

I. DEFINITION OF HOTEL/INTRODUCTION

The word “hotel” comes from the French “hostel,” which comes from the Latin “hospes.”¹ In ancient Rome, hospes was a stranger who lounged at the house of another.² Today, hospes has taken on an entirely different meaning.

One would ordinarily consult a dictionary for definitions. However, the *dictionary* definition and the *legal* definition of the same word frequently differ. To determine how the law defines a term, one must consult various types of laws.³

First, cases decided by courts over the years have produced legal definitions of importance to Arizona innkeepers. A “hotel” has been described as “a building held out to the public as a place where all transient persons who come will be received and entertained as guests for compensation and it opens its facilities to the public as a whole rather than limited accessibility to a well-defined private group.”⁴ A “motel” is a hotel for automobile tourists.⁵

In addition to case law, we find the terms “hotel” and “motel” both in Arizona statutes and the Arizona Administrative Code. The laws of Arizona, as adopted by the Arizona Legislature, are collected in a series of volumes called the Arizona Revised Statutes, or “A.R.S.” The Arizona Administrative Code (the “Code”) is the collection of rules and regulations adopted by various state agencies to assist in enforcing statutes. Citations to the Code are abbreviated as “Ariz. Admin. Code, R” followed by the applicable rule number.

In Arizona, the terms “hotel” and “motel” are not specifically defined, either by statute or rule. Rather, they are subcategories of a broader, more generic term. In the Code, “hotel” and “motel” are included within the term “transient dwelling establishment.”⁶ A “transient dwelling establishment” is defined in the Code as “any place where sleeping accommodations are available to transients or tourists on a temporary basis such as a hotel, motel, motor hotel, tourist court, tourist camp, rooming house, boarding house, inn and similar facilities by whatever name called, consisting of two or more dwelling units; provided, however, that the term shall not be construed to include apartments, clubs, boarding houses, rooming houses and similar facilities where occupancy of all dwelling units is on a permanent or semi permanent basis.”⁷

The Arizona Revised Statutes include “hotels,” “motels” and similar establishments in the definition of the term “transient lodging.”⁸ Transient lodging refers to businesses that operate, “for occupancy by transients, a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house,

¹ 19A Words and Phrases 449 (1970).

² See id.

³ Law comes from many sources. Cities and counties adopt ordinances, state legislatures and Congress pass statutes, and courts decide legal issues, creating legal opinions known as “case law.” Any or all of these sources of law may be relevant in a given situation.

⁴ Black’s Law Dictionary 739 (6th ed. 1990).

⁵ See Linder v. Frisina, 194 N.Y.S.2d 843, 845 (1959).

⁶ Ariz. Admin. Code, R9-8-1312(G).

⁷ Id.

⁸ A.R.S. § 42-5070(A).

dormitory, public or private club, mobile home or house trailer at a fixed location or other similar structure, and also including a space, lot or slab which is occupied or intended or designed for occupancy by transients in a mobile home or house trailer furnished by them for such occupancy.”⁹

Somewhat confused? That’s frequently a problem when laws and regulations address the same issues. For example, the Arizona statute includes rooming houses in its definition of transient lodging without limitation, but the Code distinguishes them from transient dwelling establishments if occupied on a permanent or semi-permanent basis. “Hotel” is, therefore, a word with many connotations, both legal and non-legal. As an innkeeper, it is important to understand how your establishment is classified under the law. Legal classifications determine what laws or rules apply to your establishment. A property that is classified as “transient lodging” or as a “transient dwelling establishment” must meet a number of state, county and municipal regulations that an apartment building, for example, is not required to meet. Different legal classifications correspond to different obligations and responsibilities.

The legal term most commonly used for hotels and motels is “transient dwelling units.” The remainder of this handbook examines the laws and rules that apply to this term.

First, however, there are a few other legal terms worth noting before moving on.

“Real Estate Timeshares” have their own section in the Arizona Revised Statutes. The laws that define what a “timeshare” is, and the duties and obligations of Arizona timeshare properties, begin at A.R.S. § 32-2197. A “timeshare plan” is defined as:

[A]ny arrangement, plan or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license or right-to-use agreement or by any other means, in which a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, but not necessarily for consecutive years. A timeshare plan may be a single site timeshare plan or a multisite timeshare plan.¹⁰

“Condominiums” are also subject to separate laws, which begin at A.R.S. § 33-1201. A “condominium” is defined as:

[R]eal estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the separate portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.¹¹

Newer specialty concepts such as “bed and breakfast” have not yet been defined by statute.

⁹ Id.

¹⁰ A.R.S. § 32-2197(28).

¹¹ A.R.S. § 33-1202(10).

II. LICENSES, PERMITS, FEES, TAXES & GIFT CARDS

A. *Source of Laws*

Most of the legal requirements of hotel operation in Arizona are found in the Arizona Revised Statutes. The following synopsis of those requirements touches on many of these state laws and their impact on innkeepers.¹² In addition to state law, innkeepers must keep abreast of local ordinances enacted by the counties and cities in which the property is located. Local governments have enacted many ordinances that impose, for example, fees, licensing requirements, and tax obligations upon transient dwelling unit operations.

B. *The “Laundry List” of Licenses and Permits Required To Operate Transient Dwelling Units*

1. *Federal*

United States Department of Treasury, Bureau of Alcohol, Tobacco & Firearms - Special Occupational Tax Stamp (Form 5630.5) for liquor sales.

2. *State of Arizona*

a. Arizona Department of Revenue (“ADOR”)

- ▶ Business or Occupation License
- ▶ Transaction Privilege (“Sales”) & Use Tax License¹³
- ▶ Withholding¹⁴
- ▶ Unemployment Tax License¹⁵
- ▶ Luxury Privilege Tax License (tobacco and liquor sales)

b. Department of Health Services - contracts with each county with respect to health inspections and permits

c. Department of Liquor Licenses and Control

¹² Unless otherwise indicated, “innkeeper” refers to the broad category of persons operating hotels, motels, bed and breakfasts, resorts, etc.

¹³ Obtained via Arizona Joint Tax Application (Form 10194 (updated July 2011)).

¹⁴ Id.

¹⁵ The ADOR forwards the Arizona Joint Tax Application to the Department of Economic Security, which issues the Unemployment Tax License.

3. *Maricopa County*¹⁶

Maricopa County Environmental Quality and Community Services Agency

- a. Construction or Remodeling Plans
 - ▶ In addition to usual construction permits, an innkeeper must obtain certain approvals respecting state and county health codes
- b. Public Accommodations Permit
- c. Eating and Drinking Establishment Permit
 - ▶ Separate permits may be required for separate establishments on the same property
- d. Food Catering Permit
- e. Bakery Permit
- f. Swimming Pool Permit

4. *City*¹⁷

- a. Building Permit
 - ▶ Construction and remodeling plans
- b. Liquor License
- c. Privilege (“Sales”) Tax License
 - ▶ Food, beverage, lodging, etc.¹⁸
- d. Massage Facility License
- e. Miscellaneous Licenses

¹⁶ Maricopa County, Arizona is used herein as an example, in order to highlight some of the more common county ordinances. You should consult the applicable ordinances for the county in which your establishment is located.

¹⁷ The following list highlights some of the more common city ordinances. Individual cities may require permits and/or licenses in addition to those listed herein. For example, the City of Phoenix requires not only the permits listed in this subsection, but also a Grading and Drainage Permit, an Offsite Permit (for improvements or alterations to sidewalks or street access), an Elevator License (if the establishment will have an audible alarm system), and a Sign Permit (for all outdoor signs). You should consult the applicable ordinances for the city in which your establishment is located.

¹⁸ Such licenses for Arizona cities and towns on the state collection system are obtained via an Arizona Joint Tax Application noted in footnote 14, *supra*. Larger municipalities have their own tax and licensing programs.

5. Employee Licenses

Certain employees are required to obtain:

- a. Food Handler's Cards
- b. Massage Practitioner's Licenses

C. Taxes and Licensing Requirements

Note: All references herein to specific dollar amounts and tax rates are as of May 1, 2014 and may be subject to change.

1. Business or Occupation Licenses

Before commencing business operations, an innkeeper must obtain business or occupation licenses from both the ADOR and the municipality in which the business is located. The license number, sometimes referred to as a sales tax license number, is used to report the taxes described below. Licenses for municipalities on the state collection system are obtained via an Arizona Joint Tax Application.¹⁹ Many of the larger cities and towns have their own tax administration program, and you must obtain applicable licenses directly from them. Additional fees are charged for each municipal license.

An innkeeper may not engage in business without also obtaining a transaction privilege tax license.²⁰ Upon submission of an application accompanied by a \$12 fee, the ADOR will issue a non-transferable privilege license.²¹ The privilege license is effective indefinitely.²² Violation of the privilege license requirement is a Class 3 misdemeanor.²³

An innkeeper who maintains more than one place of business must obtain a license for each location.²⁴ If an establishment's trade name or business location changes, a new license must be obtained.²⁵ The license must be conspicuously displayed within the establishment.²⁶

2. Transaction Privilege ("Sales") Tax

In Arizona, an innkeeper must pay a tax for the privilege of engaging in the hotel/lodging business. The transaction privilege tax, commonly known as the sales tax, is based on the volume of business transacted. The tax is computed based on the business' gross income or gross proceeds

¹⁹ See footnote 14, *supra*.

²⁰ See generally, A.R.S. § 42-5005, *et seq.*

²¹ See A.R.S. § 42-5005(A), (C).

²² See A.R.S. § 42-5005(A).

²³ See A.R.S. § 42-5005(G).

²⁴ See A.R.S. § 42-5005(E).

²⁵ See A.R.S. § 42-5005(D).

²⁶ See Ariz. Admin. Code, R15-5-2201(A).

of sales, as opposed to its net profit.

Different sources of revenue are separately classified for transaction privilege tax purposes. Since different tax rates may apply to different classifications, an innkeeper must determine the class in which a particular source of revenue falls. Income from the transient lodging, telecommunications and restaurant classifications are each reported separately.²⁷

For example, the business of operating a hotel or motel falls within the transient lodging classification.²⁸ The tax rate for the transient lodging classification is 5.5% of the gross proceeds of sale²⁹ or gross income³⁰ derived from the business of operating a hotel.³¹ Generally, extra charges collected for maid service, local telephone calls, utilities, cable television, or any other ancillary services are considered part of gross income and are therefore taxable at the transient lodging rate. The revenue from meeting rooms, however, is reported under the commercial leasing classification.³² Income from tangible personal property such as podiums, microphones and recorders, is reported under the personal property rental classification.³³

Food sales may be reported under the restaurant classification³⁴ or the retail classification.³⁵ For restaurant income, the tax rate is 5% of the gross proceeds or gross income from the sale of food or drink prepared for consumption on or off the premises.³⁶ Income from the sale of food for consumption off the premises, and income from sales of tangible personal property items, such as magazines, is reported under the retail classification.³⁷ The retail tax rate is 5% of the gross proceeds or gross income derived from retail sales.³⁸ By contrast, the purchase of food products from vendors for resale in the ordinary course of business is not subject to sales (or use) taxes.

Transaction privilege taxes are due and payable monthly, on or before the 20th day of the month following the month when the tax accrues.³⁹ The taxes are delinquent if not postmarked on or before the 25th day of the month, or if not received by the ADOR on or before the business day preceding the last business day of the month.⁴⁰ Contact the ADOR's Sales Tax Division (602-542-4656) for more information on the transaction privilege tax.

