficulties during the final weeks his store was to operate.

QUESTIONS

1. Assume Travis's restaurant is too small to be covered by the Worker Adjustment and Retraining Notification Act (WARN). Does he have a legal obligation to inform his employees of the impending restaurant closing?
2. Consider the following statement: "An action can be legal, but still not be ethical." Do you agree? Why or why not?
3. Assume that you were Travis, and you knew that your restaurant was large enough to be covered by WARN. Assume also, however, that your boss specifically instructed you not to announce the closing to your employees. What would you do?

Human Resources Terms

The following terms were defined in this chapter:

Employment law
Unemployment compensation
Workers' compensation
Garnish (ment)
Labor union
Interstate commerce
Title VII
EEOC
Sexual harassment
Bona fide occupational qualification (BFOQ)
Disparate treatment
Disparate (adverse) impact
Franchisor
Reasonable accommodation
Expatriate manager
Unit managers

For Your Consideration

1. Some business persons believe that the government is too intrusive in the operation of business. Consider the employment-related laws presented in this chapter. Are there any that you believe should not have been passed? Is so, what legislation? Why? Is there any employment-related legislation you believe should be passed? If so, identify it and explain the reason for your support.
2. The Family Medical Leave Act was controversial at the time of its passage and remains so today. Do you consider the Act an undue burden on employers? Assume you are an executive in the governmental relations department of the National Restaurant Association (NRA). Do you think the NRA's membership would want you to actively lobby to expand or to contract its current provisions? What would you do in such a situation?
3. Assume you are responsible for the HR function at a 300-room franchised hotel that employs 90 staff members and that, in this situation, the WARN Act does not apply. Assume also that you were informed by the general manager and owners that the property would be closed in 90 days for conversion to a condo hotel (a process that would involve closing the property completely for one year). However, it was important to remain open and operating normally for that 90-day period. What would you advise the hotel's owners and the general manager to do regarding giving notification of the hotel's closing to the property's employees? Explain your plan in detail.
4. In many cases, Americans working internationally are viewed as not having respect for local laws and customs of their host countries, including those related to employer–employee relations. Assume you were an international manager and you encountered an employment practice that would be illegal and discriminatory in the United States but was commonly accepted where

you were working (e.g., the remnants of the now technically illegal caste system in India). Explain how you would respond to clear-cut instances of local but society-approved discrimination when operating your hospitality business in such a setting.

Case Study: Human Resources Management in Action

Donna Moreau was employed for nine years as a room attendant for the Windjammer Hotel. Her work and attendance during that period were considered excellent. The hotel was moderately busy during the week, and then typically filled with tourists on the weekends.

In accordance with a hotel policy requiring two weeks' notification, Donna submitted a "day off" request on May 1, for time off on Saturday, May 15, to attend the 1 P.M. high school graduation ceremony of her only daughter. The hotel was expected to be extremely short of staff on the weekend of May 15 due to some staff resignations and terminations, as well as a forecasted sell-out of guest rooms.

Donna's supervisor, Tara Roach, denied Donna's request for the day off, stating the housekeeping department needed her to work that entire weekend. Donna was visibly upset when the schedule was posted and she learned that her request had been denied. She confronted Tara and stated, "I *will* be attending my daughter's graduation. I've been a single parent to my daughter for 17 years, and there's no way I am going to miss that day!" Tara replied that she was very sorry, but all employee requests for that weekend off had been denied, and Donna was to report to work as scheduled.

On the Saturday of the graduation, Donna, in accordance with written hotel policy, called in "sick" four hours before her shift was to begin. The hotel was extremely busy and, due in part to Donna's absence, each room attendant who did show up at work was assigned a heavier than average workload, causing a great deal of departmental tension.

Tara, who was angry at what she saw as willful disregard for supervisory authority, and recalling the earlier conversation with Donna, recorded the employee's call-in as an "unacceptable excuse" and completed a form stating that Donna had, in fact, quit her job voluntarily by refusing to work her assigned shift. Tara referred to the portion of the employee manual that Donna signed when joining the hotel. The manual read, in part:

> "Employees shall be considered to have voluntarily quit or abandoned their employment upon any of the following occurrences;
>
> 1. Absence from work for one (1) or more consecutive days without excuse acceptable to the company
> 2. Habitual tardiness
> 3. Failure to report to work within 24 hours of a request to report

Donna returned to work the next day to find that she had been removed from the schedule. She was also informed that she was no longer an employee of the hotel. Donna filed for unemployment compensation. In her state, workers who voluntarily quit their jobs were not typically eligible for unemployment compensation. Those who are terminated do typically receive the benefit (which is ultimately paid for by the hotel).