In addition to sales taxes, Arizona innkeepers are subject to use taxes on tangible personal

²⁷ For a discussion of the various classifications, see Arizona Transaction Privilege Tax Ruling TPR 92-3.

²⁸ See A.R.S. § 42-5070.

²⁹ “‘Gross proceeds of sales’ means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but cash discounts allowed and taken on sales are not included as gross income.” A.R.S. § 42-5001(5).

³⁰ “‘Gross income’ means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses.” A.R.S. § 42-5001(4).

³¹ See A.R.S. § 42-5010(A)(2).

³² See A.R.S. § 42-5069.

³³ See A.R.S. § 42-5071.

³⁴ See A.R.S. § 42-5074.

³⁵ See A.R.S. § 42-5061.

³⁶ See A.R.S. § 42-5010(A)(1)(k).

³⁷ See A.R.S. § 42-5061.

³⁸ See A.R.S. § 42-5010(A)(1)(m).

³⁹ See A.R.S. § 42-5014(A).

⁴⁰ See *id.*

property purchased for use or consumption in the business, unless sales tax in an amount equal to or greater than Arizona's sales tax was paid in connection with purchase of the property.⁴¹ For example, if office materials and cleaning products are purchased sales tax-free, a 5% use tax will apply.⁴² On the other hand, innkeepers do not have to pay sales or use taxes on the purchase of shampoo and other personal hygiene items for complementary use by guests.⁴³

Most cities and towns also impose business privilege taxes on transient lodging. The rates vary by municipality. Taxes for cities and towns on the state collection program are reported to the ADOR on the monthly Form TPT-1. Taxes owing to cities and towns that have their own tax collection programs are submitted directly to the city government.

3. Liquor Sales

Innkeepers who wish to sell spirituous liquor⁴⁴ solely for consumption on the licensed premises⁴⁵ must apply annually for a license.⁴⁶ An Application for Liquor License (Form LIC 0100) is submitted to the Director of the Arizona Department of Liquor Licenses and Control ("DLLC"). DLLC may issue a license to any Arizona hotel or motel that has a restaurant on the premises.⁴⁷ This license allows an innkeeper to sell and serve spirituous liquors solely for consumption on the premises.⁴⁸

Innkeepers must pay a one-time licensing fee of \$1,500,⁴⁹ and an annual renewal fee of \$500.⁵⁰ Failure to renew a liquor license on or before the due date incurs a late penalty of \$150.⁵¹ Spirituous liquor may not be sold until a license is properly renewed.⁵² A license may be terminated if not renewed within 60 days after the applicable due date.⁵³

Special restrictions apply where minibars are supplied in guest rooms.⁵⁴ For example, access keys may only be provided to those of legal drinking age.⁵⁵ The employees that stock minibars must be at least 19 years of age.⁵⁶ Minibars may not contain more than 30 individual

⁴¹ See A.R.S. § 42-5159(A)(1).

⁴² See A.R.S. § 42-5155(C).

⁴³ See A.R.S. § 42-5159(A)(13)(k).

⁴⁴ "'Spirituous liquor' includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, and any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one percent of alcohol by volume." A.R.S. § 4-101(31).

⁴⁵ "[L]icensed premises' shall include all public and private rooms, facilities and areas in which spirituous liquors may be sold or served in the normal operating procedures of the hotel or motel." A.R.S. § 4-205.01(C).

⁴⁶ See A.R.S. § 4-209(A).

⁴⁷ See A.R.S. § 4-205.01(A).

⁴⁸ See A.R.S. § 4-205.01(C).

⁴⁹ See A.R.S. § 4-209(B)(11).

⁵⁰ See A.R.S. § 4-209(D)(11).

⁵¹ See A.R.S. § 4-209(A).

⁵² See *id.*

⁵³ See *id.*

⁵⁴ See A.R.S. § 4-205.06.

⁵⁵ See A.R.S. § 4-205.06(A)(1).

⁵⁶ See A.R.S. § 4-205.06(A)(2).

servings of liquor.⁵⁷

Any innkeeper wishing to sell spirituous liquor for consumption *off* the licensed premises should consult the state Liquor Control Board for information regarding applicable licensing requirements and fees.

4. Luxury Privilege Tax

A special license from DLLC is required for the sale of tobacco, cigarettes or cigars.⁵⁸ The non-transferable license is valid for one year,⁵⁹ and must be prominently displayed within the establishment. Tax rates on specific tobacco products are located at A.R.S. § 42-3052.

5. County Transportation Excise Tax

Depending on population, counties may be required or permitted to assess county transportation excise taxes. Such taxes may be not more than 10% of the transaction privilege tax rate prescribed in A.R.S. § 42-5010(A) as of January 1, 1990. These tax rates vary by county.

6. County Hotel Excise Tax

The Arizona Legislature has authorized counties having a population of less than 2,500,000 but more than 500,000 to levy a tax of up to 6% of a hotel or motel's gross proceeds of sales or gross income.⁶⁰ This tax is imposed only in unincorporated areas of a county.⁶¹

7. Local Discriminatory Fees Prohibited

Cities and towns are prohibited from imposing licensing and other fees on hotels which are higher than such fees for other types of business establishments.⁶² There is one exception to this general rule: excess or discriminatory fees may be imposed on hotels if the revenues from the excess fees are used exclusively for the promotion of tourism within the city or town receiving the tax revenue.⁶³

8. Posting Requirements

Every keeper of a hotel, inn, boarding, lodging or apartment house, or auto camp, must post, in a conspicuous place in the office or public room, and in every bedroom of the establishment, a printed copy of sections 33-951 and 33-952, with a printed statement of charges by the day, week or month for meals, lodging or other items furnished.⁶⁴

⁵⁷ See A.R.S. § 4-205.06(A)(5).

⁵⁸ See A.R.S. § 42-3201(A).

⁵⁹ See A.R.S. § 42-3201(B).

⁶⁰ See A.R.S. § 42-6108.

⁶¹ See A.R.S. § 42-6108(B).

⁶² See A.R.S. § 9-500.06(B, C).

⁶³ See A.R.S. § 9-500.06(C).

⁶⁴ See A.R.S. § 33-301.

A.R.S. § 33-951 provides:

Hotel, inn, boarding house, lodging house, apartment house and auto camp keepers shall have a lien upon the baggage and other property of their guests, boarders or lodgers, brought therein by their guests, boarders or lodgers, for charges due for accommodation, board, lodging or room rent and things furnished at the request of such guests, boarders or lodgers, with the right to possession of the baggage or other property until the charges are paid.

A.R.S. § 33-952 provides:

A. When baggage or other property comes into the possession of a person entitled to a lien as provided by section 33-951 and remains unclaimed, or the charges remain unpaid for a period of four months, the person may proceed to sell the baggage or property at public auction, and from the proceeds retain the charges, storage and expense of advertising the sale.

B. The sale shall not be made until the expiration of four weeks from the first publication of notice of the sale, published in a newspaper once a week for four consecutive weeks. The notice shall contain a description of each piece of property, the name of the owner, if known, the name of the person holding the property, and the time and place of sale. If the indebtedness does not exceed sixty dollars, the notice may be given by posting at not less than three public places located at the place where the hotel, inn, boarding house, lodging house, apartment house or auto camp is located.

C. Any balance from the sale not claimed by the rightful owner within one month from the day of the sale shall be paid into the treasury of the county in which the sale took place, and if not claimed by the owner within one year thereafter, the money shall be paid into the general fund of the county.

D. SUMMARY OF TAX RATES

The combined state and county tax rates on three common classifications are summarized as follows:

County	Transient Lodging	Restaurant	Communications
Gila	6.6%	6.6%	6.6%
La Paz	7.7%	7.6%	7.6%
Maricopa	7.27%	6.3%	6.3%
Mohave	5.78%	5.85%	5.85%
Pima	6.05% ⁶⁵	6.1%	6.1%
Pinal	6.698%	6.7%	6.7%

⁶⁵ An addition 6% is charged for unincorporated areas. See <http://www.azdor.gov/Portals/0/TPTRates/201403.pdf>.

E. GIFT CARDS

Any innkeeper wishing to sell gift cards and/or gift certificates must adhere to the following Arizona State Statutes:

A.R.S. § 44-7401 – Definitions

In this chapter, unless the context otherwise requires:

1. "Fee" means any amount or value automatically deducted from the amount of the gift card due to a period of nonuse or inactivity.

2. "Gift card" means any gift certificate, gift card or electronic gift card or any other medium issued or sold after October 31, 2005 for which the issuer has received payment for the full face value or full banked dollar value of the card for the future purchase or delivery of goods or services.

A.R.S. § 44-7402 - Gift card fees; expiration date; disclosure; exceptions; civil penalty

A. Any gift card subject to an expiration date or a fee, or both, shall clearly and conspicuously disclose the following:

1. The expiration date.
2. The amount of the fee and when the fee is incurred.

B. The disclosure required in subsection A of this section shall be clearly visible to a consumer before the purchase is made. In the case of a paper gift certificate, the information in subsection A of this section shall be disclosed on the front of the gift certificate.

C. For a gift card purchase via electronic or computer means, the existence of an expiration date and the amount of the fee and when the fee is incurred shall be conspicuously disclosed to the consumer before the purchase via the means used to purchase the gift card. For a gift card purchase via telephonic means, the existence of an expiration date and the amount of the fee and when the fee is incurred shall be disclosed verbally to the consumer before the purchase.

D. This section does not apply to any of the following:

1. A gift card distributed to a consumer pursuant to an awards, loyalty or promotional program when no money or other thing of value has been given by the consumer in exchange for the gift card.
2. A gift card that is sold below face value to a nonprofit or charitable organization or donated to a nonprofit or charitable organization for fund raising purposes.
3. A card for prepaid telecommunication services, a debit card connected to a person's bank account or an electronic funds transfer card.

E. Notwithstanding title 44, chapter 10, article 7, the sole penalty for a violation of this section shall be a civil penalty of not more than five hundred dollars per card violation.

F. HEALTH PERMITS

Local health departments are required to inspect all transient dwelling establishments at least once a year.⁶⁶ A copy of the inspection report, which indicates the degree of compliance with applicable health department regulations, is furnished to the operator of the transient dwelling establishment.⁶⁷ A permit may be revoked for failure to correct reported problems.⁶⁸

DHS requires individual dwelling units, *i.e.*, guest rooms, to have at least 100 square feet of floor area, exclusive of bathrooms, closets, kitchens and similar areas.⁶⁹ Items such as furniture, window coverings and carpets are required to be kept clean and in good repair.⁷⁰ Other health regulations address construction materials, window size, and cleaning methods for floors, walls and ceilings.⁷¹

DHS also regulates hotel grounds, which are required to be kept clean and free of accumulations of garbage and other debris.⁷² In addition, “there shall be no evidence of fly, mosquito or rodent breeding or infestation.”⁷³ Garbage cans are required to be thoroughly washed, and maintained free of odors and other “objectionable conditions” after each use.⁷⁴

NOTE: The information provided in this section is a compilation of the most common laws and regulations that affect ownership and operation of transient dwelling units. It should not be construed as a comprehensive listing of all applicable laws and regulations. It is also important to remember that statutes, regulations and administrative decisions are frequently revised.

⁶⁶ See Ariz. Admin. Code, R9-8-1314.

⁶⁷ See id.

⁶⁸ See id.

⁶⁹ See Ariz. Admin. Code, R9-8-1321.A.

⁷⁰ See Ariz. Admin. Code, R9-8-1321.F.

⁷¹ See Ariz. Admin. Code, R9-8-1321.B-D.

⁷² See Ariz. Admin. Code, R9-8-1322.B.

⁷³ Id.

⁷⁴ See Ariz. Admin. Code, R9-8-1334.

III. WHO IS A GUEST?

Once a particular business is determined to be transient lodging or a transient dwelling establishment, an innkeeper must be aware of the laws that address whether an individual on the premises is a guest, a non-guest, or holds some other legal status. These distinctions are important because an innkeeper's rights and duties vary according to the individual's legal status.

The key relationship for any innkeeper is that between innkeeper and guest. Although innkeepers may owe certain legal duties to all persons on their premises, greater duties are owed, and more responsibilities accrue, to guests. There are no definitive legal rules for characterizing people in that regard. The determination generally depends upon all of the facts and circumstances of a particular case. However, courts have developed the following guidelines to aid in making the determination:

A. Is the Person a Transient?

Originally, the duties of an innkeeper to a transient were owed to travelers only, *i.e.*, persons engaged in a journey or traveling from afar. Within the last century, however, the definition of transient has changed to mean anyone who requests and receives accommodations at an inn in exchange for compensation. A transient generally: (1) has a permanent residence elsewhere; (2) is en route to or from some destination; (3) does not have permanent employment in the area in which the inn is located; and (4) seeks accommodations only on a temporary basis.⁷⁵ Regardless of these guidelines, however, innkeepers today should assume that any individual who rents a room is a "transient."

B. Is the Individual Seeking Transient Accommodations?

Another factor in distinguishing a guest from a non-guest is whether the individual is seeking accommodations and services generally provided only to guests, or occupies the premises for some other purpose such as visiting a guest, having a drink, or using gratuitous services offered to the public at large.⁷⁶

C. Was the Individual Received by the Innkeeper as a Guest?

The legal relationship between innkeeper and guest derives from the intent of the parties, as evidenced by what they say and do. To become a guest, an individual must first give the innkeeper notice of his or her intention to become a guest, and then give the innkeeper an opportunity to receive or reject the individual as a guest.⁷⁷ Most often, the innkeeper's consent to become a guest is expressly given by an employee entrusted with the duty of receiving or rejecting potential guests, such as a desk clerk or assistant manager. Consent to receive a guest, however, may also be implied

⁷⁵ See Selvetti v. Building Inspector of Revere, 233 N.E.2d 915 (Mass. 1968); Asseltyne v. Fay Hotel, 23 N.W.2d 357 (Minn. 1946); Brams v. Briggs, 260 N.W. 785 (Mich. 1935); Smith v. Dorchester Hotel Co., 259 P. 1085 (Wash. 1927).

⁷⁶ See Parker v. Dixon, 157 N.W. 583 (Minn. 1916).

⁷⁷ See Fidelman-Danziger, Inc. v. Statler Management, Inc., 136 A.2d 119, 122 (Pa. 1957).

from the conduct of the innkeeper or employees. For example, even if an individual is sharing a room with a registered guest without the innkeeper's knowledge, or a registered guest's visitor engages in activities in which only a guest would normally engage, the innkeeper owes the same duties to that individual as to a registered guest.⁷⁸

The bottom line in determining whether an innkeeper-guest relationship exists is reasonableness. If what an innkeeper and a potential guest say and do in a given case would lead a reasonable person to believe that the parties intended to form an innkeeper-guest relationship, the relationship will exist under the law, for purposes of determining the parties' respective rights and obligations.

D. The Innkeeper-Guest Relationship

In general, a guest has the right to use the premises for a limited period of time, subject to the innkeeper's retention of control and right of access (also referred to as a "license"). Contrast that relationship with the similar, but legally distinct, relationship of landlord-tenant. In Arizona, as in most states, a tenant has certain rights against a landlord not afforded to a guest against an innkeeper.⁷⁹ A guest is not entitled to the same notice that must be provided to tenants before eviction or removal, nor is a guest entitled to the statutory protections of forcible entry and detainer and similar laws enjoyed by tenants. On the other hand, an innkeeper may be deemed the insurer of the personal property of guests, subject to certain exceptions and limitations. An innkeeper, moreover, unlike a landlord, owes a high degree of care for the personal comfort and safety of guests, as well as a duty of courtesy.

The law does not set forth formulaic rules for distinguishing between guests, non-guests and tenants. Accordingly, when an innkeeper has any doubt as to an individual's status, particularly in cases of lockout or removal, the innkeeper should seek legal advice before taking any action. Prior to consulting an attorney, the safest course is to assume that a long-term guest is a tenant, and that any person on the premises is a guest.

⁷⁸ See Woodty v. Weston's Lamplighter Motels, 171 Ariz. 265, 271, 830 P.2d 477, 483 (App. 1992)

⁷⁹ See A.R.S. §§ 33-1301 to 33-1381 (also known as the "Arizona Residential Landlord and Tenant Act"). Guests in hotels, motels or recreational lodgings are specifically excluded from application of the Act. See A.R.S. § 33-1308(4).

IV. THE RELATIONSHIP BETWEEN INNKEEPER AND GUEST

A. *The Common Law Duty to Receive Guests*

A fundamental principle of hotel law is that an innkeeper is engaged in “public employment” and must accept all individuals who seek to be received as guests, unless the innkeeper has some reasonable grounds for refusing such persons.⁸⁰ “The fundamental duty of the innkeeper to the public . . . is to receive for entertainment at his inn, all travelers who properly apply to be admitted as guests.”⁸¹ These duties differ from those in other types of lodging operations, such as apartments or boarding houses.

The duty of an innkeeper to receive guests has two aspects. First, an innkeeper may not deny accommodations without reasonable, non-arbitrary grounds. Second, such reasonable grounds for denial must be applied equally, and without discrimination.

B. *Discrimination Against Guests Prohibited*

“Discrimination in places of public accommodation against any person because of race, color, religion, sex, national origin or ancestry is contrary to the policy of this state and shall be deemed unlawful.”⁸² “‘Places of public accommodation’ means all public places of entertainment, amusement or recreation . . . all public places which are conducted for the lodging of transients . . . and all establishments which cater or offer their services, facilities or goods to or solicit patronage from the members of the general public.”⁸³

Not only is it illegal under state law to refuse to offer accommodations on the basis of race, color, religion, sex, national origin or ancestry,⁸⁴ but it is also illegal to vary the price or quality of accommodations based upon such factors.⁸⁵ Federal laws impose similar obligations.

Violation of the foregoing provisions may result in, among other things, an injunction and a \$5,000 fine.⁸⁶ Wrongful refusal to receive a guest also subjects an innkeeper to a lawsuit for damages. If the refusal was made maliciously, the innkeeper may also be liable for punitive damages.⁸⁷

The obligation to receive guests, however, is not unlimited. An innkeeper may refuse accommodations to an individual who is “under the influence of alcohol or narcotics, who is guilty of boisterous conduct, who is of lewd or immoral character, who is physically violent, or who

⁸⁰ See Hendrik Swarensteyn, Fundamentals of Hotel Law: The Legal Aspects of the Innkeeper-Guest Relationship 66 (1963).

⁸¹ See John E.H. Sherry, The Laws of Innkeepers: For Hotels, Motels, Restaurants, and Clubs 34 (1981).

⁸² A.R.S. § 41-1442(A).

⁸³ A.R.S. § 41-1441(2).

⁸⁴ See A.R.S. § 41-1442(B).

⁸⁵ See *id.*

⁸⁶ See A.R.S. § 41-1472(A)-(B). The fine for a subsequent violation is \$10,000. See A.R.S. § 41-1472(B).

⁸⁷ “Punitive damages” refers to a monetary award over and above that which fully compensates the individual for a wrongful act by another. Punitive damages are generally awarded solely to punish the wrongdoer for particularly heinous behavior.

violates any [non-discriminatory] regulation of any place of public accommodation ...“regardless of race, color, religion, sex, national origin or ancestry.”⁸⁸

C. Discrimination on the Basis of Disability Prohibited

Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.

The ADA defines a service animal as a dog trained to do work or perform tasks for people with disabilities. If they meet this definition, dogs are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. “Seeing eye dogs” are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons with other kinds of disabilities in their day-to-day activities. Some examples include:

- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.

A service animal is not a pet. The ADA requires you to modify your “no pets” policy to allow the use of a service animal by a person with a disability. This does not mean you must abandon your “no pets” policy altogether but simply that you must make an exception to your general rule for service animals. Most animals, including but not limited to those labeled Companion Animals, Emotional Support Animals and Therapy Animals or pets are NOT service animals according to ADA’s Definition, as they have NOT been individually trained to perform disability mitigating tasks. Thus their handlers do not legally qualify for public access rights. Typically these animals also lack the months of training on obedience and manners needed to behave properly under challenging conditions in places of public accommodation.

Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if the dog is a service animal required because of a disability and what work or task has the dog been trained to perform. However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

⁸⁸ See A.R.S. § 41-1442(C).

The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers and members of the public are normally allowed to go. An individual with a service animal may not be segregated from other customers.

You may not impose additional fees on individuals bringing service pets into your establishment, such as a cleaning or maintenance fee. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage.

The care or supervision of a service animal is solely the responsibility of his or her owner. You are not required to provide care or food or a special location for the animal.

You may exclude any animal, including a service animal, from your facility when that animal's behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. You may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Each situation must be considered individually. Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

There may be a few circumstances when a public accommodation is not required to accommodate a service animal--that is, when doing so would result in a fundamental alteration to the nature of the business. Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities. But when it does, for example, when a dog barks repeatedly during a movie, the animal can be excluded.

Arizona law also specifically prohibits businesses and other public places from discriminating against individuals who use service animals if the work performed by the service animal is directly related to the individual's disability.⁸⁹ Under Arizona law, a service animal includes any dog or miniature horse that is trained to work or perform tasks for the benefit of an individual with a disability.⁹⁰ Similar to the federal law, it is not considered discrimination to exclude a service animal from a public place if the animal poses a direct threat, fundamentally alters the nature of the public place, or poses an undue burden.⁹¹

D. Discrimination Against Guests With Children

The law provides that it is a petty offense, *i.e.*, minor crime, for a person to knowingly

⁸⁹ See A.R.S. § 11-1024(A).

⁹⁰ See A.R.S. § 11-1024(J).

⁹¹ See A.R.S. § 11-1024(B).

refuse “to rent to any other person a place to be used for a dwelling for the reason that the other person has a child or children, or [to advertise] in connection with the rental a restriction against children, either by the display of a sign, placard, written or printed notice, or by publication thereof in a newspaper of general circulation.”⁹² Although there is no specific case law on the subject, this statute arguably may apply to an innkeeper. Accordingly, an innkeeper should not refuse admittance to a prospective guest based upon the mere fact that the prospective guest is accompanied by a child.