Dimension: Societal Reaction

Review the actions described in the case:

1. What do you think those outside the hospitality industry would think about Tara's decision to terminate Donna?
2. Assume that accurate information regarding this situation were to become well-known in the local community surrounding this hotel. Would this information likely increase or decrease the interest of other professional housekeepers in working at the Windjammer in the future?
3. The concept of "unacceptable excuse" can be difficult to define. Despite that, define it in terms you believe Donna and other employees would use. Define the term in a manner that Tara and other supervisors would likely use.

Dimension: Company Procedure and Decision Making

Review the actions described in the case:

1. What do you think of the "time off" request system in use at the Windjammer?
2. If you were the hotel's general manager, would you support the actions of your housekeeping supervisor?
   a. If your answer is "yes," how would you respond to Donna if she maintains (accurately) that she has not called in "sick" in the past 15 months, and in fact has frequently been called in to work on her days off because other employees called in sick fairly often?
   b. If your answer is "no," how would you respond to Tara if she maintains (accurately) that allowing employees to set their own schedule in her department would lead to severe difficulties that would result in poorly cleaned guest rooms and, ultimately, unhappy guests who were very likely to complain to the general manager or even directly to the hotel's owners? In addition, Tara is adamant that if you do not support her decision making on this issue, her credibility as a departmental supervisor will be severely diminished.
3. Were Tara's actions in the best interests of the hotel? Explain your answer.

Dimension: The Unemployment Compensation Hearing

Assume you were called to an administrative court hearing to defend the Windjammer's contention that Donna was not fired, but rather that she quit

(and thus is not eligible for unemployment compensation). Review the actions described in the case:

1. If you were an Unemployment Compensation Administrative Hearing Judge in this case, would you initially be more likely to side with the employee or the hotel?
2. How would you likely answer the following specific questions asked by the Administrative Hearing Judge?
   a. Is there a distributed list of "unacceptable" reasons for calling in sick? Who decides what is "unacceptable"?
   b. Have, in the past six months, all employees who followed the hotel's policy of calling in sick four hours before their shift ultimately been documented as "resigned" from their job?
   c. Assuming the answer to the above question is "no," what was the hotel's basis for treating Donna differently from:
      - Males in the hotel
      - Those of a different ethnic background (the hearing officer explains that this is asked simply to ensure that the hotel is not guilty of a civil rights violation)
3. How important would it be to be very familiar with the state's unemployment compensation laws if you were:
   a. The person representing the hotel at the administrative hearing?
   b. The hotel's general manager?
   c. Tara?

Internet Activities

1. Staying abreast of legal trends in the hospitality industry is important. HospitalityLawyer.com is one resource that is readily available to you. Operated by Stephen Barth, a hospitality professor at the University of Houston's Conrad Hilton College of Hotel and Restaurant Management, it contains the most current legal information (including employment law) related to the hospitality industry. To review it, go to: *www.hospitalitylawyer.com.*
   a. Review the 12 subsections of hospitality law listed in the Legal, Safety and Security Solutions Center for the Hospitality Industry.
   b. Identify the date and location for this year's Hospitality Law Conference.
   c. Subscribe to the free newsletter.
   d. Bookmark the site if you feel it will be an asset in your future management efforts.
2. If you are responsible for the management of a hospitality operation in another country, you will likely have access to a variety of resources that will help you familiarize yourself with that country's specific labor-related laws. However, in some cases, you may be responsible for finding your own

learning aids. For this exercise, go to *www.amazon.com*, and type in the book title *International Labor & Employment Law: A Country by Country Look at Legal Issues in Human Resources in Major Markets Around the Globe* (ISBN 158762379X).

a. List at least 12 specific countries whose employment laws are reviewed in the text.

b. Identify the text's authors. Comment briefly on their credibility.

c. List at least three specific labor-related topics that are explored in the book.

d. Comment on the selling price of the text. Do you feel it is excessive? Explain your position.

3. In many cases, you simply will not know some of the applicable employment laws of a state until you are actually assigned to work there. Identify a state (or one of the states) in which you are most likely to work when you graduate. Then, proceed to "Google" or your favorite search engine and enter the name of that state and the words "unemployment claims." Select the agency that is responsible for processing unemployment claims and determine the following:

a. The number of weeks for which employees in that state are typically eligible for unemployment compensation

b. The maximum amount of weekly compensation allowable

c. Specific reasons for which unemployment compensation will be denied