E. The Duty to Receive Minors

In general, the requirement that an innkeeper accept all potential guests applies equally to minors (individuals under 18 years of age). Therefore, an innkeeper should not assume that unaccompanied minors can be refused accommodations. The nature of the relationship between innkeeper and guest is a contractual one. In that regard, the general rule of law is that minors lack the capacity to contract.⁹³ This rule is intended to protect minors from their own acts of immaturity or lack of judgment, and from unscrupulous adults. Nevertheless, the law has long recognized that, even when a minor disaffirms a contract, the minor may be required to pay for the reasonable value of “necessaries” furnished in reliance upon a contract. The word “necessaries” is a term of art, but generally includes food, shelter and lodging.⁹⁴

Regardless of the general rule, the mere fact of legal incapacity to contract does not allow an innkeeper to deny accommodations.⁹⁵ In the only reported case directly on point, a minor sued an innkeeper to recover payment of charges incurred while the minor was a guest at the hotel.⁹⁶ The court concluded that the mere fact of the guest’s minority would not have permitted the innkeeper to refuse the minor accommodations, because innkeepers are legally bound to receive all guests “apparently responsible and of good conduct.”⁹⁷ Since the contract was, in effect, compulsory upon the innkeeper, it was inequitable to allow the minor to subsequently disaffirm the contract. In any case, the innkeeper was permitted to recover for the reasonable value of any necessities furnished to the minor.⁹⁸ Based upon this decision, the possibility that a minor might later attempt to disaffirm an innkeeping contract is not sufficient grounds to refuse accommodations, in the absence of other grounds to do so.

Acceptable grounds for refusing accommodations to a minor are essentially the same as those for any other potential guest. Typically, proper grounds include:

- Reasonable belief that the prospective guest is seeking accommodations for improper or unlawful purposes.
- Lack of available guest rooms.

⁹² See A.R.S. § 33-303(A).

⁹³ See *Williston on Contracts*, Volume I, § 222 *et seq.*

⁹⁴ See *Burnand v. Irigoyen*, 186 P.2d 417, 420 (Cal. 1947).

⁹⁵ See *Sherry*, *supra* n.67, at 34.

⁹⁶ See *Watson v. Cross*, 63 Ky. 147 (1865).

⁹⁷ *Id.*

⁹⁸ *Id.*

- Refusal by prospective guest to pay in advance when requested to do so.
- Failure of the prospective guest to provide evidence of ability to pay.
- Indication of improper conduct (including intoxication).

Despite the fact that minors may sometimes disaffirm their contracts, an innkeeper cannot arbitrarily refuse accommodations to an unaccompanied minor. The decision to refuse accommodations to a minor should only be made following nondiscriminatory application of the grounds listed above.

F. “Prom Nights,” Graduation Parties, Spring Break,” and Similar Events

As noted above, an innkeeper would be justified in refusing accommodations to a minor when there are reasonable grounds to believe that the accommodations will be used by a group of unaccompanied minors for a party or an illegal purpose (such as drinking alcohol). The innkeeper’s right to refuse accommodations under those circumstances arises from the duty to take reasonable steps to safeguard the peace and quiet for other guests, and the right to take precautions to safeguard its property and other guests. If an innkeeper reasonably suspects that minors may utilize the premises for illegal activity, the innkeeper not only has the right, but quite possibly a legal obligation, to refuse accommodations.

The “Voluntary Guidelines” of the California Hotel and Motel Association suggest that innkeepers should consider notifying any person seeking accommodations that guest rooms and suites are not available for gatherings of minors, and that the innkeeper reserves the right to cancel a reservation or evict minors in the event the innkeeper learns that such a gathering is planned or is taking place. A suggested form of notice is as follows:

NOTE: It is the policy of *[name of establishment]* not to make guest rooms or suite accommodations available to minors in connection with “prom nights,” graduation ceremonies or similar events. Any intended use for such purposes of the guest room or suite that you have reserved is grounds for canceling your reservation. If we learn that such an event is in progress, and particularly if we have reasonable grounds to suspect that alcoholic beverages are being consumed or that other illegal activity is taking place, we reserve the right to revoke your license to occupy the guest room or suite, and to immediately evict all occupants.

If a gathering or party is permitted, and grounds for removal develop during the course of the event, reasonable care should be exercised as to the timing and method of eviction to protect all concerned parties, and to limit the innkeeper’s potential liability. The innkeeper should avoid any physical violence, should refrain from any actions or statements that could constitute defamation or the infliction of emotional distress (such as derogatory remarks), and should never evict a minor when doing so would place the minor in danger, such as late at night or in a high-crime area, unless the minor is released to the custody of a legal guardian. Perhaps the safest course for an innkeeper

under such circumstances is to call the minor's parents, if possible, and request that they either pick up their child or provide safe transportation. If there is any indication that a proposed eviction could result in violence, the innkeeper should seek the assistance of local law enforcement officials.

G. Liability for Failure to Honor Reservations

1. The Reservation Contract

A reservation is a contract between the innkeeper and the guest. The key to formation of a contract is the intent of both parties to enter into an agreement. A valid reservation contract is generally formed when the innkeeper promises to provide accommodations in the future in return for the prospective guest's payment or promise of payment. If both parties agree on all material terms and conditions of the contract, whether orally or in writing, a valid contract is formed.

In general, the material terms of a reservation contract will be the guest's arrival and departure dates, the number and types of rooms to be provided, the number of guests, and the rates. Any other terms that are essential to the agreement between the innkeeper and the prospective guest are also material terms.

In addition, the innkeeper may impose certain other terms as a condition to the innkeeper's performance under the contract. For example, the innkeeper can offer to hold a room for a prospective guest only until a specified time without pre-payment. The innkeeper may also require the prospective guest to pay a deposit, prepay all or part of the reservation, or provide a credit card number as a guarantee of the ability to pay. If the prospective guest agrees to such conditions, those conditions are on both parties.

Although different terms are used to describe various types of reservation contracts,⁹⁹ each is essentially a variation on the key question of whether a valid and binding reservation contract exists. While an innkeeper may place conditions on the creation of a contract, a valid reservation contract is created when the prospective guest agrees to the conditions.

A reservation contract can be oral as well as written. If the innkeeper does not place conditions on the creation of a contract, one may arise whether or not the reservation has been confirmed in writing by either party. As a consequence, innkeepers should institute standard procedures for making reservations, and inform prospective guests what conditions, if any, are required to make a binding reservation. When a prospective guest follows the procedures, the innkeeper should assume that a valid and binding reservation contract has been created between the parties.

2. Breach of the Reservation Contract

Once a valid reservation contract exists and one party fails to perform, the other party can

⁹⁹ Common terms include "guaranteed reservations", "prepaid reservations", "confirmed reservations", "blanket reservations" and "company-made reservations".

recover damages, in the absence of a valid excuse for nonperformance. In general, contract law allows few excuses for breach of a binding contract. Impossibility of performance might be a sufficient excuse, if, for example, the hotel is destroyed by fire or flood. Short of some catastrophic event, an innkeeper will generally be held to the terms of a valid reservation contract. The excuse of a “full house” is not a valid defense to nonperformance of a reservation contract, especially if the lack of available rooms results from intentional overbooking.¹⁰⁰

Courts have not often addressed the ramifications of refusing guests as a result of overbooking, nor are there any applicable federal laws or regulations such as those in the airline industry. Nevertheless, an innkeeper’s refusal to honor a reservation is likely to be construed a breach of contract, particularly if the establishment “guaranteed” the reservation by accepting a deposit. In one case, when members of a tour group who had reservations were forced to stay at an alternate facility, the court found that the innkeeper had committed fraud by knowingly overbooking the facility.¹⁰¹ Thus, deliberate overbooking can have significant legal consequences.

To avoid legal claims--and for good customer relations--innkeepers who refuse guests with reservations should preempt any damages by making arrangements to place the guest in a comparable hotel and paying at least any difference in rates, as well as the costs of transportation to and from the alternate hotel and any other “out of pocket” expenses suffered, such as phone calls.

When a prospective guest breaches the reservation contract, an innkeeper theoretically has the right to sue for any damages resulting from the breach. A prospective guest is under an obligation to notify the innkeeper as soon as possible that he or she will not be able to honor the reservation, particularly if the innkeeper placed such a condition on the contract. On the other hand, the innkeeper is generally obligated to use reasonable efforts to rebook the room. If the innkeeper is successful, any deposit should be returned to the original prospective guest. On the other hand, if the prospective guest fails to notify the innkeeper, or if the notice is too late for the innkeeper to rebook the room, the prospective guest may be liable for breach of contract.

In most cases, it is not cost-efficient for an innkeeper to pursue a lawsuit for breach of a reservation contract. Prospective guests often live out of state, and the amount recoverable is generally too small. One possible exception, however, is a lawsuit to recover against a convention host for breach of a reservation contract for a large number of rooms for an extended period of time. Under those circumstances, the innkeeper’s loss may be sufficient to justify the time and expense of a lawsuit, particularly in Arizona, where the law provides that the prevailing party in contract litigation may recover its attorney’s fees.

¹⁰⁰ Most transient dwelling establishments attempt to fill their available rooms and facilities 100% of the time. Even when a facility is completely booked, however, sellouts are often thwarted by last minute cancellations. Thus, it is not uncommon for innkeepers, in anticipation of cancellations and no-shows, to accept reservations over and above maximum availability in order to minimize the number of rooms ultimately left empty. Overbooking may also result when guests elect to extend their stay, or when fewer than the estimated number of reservations are cancelled.

¹⁰¹ See Rainbow Travel Service, Inc. v. Hilton Hotels Corp., 896 F.2d 1233 (10th Cir. 1990).

H. Liability for Personal Property of Guests

Originally, Arizona followed the common law rule, which imposed strict liability upon an innkeeper for a guest's property. As travel became more common and less hazardous, states, including Arizona, began enacting innkeeper statutes to limit an innkeeper's liability for loss of or damage to a guest's property. Arizona's innkeeper statute provides that

- A. An innkeeper who maintains a fireproof safe and gives notice by posting in a conspicuous place in the office or in the room of each guest that money, jewelry, documents and other articles of small size and unusual value may be deposited in the safe, is not liable for loss of or injury to any such article not deposited in the safe, which is not the result of his own act.
- B. An innkeeper may refuse to receive for deposit from a guest articles exceeding a total value of five hundred dollars, and unless otherwise agreed to in writing shall not be liable in an amount in excess of five hundred dollars for loss of or damage to property deposited by a guest in such safe unless the loss or damage is the result of the fault or negligence of the innkeeper.
- C. The innkeeper shall not be liable for loss of or damage to merchandise samples or merchandise for sale displayed by a guest unless the guest gives prior written notice to the innkeeper of having and displaying the merchandise or merchandise samples, and the innkeeper acknowledges receipt of such notice, but in no event shall liability for such loss or damage exceed five hundred dollars unless it results from the fault or negligence of the innkeeper.
- D. The liability of an innkeeper to a guest shall be limited to one hundred dollars for property delivered to the innkeeper to be kept in a storeroom or baggage room and to seventy-five dollars for property deposited in a parcel or checkroom.¹⁰²

Thus, Arizona's innkeeper statute limits the liability of hotels and other lodging for property loss if the hotel posts notice in a conspicuous place in an office or guest room regarding the availability of a fireproof safe for keeping their valuables. If the hotel guest fails to deposit any such valuables in the safe, the hotel will not be liable for any loss or damage. Moreover, for items deposited in such safe, the hotel shall not be liable for more than \$500 for loss or damage to the guest's property unless the loss or damage results from the fault or negligence of the hotel. In addition, the hotel is only liable for up to \$100 for guest property given to the hotel to keep in the storage or baggage room and up to \$75 for property deposited to a parcel or checkroom.¹⁰³

In *Terry v. Linscott Hotel Corp.*, 126 Ariz. 548, 617 P.2d 56 (Ct. App. 1980), hotel guests sued the Scottsdale Hilton Inn for the theft of their jewelry from their hotel room. Plaintiffs alleged the hotel owed them a duty to disclose recent thefts and burglaries, and to provide adequate security. The hotel won summary judgment because it provided a fireproof safe, had complied with

¹⁰² See A.R.S. § 33-302.

¹⁰³ Id.

the “posting provisions” of A.R.S. § 33-302(A), and the guests failed to deposit their jewelry into the safe.¹⁰⁴

With respect to baggage and other property in the hotel’s possession, hotels shall have a lien upon the baggage and other property of their guests for charges due for accommodation or room rent and things furnished at the request of such guests, with the right to possession of the baggage or other property until the charges are paid.¹⁰⁵

For items mistakenly left in the room, the hotel may be considered a gratuitous or constructive bailee of found property, which means the hotel must deliver the property to the owner on demand and must exercise reasonable care to protect bailor’s property, i.e. that which a person of common prudence would use under the circumstances. Even if a bailment relationship is not created, the hotel should still exercise a degree of care over their guest’s property to avoid claims of negligence. Hotels should have a procedure in place for when personal property is found in the hotel’s public spaces or in rented areas, such as a guest’s room, following check-out. Lost, mislaid, or abandoned property should be logged and turned into the hotel manager, or his or her designee. Access to this property should be limited to designated employees. The hotel should make a good faith effort to locate the rightful owner, and document these efforts. The hotel should also establish appropriate time frames for retaining found property. Although Arizona does not prescribe a statutory time frame, a sixty to ninety day time frame is recommended for retaining found property. The hotel should ascertain the identity of the purported owner by requiring proof of ownership or identification before returning found property. If the original owner cannot be located, the found property should be disposed of in a fair and consistent manner. By following these procedures, management can protect the hotel from liability for any lost personal property.

For personal property of guests that are left in the care of the hotel, such as laundry, valet parked cars, or luggage stored with the bellman in return for a claim check, a legal bailment relationship is created. When a hotel accepts this responsibility it is a contract of bailment and the hotel must exercise reasonable care to safeguard the property and is liable for any loss or damage to that property while they are safeguarding that property except as limited by A.R.S. § 33-302. Remember, to receive the limited liability protection of the innkeeper’s statute, all statutory requirements of the statute must be met.

¹⁰⁴ See Terry v. Linscott Hotel Corp., 126 Ariz. 548, 617 P.2d 56 (Ct. App. 1980)

¹⁰⁵ See A.R.S. § 33-951.

V. CONVENTIONS, MEETINGS AND EVENTS

Most hotels and motels, whether large convention resorts or small “mom and pop” operations, have facilities for group events. Whether you are setting aside a portion of your dining room for a meeting of the local Rotary Club, or hosting a convention with 1,000 attendees, there are legal issues to consider. The following section presents an overview of some of the most common issues that arise with regard to group events.

A. *Basic Contract Law*

The basic elements of a contract are: (1) an offer; (2) acceptance of the offer; and (3) consideration, *i.e.*, the obligation to do something one would not otherwise be required to do, such as pay an agreed upon price or perform a promise.

Generally, contracts need not be written to be enforceable. Arizona’s Statute of Frauds requires a written contract only for agreements that cannot be performed within one year, or for the sale of real estate or of goods with a value of more than \$500.¹⁰⁶ Nevertheless, using a written contract is the best way to ensure that both parties have the same understanding of their agreement, in order to minimize disputes.

With regard to group events, it is common in the hospitality industry for the innkeeper and a representative of the group to discuss and agree upon the requirements for the event, which are then incorporated into a written contract. The contract constitutes an offer by the innkeeper to contract on the stated terms. Offers to contract may include provisions requiring a specific manner of acceptance, or may be open for only a specified period of time such that, if not properly and timely accepted, no contract is formed. In any case, an offer may be withdrawn at any time before it is accepted.

If the group makes a change in the contract, such as in the number of attendees or the rates, then signs the contract and returns it, a contract has not been formed. By changing the terms, the group has rejected the offer, and has made a counteroffer. A contract is formed only if and when the counteroffer is formally accepted by the innkeeper.

Often, contracting parties place their initials next to changes as evidence of acceptance. It is wiser for the parties to exchange a revised contract incorporating the new terms, and to obtain both parties’ signatures, to avoid later disputes over the final terms of the contract.

B. *Consideration*

Not only must each side be bound to do something in order for a contract to be valid, but the consideration must be sufficient and definite. An “agreement to agree” is not enforceable. Thus, a contract which states that a material term, such as room rates, will be determined in the future is not enforceable.

¹⁰⁶ See A.R.S. § 44-101.

When a party is contracting to hold a block of rooms or host a food and beverage event, it is customary for the contract to contain a “cutoff date” several days or weeks before the event, by which reservations must be confirmed and the number of attendees guaranteed. Many contracts provide that reservations may be cancelled in whole or in part if not confirmed by the cutoff date. In that regard, however, at least one court has held that if an innkeeper contracts for the right to cancel reservations not confirmed by the cutoff date, then the other party is not bound by any reservations not properly confirmed before the cutoff.¹⁰⁷

This legal precedent could have a significant impact on innkeepers who hold sleeping rooms, meeting space or other facilities pursuant to a contract, only to have the other party cancel before the cutoff date. In order to protect the innkeeper’s right to recover damages for such cancellations, any cutoff date provision must be carefully drafted.

C. Amendments to Contracts

In most cases, written contracts can only be amended in writing. Unless a contract’s terms are ambiguous or the contract does not contain all the terms necessary for performance, courts do not permit reliance on oral agreements to change or add to the terms of a written contract. Any adjustments or additional details should be documented in a written agreement or amendment, signed by authorized representatives of both parties.

D. Force Majeure/Impracticability

The law provides generally that in the event one party is prevented from performing due to an “act of God,” *e.g.*, fire, flood, etc., that party is excused from performance. Consequently, it is not necessary to include such a provision in an event contract. However, many groups request expanded clauses that excuse non-performance for reasons other than acts of God.

For example, a contract provision may allow cancellation, without payment of damages, if performance becomes “inadvisable.” Others permit cancellation based on “impracticability.” In that regard, the general rule is that a party may be excused from performance if the purpose of the event was a basic assumption of the parties, and has been frustrated beyond what the parties contemplated could happen at the time the contract was executed.¹⁰⁸

E. Conditions/Contingencies

Contracts may also include some fact or event, *i.e.*, a condition, which must occur in order for performance to be required, such as approval of the contract by a group’s board of directors, or that planned renovations be complete by a specific date. When including such conditions in a contract, care must be taken to ensure they are clearly worded and appropriately limited, so that neither party may unreasonably avoid performance, and to avoid disputes over whether or not a condition has been satisfied.

¹⁰⁷ See Lederman Enters., Inc. v. Allied Social Science Ass’ns, 709 P.2d 1, 3 (Colo.App. 1985).

¹⁰⁸ See 7200 Scottsdale Road General Partners v. Kuhn Farm Machinery, Inc., 184 Ariz. 341, 347, 909 P.2d 408, 414 (Ct.App. 1995).

F. Indemnity/Insurance

As discussed in more detail in Section X, innkeepers owe a duty to their guests and to members of the public to keep their premises reasonably safe. Failure to do so may subject the innkeeper to liability and damages. In that regard, Arizona has adopted a “pure” comparative negligence system, under which a party may only be held liable for the percentage of damages caused by that party.¹⁰⁹ Nevertheless, an establishment may incur substantial liability even if not ultimately responsible for injuries caused by a group’s actions. An injured party is likely to file a lawsuit against any and all parties related to the event which caused the injury. Accordingly, an innkeeper that is totally without fault may be forced to incur costs, legal fees and business disruption in connection with having to defend a lawsuit.

As a result, indemnity clauses in contracts often require one party to reimburse another for certain damages. Depending on how they are drafted, the party making an indemnity claim, *i.e.*, the indemnitee, may be reimbursed only for damages it is required to pay to the damaged party, or may receive full reimbursement for damages, plus costs, legal fees and other expenses. The party making payment, *i.e.*, the indemnitor, may be required to reimburse only for damages resulting from the indemnitor’s fault, or the clause could be drafted to require the indemnitor to reimburse for damages resulting from the indemnitee’s negligence. Under Arizona law, such clauses are enforceable contractual agreements for cost shifting between parties, separate and apart from the allocation of fault under negligence law.

Indemnification obligations are often funded by insurance. Consequently, group event contracts may require one party (usually the indemnitor) to provide proof of insurance coverage with respect to its indemnity commitments. If the indemnitor has insurance, the policy proceeds may be used to pay for legal fees and damage awards. By requiring proof of insurance, the indemnitee ensures that the indemnitor will have the financial resources available to meet its indemnity commitments.

Innkeepers should not only require the protection of indemnity and insurance from groups using their facilities, but should also require those groups to obtain similar protections from third parties with whom they contract. For example, vendors at trade shows, entertainers at events, and suppliers such as audio-visual companies should all be required to protect both the group and the hotel from claims that may result from negligence or injury.

G. Disclosure of Third Party Payments

When dealing with groups or group events, an innkeeper may deal with many third parties, such as meeting planners and housing companies, which handle reservations and provide rooming lists for group events. In that regard, an innkeeper may be asked to make payment to such a third party on behalf of the group, out of hotel’s fees for the event. In addition, a group may request a rebate or other payment in exchange for holding its event at a particular facility. The payment may be a flat fee, or a percentage of the room rate. In any case, any such rebate is ultimately paid by the individual or entity paying for the rooms. While such payments are common in the hospitality industry, they may be illegal if not properly disclosed.

¹⁰⁹ See A.R.S. § 12-2505.

For example, company A hires meeting planner B to arrange its annual sales meeting. A will pay B a fee for B's services, and A will pay the hotel for the rooms and other charges. B contracts with hotel C for the event. B and C agree that for each night utilized by A, B will receive a commission equal to 10% of the room rate. A is not informed of the commission, for which it will ultimately be paying, by paying for the rooms.

This scenario could be considered commercial bribery under the laws of many states, for which B and C would be subject to civil and criminal penalties. Arizona's commercial bribery laws are not as broad as those of many states. Arizona requires corrupt intent, among other factors, which may limit application of the law to groups.¹¹⁰ However, because convention or group contracts are often made with out-of-state parties, Arizona innkeepers should be wary of making "undisclosed" payments to any third party, and should consult with legal counsel before agreeing to do so.

H. Breach of Contract

Technically, any failure to fully perform under a contract constitutes a breach. However, the law generally overlooks minor, or "non-material," breaches. When a breach is significant, *i.e.*, "material," the law provides remedies to the non-breaching party. Whether a breach is material depends on the facts of each situation, but it generally involves a situation where one party's non-performance deprives the other party of the benefits of the contract.

The goal of courts in addressing breaches of contract is to return the non-breaching party to the position in which it would have been had the breach not occurred. Thus, a successful breach of contract claimant is awarded "compensatory damages," *i.e.*, the amount that compensates the claimant for losses resulting from the breach, such as lost profits, or the value of the non-breaching party's performance. The claimant may also be awarded "consequential damages," or additional losses incurred as a result of the breach, such as the costs of finding and contracting with another party, and loss of goodwill. The non-breaching party has a duty to reduce, or "mitigate," its damages, *i.e.*, take reasonable steps to minimize its loss. In Arizona, punitive damages are only awarded in cases in which the breaching party engaged in extreme conduct, designed or intended to harm the other.

Parties may also agree in advance regarding the amount of damages that will be paid in the event of a breach. Such provisions, known as "liquidated damages," may be used in situations where it may be difficult for the damaged party to prove the exact amount of its loss. Liquidated damages must be reasonable, and may not operate as a penalty. Any contract that provides for liquidated damages must be drafted carefully to ensure enforceability.

¹¹⁰ See A.R.S. §§ 1-215(8) (defining "corruptly"); 13-2605.

I. Dispute Resolution

Contracting parties may provide for specific places or methods of dispute resolution. Such provisions often include a requirement that disputes be decided by arbitration rather than court proceedings. While Arizona courts have undertaken aggressive measures to reduce the costs and delays associated with litigation, they are still be a significant burden, and may even discourage the pursuit of legitimate claims. As a consequence, innkeepers should consider incorporating alternative dispute resolution provisions in their standard contracts.

VI. THE INNKEEPER'S RIGHT TO REFUSE GUESTS

As discussed above, an innkeeper has a duty to receive all prospective guests unless the innkeeper has “just cause” for refusing accommodations. The right to refuse for just cause derives from the innkeeper’s duty to exercise reasonable care to maintain the premises for the peace, tranquility and physical safety of other guests, to preserve the inn’s property, and to prevent illegal activity on the premises.

A. Lack of Available Rooms

From earliest times, the common law has recognized that an innkeeper is justified in refusing to receive a traveler when there is no room available, and no advance reservation was made. If rooms are available, an innkeeper cannot refuse accommodations merely because the traveler arrives late at night. The time of arrival, however, may affect the question of whether the innkeeper is liable for failure to honor a reservation.

B. Ability to Pay

An innkeeper is entitled to require that the prospective guest pay a reasonable price, and may demand proof of the prospective guest’s ability to pay. As long as the hotel’s policies are applied in a uniform, nondiscriminatory manner, the innkeeper is entitled to require payment in advance and/or proof of ability to pay. Today, these interests are generally satisfied by the innkeeper’s requirement that the prospective guest provide a valid credit card, and authorization to use the card to pay for the guest’s purchases and accommodations.

C. Infectious or Contagious Disease¹¹¹

An innkeeper is permitted to refuse accommodations to persons who have infectious or contagious diseases. Certain types of diseases have long been recognized as dangerous and easily transmitted. With respect to those diseases, the innkeeper has a duty to refuse the prospective guest in order to protect other guests, employees, and others lawfully on the property. DHS has declared certain diseases to be “communicable,” such as cholera, measles, pertussis and smallpox. Other diseases, such as AIDS, which is not a legal basis to refuse accommodations, may be considered disabilities governed by the Americans With Disabilities Act (“ADA”), discussed in Section XVII. Moreover, inquiries regarding the physical condition of prospective guests may be construed as an invasion of privacy, negligent or intentional infliction of emotional distress, or other misconduct, depending upon the circumstances. As always, innkeepers should seek the advice of legal counsel in establishing the policies and procedures they wish to implement in this sensitive area.

D. Actual and Potential Improper Conduct

An innkeeper has a duty not to admit prospective guests whom the innkeeper has reason to believe will disrupt the peace and quiet of the hotel or pose a threat to others lawfully on the property. An innkeeper may refuse accommodations under circumstances involving improper

¹¹¹ See also Section VII.B, *infra*.

conduct, such as intoxication. An innkeeper is also permitted, and may be bound, to refuse accommodations to a person of known violent and disorderly propensities. Failure to do so could expose the innkeeper to civil liability.¹¹² Under the proper circumstances, the innkeeper may also refuse a prospective guest who seeks admission solely for the purpose of soliciting business for a competitor, or for carrying on business activities in the hotel. In addition, the innkeeper may refuse a guest who is seeking admission for immoral or unlawful purposes, or whom the innkeeper believes will engage in unlawful activities.

On the other hand, an innkeeper risks breaching its duty to receive guests, and violating federal civil rights laws, if the innkeeper denies accommodations on the basis of “objectionable character or appearance.” Although older cases have held that an innkeeper may justly exclude those of known immoral character or those who are “undesirable,” today’s courts probably do not permit an innkeeper to refuse accommodations based upon such things as violation of an arbitrary dress code.

In any case, an innkeeper should establish and follow reasonable guidelines and procedures with regard to the conduct of potential guests, and should apply those guidelines and procedures equally and without discrimination.

¹¹² See also Section X, infra.

VII. RIGHT TO EVICT GUESTS AND OTHERS

Generally, a guest can be evicted for just cause provided no more force is used than is necessary.¹¹³ In order to determine if a guest may be legally evicted, the innkeeper must determine whether the person is a guest, as opposed to a tenant; and whether just cause exists to evict that person. Once the innkeeper has established that the person is a guest, the guest may be evicted for the same reasons the hotel can properly refuse to admit the person as a guest in the first place.¹¹⁴ Under Arizona law, the hotel may exclude “[a]ny person under the influence of alcohol or narcotics, or who is guilty of boisterous conduct, or who is of lewd or immoral character, who is physically violent or who violates any regulation of any place of public accommodation that applies to all persons regardless of race, color, religion, sex, national origin or ancestry.”¹¹⁵ The hotel may also evict a guest if the guest refuses to pay, or if the guest has a contagious disease.

A. *Refusal to Pay*

Eviction is proper when a guest refuses to pay his or her expenses incurred while staying at the hotel.¹¹⁶ Prior to eviction, the hotel should ask the guest to either pay the bill or leave.¹¹⁷ If the guest does not leave voluntarily, then the hotel may use reasonable force to evict the guest.¹¹⁸ If excessive force is used, or if the eviction is carried out improperly, the hotel may be held liable.¹¹⁹ Reasonable force and excessive force are legal concepts that do not lend themselves to precise measurement. The same amount of force may be reasonable in one instance and unreasonable in another. Judges have described reasonable force as “that amount of force reasonably necessary to prevent or terminate an unjustified act. Reasonable force is that which is calculated not to inflict any serious bodily harm.”¹²⁰

B. *Contagious Disease*

Arizona law requires hotel management to immediately report in writing to the local board of health each case of contagious, infectious or epidemic disease in their establishment.¹²¹ The report is to include the name of the person(s) afflicted and the nature of the disease, and must be made within 24 hours after the existence of the disease is known.¹²² If the hotel decides it is necessary to evict the guest, the guest must be moved at an appropriate time, to a hospital or other safe place.¹²³

¹¹³ See McBride v. Hosev, 197 S.W.2d 372, 375 (Tex. App. 1946).

¹¹⁴ See John E.H. Sherry, The Laws of Innkeepers: For Hotels, Motels, Restaurants, and Clubs 109 (1981).

¹¹⁵ A.R.S. § 41-1442(C).

¹¹⁶ See State v. Carrillo, 26 Ariz.App. 113, 114, 546 P.2d 838, 839 (1976) (distinguishing tenants from guests); Porozonoff v. Alberti, 391 A.2d 984, 988 (N.J. Super. 1978); Raine, 250 Cal.App.2d at 520, 58 Cal.Rptr. at 756; Neely v. Lott Hotels Co., 78 N.E.2d 659 (Ill. App. 1948).

¹¹⁷ See Hopp v. Thompson, 38 N.W.2d 133, 135 (S.D. 1949); Raider v. Dixie Inn, 248 S.W. 229, 230 (Ky. App. 1923).

¹¹⁸ See Neely, 78 N.E.2d at 659.

¹¹⁹ See Jones v. Shannon, 175 P. 882, 883 (Mont. 1918); Raider, 248 S.W. at 230.

¹²⁰ See Gortarez v. Smitty's Super Valu, Inc., 140 Ariz. 97, 102, 680 P.2d 807, 812 (1984).

¹²¹ See A.R.S. § 36-622.

¹²² See id.

¹²³ See McHugh v. Schlosser, 28 A. 291, 292 (Pa. 1894). See also Section VI.C, infra.

C. Violation of Hotel Rules

Under Arizona law, a hotel may evict a guest who violates any regulation of a place of public accommodation, as long as the rules and regulations are applied without discrimination on the basis of race, color, religion, sex, national origin, or ancestry.¹²⁴ The hotel's ability to enforce its rules and regulations will be enhanced substantially if guests have advance written notice of such rules.

D. Objectionable Conduct

A hotel is obligated to provide a safe and comfortable place for its guests.¹²⁵ Likewise, a guest is obligated to refrain from offensive conduct, conduct that would harm the hotel's reputation, and conduct that could injure other persons, hotel property or the property of other guests.¹²⁶ When a guest acts offensively in any respect, hotel management has a duty to ask the guest to cease the conduct.¹²⁷ For example, a hotel may evict a guest for being under the influence of alcohol,¹²⁸ or for boisterous conduct.¹²⁹ A guest can also be evicted for lewd or immoral behavior.¹³⁰ In addition, a hotel can evict a guest who, while in the hotel, solicits sexual services or other illegal business from other guests.¹³¹ Under any of these circumstances, hotel management has the right to evict the guest, provided the establishment does not use excessive force.¹³²

E. Illegal Activity

A hotel has the right to evict any guest who is involved in illegal activity on the premises.¹³³ Illegal activity includes theft, prostitution, drug dealing, gambling, or disturbing the peace.¹³⁴

F. Overstaying Agreed Term ("Holdover" Guests)

Upon the expiration of the rental period, a hotel guest no longer has a right to use a room and loses any privacy interest associated with it.¹³⁵ Nevertheless, an innkeeper must consider the hotel's duty to accommodate a present guest in the context of the hotel's duty not to refuse a new guest who has a reservation.¹³⁶ To avoid this issue, the hotel should advise guests in advance that they cannot stay beyond their scheduled departure date, and will be subject to eviction if they do

¹²⁴ See A.R.S. § 41-1442(C). See also *O'Connor v. Village Green Owners Ass'n.*, 662 P.2d 427, 431 (Cal. 1983).

¹²⁵ See *Jones*, 175 P. at 883.

¹²⁶ See *State v. Weekley*, 200 Ariz. 421, 427, 27 P.3d 325, 331 (App. 2001). See also *Jones*, 175 P. at 883; *People v. Minervini*, 20 Cal.App.3d 832, 840, 98 Cal.Rptr. 107, 112 (1971).

¹²⁷ See *Hopp*, 38 N.W.2d at 135; *Raider*, 248 S.W. at 230.

¹²⁸ See *Porozonoff*, 391 A.2d at 988.

¹²⁹ See *Lehnen v. E.J. Hines & Co.*, 127 P. 612, 614 (Kan. 1912).

¹³⁰ See *United States v. Rambo*, 789 F.2d 1289, 1294 (8th Cir. 1986) (applying Minnesota law).

¹³¹ See *Kelly v. United States*, 348 A.2d 884, 885 (D.C. 1975).

¹³² See *Jones*, 175 P. at 883.

¹³³ See *Sherry*, *supra* n.113, at 112.

¹³⁴ See *Porozonoff*, 391 A.2d at 988; *Raider*, 248 S.W. at 229; *Watkins v. Cope*, 86 A. 545, 548 (N.J. 1913).

¹³⁵ See *Weekley*, 200 Ariz. at 427, 27 P.3d at 331.

¹³⁶ See *Sherry*, *supra* n.113, at 112.

so.¹³⁷ Good business judgment and courtesy also suggest moving the holdover guest to a comparable hotel if no alternative rooms are available.

G. Eviction of Persons Other Than Guests

The hotel, rather than the guest, has legal control of hotel premises.¹³⁸ Nevertheless, a guest has the right to invite visitors to the premises. This right is subject to reasonable regulation and restriction as to the type of person, purpose, time or nature of visit, and similar matters.¹³⁹ Similar considerations apply to those who have lawful business with the guest.¹⁴⁰ Rules concerning the admission of people invited by guests must be reasonable and nondiscriminatory.¹⁴¹ In general, people invited by guests can be evicted for the same reasons for which a guest may be evicted.¹⁴²

H. Method and Time of Eviction

Any eviction must be for a proper reason, and must be done in a reasonable manner at a reasonable time.¹⁴³ If a person is evicted for an improper reason, the hotel may be held liable for damages.¹⁴⁴ If justification does exist, the hotel should first ask the offending person to leave.¹⁴⁵ If the person does not leave voluntarily, then the hotel may use reasonable force to evict the person.¹⁴⁶ However, the innkeeper should first seek police assistance. If excessive or improper force is used, the hotel can be held liable.¹⁴⁷ The hotel should refrain from using insulting language, offensive conduct, and public humiliation to the extent possible to avoid liability for infliction of emotional distress.¹⁴⁸

¹³⁷ See *id.* at 115.

¹³⁸ See *id.* at 125.

¹³⁹ See *Goldstein v. Healy*, 201 P. 462, 464 (Cal. 1921).

¹⁴⁰ See *Steinberg v. Irwin Operating Co.*, 90 So.2d 460, 461 (Fla. 1956).

¹⁴¹ See A.R.S. § 41-1442.

¹⁴² See *Sherry*, *supra* n.113, at 109.

¹⁴³ See *Raider*, 248 S.W. at 230; *Sherry*, *supra* n.113 at 112.

¹⁴⁴ See *Jones*, 175 P. at 883.

¹⁴⁵ See *Hopp*, 38 N.W.2d at 135; *Raider*, 248 S.W. at 230.

¹⁴⁶ See *Neely*, 78 N.E.2d at 659.

¹⁴⁷ See *Jones*, 175 P. at 883; *Raider*, 248 S.W. at 230.

¹⁴⁸ See *Newby v. Alto Riviera Apartments*, 60 Cal.App.3d 288, 131 Cal.Rptr. 547, 553 (1976); *Raider*, 248 S.W. at 230.

VIII. EMPLOYMENT POLICIES

A. Family and Medical Leave Act (FMLA)

1. Introduction

On February 5, 1993, the Family and Medical Leave Act,¹⁴⁹ was signed into law. The FMLA requires covered employers to provide eligible employees with up to 12 weeks of unpaid, job-protected leave each year for certain family and medical reasons as described below.

On January 28, 2008, the FMLA was amended in various respects with the signing of a defense authorization bill. In addition to other changes, the FMLA was amended to provide for up to twenty-six workweeks of leave for family members caring for a servicemember who was injured during active duty, and 12 weeks of leave for family members of servicemembers called up to active duty, under certain circumstances. Subsequently, the Department of Labor issued new regulations that went into effect on January 16, 2009.

2. Definitions

Covered Employer

A covered employer includes any person engaged in commerce who employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.

Eligible Employee

An eligible employee is one who (1) has been employed by the employer for at least 12 months, (2) has been employed for at least 1250 hours of service during the 12-month period immediately preceding the commencement of the leave, and (3) is employed at a worksite where 50 or more employees are employed within 75 miles of the worksite.

3. Leave Entitlement

Leave is allowed in the following situations:

- a. To care for a newborn or newly placed adopted or foster child;
- b. To care for a child, spouse or parent with a serious health condition;
- c. Because of the employee's own serious health condition which renders the employee unable to perform the functions of employee's job;

¹⁴⁹ 29 U.S.C. Section 2601, et seq.

- d. “Active Duty Leave,” which applies because of any qualifying exigency arising out of the fact that an employee's spouse, son (of any age), daughter (of any age) or parent, who is serving in any branch of the military (including the National Guard or Reserves), has been deployed or called to active duty in a foreign country
- e. “Caregiver Leave,” which permits an employee to take up to 26 weeks to care for a military service member who is the employee’s spouse, son (of any age), daughter (of any age), parent, or next of kin.

4. Notice Requirements

Employer

All covered employers must prominently post a notice, where it can be readily seen by employees and applicants for employment, explaining the Act’s provisions and procedures for filing a complaint, even if there are no eligible employees. If the employer has any eligible employees, the employer must provide written guidance to employees of their rights and obligations under the FMLA. This can be included in a handbook or manual, or distributed to each new employee upon hire. The distribution can be made electronically. The employer must provide written notice, in a language in which the employee is literate, detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. A sample notice may be found on the Department of Labor’s website at www.dol.gov/whd.

Employee

An employee must generally give the employer at least 30 days advance notice if the need for leave is foreseeable based on an expected birth, adoption, or foster care placement, planned medical treatment for a serious health condition of the employee or of a family member, or active duty leave. When FMLA is unforeseeable, the employee must give notice as soon as practicable after learning of the need for leave. In both instances, an employer may require the employee to follow the employer’s usual and customary call-in procedures for reporting an absence unless special circumstances prevent such notice. An employee must initially provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, but the employer may require the employee to complete a written request later.

5. Designating Leave as FMLA Leave

When an employee requests FMLA leave or when an employer acquires knowledge that an employee’s leave may be for an FMLA-qualifying reason, an employer must designate leave, paid or unpaid, as FMLA-qualifying, and must give notice of the designation to the employee. An employer may orally notify employee but must then confirm in writing within five business days. The designation notice must be in writing. A sample notice can be found on the DOL website listed above. If ineligible, notice must state the reason for the ineligibility. The employer must also

provide an employee with a notice of rights and responsibilities each time an eligibility notice is provided to the employee.

Employees may choose, or employers can require employees, to substitute accrued paid leave for FMLA leave, including accrued vacation, personal, or medical/sick leave. Substitution of paid leave may be elected to the extent the circumstances meet the employer's usual requirements for the use of paid leave. Employers are not required to allow substitution of paid leave for unpaid leave in any situation where the employer's policy would not normally allow such paid leave. All substituted paid leave that is being concurrently exhausted will be counted against an eligible employee's FMLA leave entitlement.

FMLA leave may run concurrently with a workers' compensation absence when the injury is one that meets the criteria for a serious health condition.

Under the new regulations, retroactive designation is permitted if an employer fails to timely designate leave as FMLA leave (and notify the employee of the designation), but the employer may be liable if the employee can show she or he has suffered harm or injury as a result of the failure to designate the leave as FMLA leave.

6. Certification of Leave

Employers may require employees to provide medical certification to support an FMLA leave.

The new regulations require an employer to request the certification within five days of notice. If requested, certification is due within 15 calendar days after the employer requests it, regardless of whether leave is foreseeable or unforeseeable, unless this would not be practicable.

In all instances, the information on the form must relate only to the serious health condition for which the current need for leave exists. The certification form must be both complete and sufficient, meaning that all entries must be answered clearly. Under the new regulations, an employee has seven calendar days to cure any deficiencies.

The employer who doubts the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the medical opinion, the employee is entitled to the FMLA's benefits. If the employer's and employee's physicians disagree, the employer and employee may jointly designate a third physician, whose decision is binding.

In the following circumstances, an employer may, in its sole discretion, require recertification of the qualifying reason for FMLA: (1) where the employee needs more leave than the original certification justified; (2) where circumstances and facts cast doubt on the employee's need for FMLA; or (3) when the need for FMLA extends beyond 6 calendar months. In these situations, the employee will have fifteen (15) days in which to provide a completed Recertification form.

7. Calculating FMLA Leave

An employer is permitted to choose any one of the following methods for determining the “12-month period” in which its employee’s 12 weeks of FMLA entitlement occurs, provided that the alternative chosen is applied uniformly and consistently to all employees:

- The calendar year;
- Any fixed 12-month “leave year,” such as a fiscal year or a year starting on the anniversary of an employee’s service with the employer, other than January 1;
- The 12-month period measured forward from the date an employee begins his or her FMLA leave; or
- A “rolling” 12-month period, which is measured backward from the date an employee begins his or her FMLA leave.

An employer is entitled to change its chosen alternative, upon 60 days notice to its employee, but only if done in such a manner that the employee retains the full benefit of the leave under whichever method (the former or the new) affords the greatest benefit to the employee.

8. Military Leave Amendments

Among the highlights of the new regulations are provisions that address the requirements of the National Defense Authorization Act (NDAA) for FY 2008, which authorizes “Active Duty Leave” and “Caregiver Leave. In addition, the regulations address employers’ notice obligations and certification requirements for employees seeking leave under the FMLA.

Because an employer may require an employee seeking FMLA leave to submit a certification providing facts to support the request for leave, the Department of Labor has published a sample “Certification for Serious Injury or Illness of Covered Servicemember for Military Leave” form as well as a “Certification of Qualifying Exigency for Military Family Leave” form. Although employers may develop their own forms, an employer may **not** ask an employee to provide more information than allowed under the FMLA regulations.

“Active Duty Leave”

Covered employees may now use some or all of their 12 weeks of unpaid FMLA leave for a “qualifying exigency” related to military service. In order to be eligible for Active Duty Leave, employees must be an immediate family member of a military member, who is serving in any branch of the military (including the National Guard or Reserves) who has been deployed or called to active duty in a foreign country. Notably, this type of leave does not apply to Reservists who are merely performing their training or other regular obligation. The law applies to “qualifying” exigency” arising out of the fact that the spouse, son, daughter or parent of an employee is on active duty (or has been notified of an impending call or order to active duty).

“Caregiver Leave”

Eligible employees who are family members (spouse, son (of any age), daughter (of any age), parent or next of kin) of covered service members may take up to 26 workweeks of leave in a “single 12 month period” to care for a covered service member with a serious illness or injury incurred in the line of duty. This single 12-month period begins on the first day an eligible employee takes Caregiver Leave (as long as it is within 5 years of the covered service member’s active duty) and ends 12 months after that date. Caregiver Leave applies on a per-covered service member, per-injury basis, so that an employee may be eligible to take more than one 26 week period of Caregiver Leave, but no more than 26 weeks of leave may be taken during any one 12-month period.

A “covered service member” is defined as 1) a current member of the Armed Forces, including the National Guard or Reserves, and who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, which is incurred in the line of duty (or for a pre-existing injury or illness which is aggravated in the line of duty) and that renders the service member medically unfit to perform the duties of his or her office, grade, rank or rating, or 2) a veteran who was a member of any branch of the Armed Forces, including the National Guard or Reserves, and who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness that occurred in the line of duty (or for a pre-existing injury or illness which was aggravated in the line of duty) at any time within 5 years preceding the treatment, recuperation or therapy.

9. Benefits to Which Employees Are Entitled During And At The End of FMLA Leave

An employer must maintain an eligible employee’s coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. An employee on FMLA leave is entitled to any new or changed health plan/benefits provided by his or her employer to the same extent as if the employee were not on leave. Moreover, the employer must provide notice of any opportunity to change plans or benefits to all employees on FMLA leave.

An employee on FMLA leave is required to maintain his or her share of any health insurance premiums. The employer must provide the employee with advance written notice regarding how it expects the employee to make payments, which can be by any of the following methods: (1) payment due at the same time as payroll deductions normally take place, (2) payment due at same time as payments made under COBRA, (3) payment prepaid under cafeteria plan, at employee’s option, (4) payment made according to employer’s existing policy for payment by employees on other leave without pay, except that no payments can be required to be made before the commencement of FMLA leave, (5) payment under any other system voluntarily agreed to in advance by the employer and employee.

If an employee fails to timely make his or her health insurance premium payments, the employer’s obligation to provide health care coverage under FMLA ends. Unless the employer has an established policy that provides a longer grace period, this provision is triggered when a payment is more than 30 days late. To lawfully drop coverage, however, the employer must

provide the employee with written notice of its intent to do so not less than 15 days before coverage is to end. In addition, the employer may recover from the employee any share of the employee's premiums that the employer made on behalf of the employee.

If an employee fails to return to work when his or her FMLA leave is exhausted, the employer may recover from the employee its share of health plan premiums, provided that the employee's failure to return to work is not due to the continuation or onset of a serious health condition of the employee or immediate family member which would otherwise entitle the employee to FMLA leave, or due to other circumstances outside the employee's control.

An employee's entitlement to other benefits like holiday pay or vacation time is determined according to the employer's established policy for providing such benefits to employees on other forms of leave (paid or unpaid, as appropriate).

FMLA leave may be taken on an intermittent or reduced leave schedule when: (a) leave is taken after the birth or placement of a child for adoption or foster care, if the employer agrees (e.g., employee may wish to take leave in separate segments or work part-time for some period after the birth of a child); (b) it is medically necessary leave taken for planned and/or unanticipated medical treatment of a serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition, or to provide care for an immediate family member with a serious health condition or a serious injury or illness of a covered servicemember; or (c) leave is taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition, even if he or she does not receive treatment by a health care provider.

Employees who take foreseeable intermittent or reduced schedule leave must attempt to schedule their intermittent or reduced schedule leaves so as not to disrupt the operations of the employer. In some instances, if an employee is eligible to take intermittent or reduced schedule leave, the employer may require the employee to transfer (during the period of leave) to an available alternative position for which the employee is qualified and which more appropriately accommodates recurring periods of leave than does the employee's regular position. The alternative position must provide equivalent pay and benefits, but need not entail equivalent duties. The employer may also transfer the employee to a part-time position with equivalent pay and benefits, provided that it does not require the employee to take more leave than is medically necessary. (Caveat: when transferring an employee to a part-time position, the employer may not eliminate any benefits not available to other part-time employees; however, the employer may proportionately reduce benefits like vacation leave where the employer normally bases such benefits on the number of hours an employee actually works.)

Only the amount of leave actually taken may be counted toward the 12 weeks of leave entitlement. To calculate leave time taken on an intermittent or reduced schedule basis, the employer should look to the employee's normal schedule. For example, if an employee who normally works five days a week takes one day of FMLA leave, the employee has used 1/5 of a week of FMLA leave. An employee's regular work schedule is determined on the date of the notice by looking back at the schedule twelve months.

An employee returning from FMLA leave is entitled to be reinstated even if the employee has been replaced or the position has been restructured to accommodate the employee's absence.

A reinstated employee is entitled to an equivalent position with equivalent pay, benefits, and terms and conditions of employment.

An employee is not entitled to reinstatement if he or she is unable to perform the essential functions of the position because of some physical or mental condition. This may, however, trigger certain obligations on the part of the employer under the Americans with Disabilities Act.

An employer is not required to reinstate an employee who has taken FMLA leave if the employer can show that the employee would not otherwise have been employed at the time reinstatement was requested (e.g., employee laid off during leave, employee's shift eliminated and not just filled by another employee, employee hired for a discrete project that has ended by the time the employee seeks reinstatement, etc.).

An employer can similarly deny reinstatement if the employee is a "key employee" and the denial of reinstatement is necessary to prevent substantial and grievous economic injury to the operations of the employer. A "key employee: is a salaried FMLA-eligible employee who is among the highest paid 10% of all the employer's employees within 75 miles of the employee's worksite. The following restrictions apply to the employer's ability to deny reinstatement to "key employees:" (1) the determination of whether an employee is a "key employee" must be made when the employee requests leave, (2) restoration, not absence, must cause substantial and grievous economic injury, (3) minor inconveniences and costs do not qualify as substantial and grievous economic injury, (4) an employer that believes it may deny reinstatement to a key employee must so notify the employee when the employee gives notice of his or her need for FMLA leave. The notice must contain: an explanation for the employer's finding that reinstatement would result in substantial and grievous economic injury, and reasonable time for employee to return to work, if leave has commenced. If the employee does not return to work upon receiving such notice, that employee's FMLA rights (including the maintenance of health benefits) continue unless and until the employee gives notice that he or she does not intend to return to work or the employer actually denies reinstatement.

B. The Arizona Drug and Alcohol Testing Act¹⁵⁰

In 1994, the Arizona legislature passed a comprehensive drug and alcohol testing law (the “Act”) that established uniform standards for such testing. The Act covers all persons or corporations in Arizona employing one or more full-time employee(s). Employers may choose to test in compliance with the Act, or according to their own preferences, or not test at all. If an employer’s testing complies with A.R.S. § 23-493 *et seq.*, an employer will gain “safe harbor” protection against employee lawsuits arising out of the tests or the test results.

The Act does not define a positive drug or alcohol impairment test. As a result, employers must adopt positive cutoff levels from other sources, such as law enforcement, federal regulations, or drug manufacturers.

To receive the statutory safe harbor protections, employers must prepare and distribute a written policy before conducting testing. The Act requires that the policy contain certain specific terms, including, but not limited to:

1. a statement of the employer’s policy respecting drug and alcohol use by employees;
2. a description of which employees will be subject to testing;
3. the circumstances under which testing may be required;
4. the substances for which tests may be given;
5. a description of the testing methods and collection procedures to be used;
6. the consequences for refusal to submit to a test and the potential adverse action based on results of the test;
7. the employer's policy regarding confidentiality of the results;
8. the right of the employee to obtain the test results and explain a positive test result in a confidential setting; and
9. a statement of the employer’s policies regarding drug and alcohol use by employees.

Furthermore, all employees, including officers, directors, and supervisors, must be uniformly included in the testing policy.

Employers may conduct random testing, testing for any job-related purpose consistent with business necessity, testing in connection with an investigation of a specific accident in the workplace, and testing based upon a reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the employee’s job performance or the work environment.

¹⁵⁰ A.R.S. §§ 23-493 to 23-493.12

Employers may take adverse action based upon a positive drug test or alcohol impairment test. This may include suspension, termination, or, in the case of a positive drug test, refusal to hire a prospective employee. Employers also may require rehabilitation or counseling.

If you require assistance in drafting an appropriate drug and alcohol policy, it is recommended you consult with an attorney.

C. The Arizona Medical Marijuana Act

In 2010, Arizona voters passed Proposition 203, legalizing the possession and use of marijuana for medical purposes in Arizona. The Arizona Medical Marijuana Act (the “AMMA”) allows a “qualifying patient” with a “debilitating medical condition” and a “designated caregiver” to obtain and possess up to 2.5 ounces of marijuana in a 14-day period from a registered medical marijuana dispensary. In specific instances, the AMMA allows a “qualifying patient” and a “designated caregiver” to cultivate up to 12 marijuana plants.

The AMMA has several implications for employers. Importantly, it specifically prohibits discrimination by an employer based on an individual’s status as a medical marijuana card holder (or their designated caregivers and non-profit medical marijuana dispensary agents). In other words, employers may not refuse to hire, terminate or otherwise discipline an employee or applicant solely because of his or her card holder status. The AMMA also prohibits discrimination against a qualifying card holder due to his or her positive drug test for marijuana. This provision does not apply if the employee used, possessed, or was impaired by marijuana at or during work, or if the position is a “safety sensitive position.” Thus, an employer may prohibit employees from (and discipline employees for) using or possessing marijuana, or being impaired by marijuana, while working or on the job. The non-discrimination provisions do not apply if allowing employment of a card holder would cause an employer to lose monetary or licensing-related benefits under federal law or regulations.

The AMMA defines impairment as “symptoms that a prospective employee or employee while working may be under the influence of drugs or alcohol that may decrease or lessen the employee’s performance of the duties or tasks of the employee’s job position.” An employer may establish a good faith belief in determining the employee’s impairment by: (1) observed conduct, behavior, or appearance; (2) information reported by a person believed to be reliable; (3) written, electronic, or verbal statements; (4) lawful video surveillance; (5) records of government agencies, law enforcement agencies, or courts; (6) results of a test for the use of alcohol or drugs; or (7) other information reasonably believed to be reliable or accurate. No cause of action may be established against an employer who has a written policy and has initiated a testing program in accordance with the Arizona drug testing statute for actions based on the employer’s good faith belief that the employee used, possessed, or was impaired by marijuana while on work premises or during the hours of employment.

A safety-sensitive position is defined as “any job designated by an employer as a safety-sensitive position or any job that includes tasks or duties that the employer in good faith believes could affect the safety or health of the employee performing the task or others.” An employer may exclude an employee from a safety-sensitive position if it has a good faith belief the employee is

engaged in current drug use if that use could cause an impairment or decrease or lessen job performance or the employee's ability to perform his or her job duties.

D. The Smoke-Free Arizona Act¹⁵¹

On May 1, 2007, the Smoke-Free Arizona Act (the "Act"), also known as Proposition 201, became law. The Act prohibits smoking in all public places and all places of employment, unless they fall into a specified exception.¹⁵² It also places on employers certain affirmative duties to notify employees and customers of the prohibition and to enforce the prohibition.¹⁵³

The Act is important to the Hotel and Lodging industry in two ways. First, while the Act prohibits smoking in all public places, certain businesses and public places are exempt from the Act. One of these exemptions is "hotel and motel rooms that are rented to guests and are designated as smoking rooms."¹⁵⁴ However, hotels and motels may only designate up to fifty percent of the rooms as smoking rooms.¹⁵⁵ "Hotel and motel common areas" are specifically designated as public places.¹⁵⁶ The Act also excludes outdoor patios but only so long as the tobacco smoke does not enter any areas where smoking is prohibited through entrances, windows, ventilation, or other means.¹⁵⁷

Second, as an employer, hotels and motels must communicate to their employees the prohibition on smoking in the place of employment. Specifically, the owner, operator, manager or other person in control must post a "No Smoking" sign (or the international "No Smoking" symbol) in an area that is clear and conspicuous.¹⁵⁸ This person must also post a sign identifying where complaints can be made.¹⁵⁹ All ashtrays must be removed from areas where smoking is prohibited.¹⁶⁰ Employers are also prohibited from discharging or retaliating against an employee who exercises any rights provided by the Act.¹⁶¹

The Act has no application on Indian reservations, as define in the Arizona Revised Statutes at A.R.S. § 42-3301(2).¹⁶²

E. "Guns in Parking Lots" Law

On September 30, 2009, A.R.S. § 12-781, commonly known as the "guns in parking lots" law, went into effect. Under the law, it is illegal for a property owner, tenant, public or private employer or business entity to prohibit a person from lawfully storing a firearm in his or her vehicle

¹⁵¹ A.R.S. § 36-601.01.

¹⁵² A.R.S. § 36-601.01(B).

¹⁵³ A.R.S. § 36-601.01(C), (E).

¹⁵⁴ A.R.S. § 36-601.01(B)(2).

¹⁵⁵ Id.

¹⁵⁶ A.R.S. § 36-601.01(A)(9).

¹⁵⁷ A.R.S. § 36-601.01(B)(6).

¹⁵⁸ A.R.S. § 36-601.01(E).

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ A.R.S. § 36-601.01(F).

¹⁶² A.R.S. § 36-601.01(N).

or motorcycle.¹⁶³ The law requires that the firearm not be visible from outside the vehicle or motorcycle, and must be in a locked compartment.¹⁶⁴

The law provides several exceptions. A firearm may be prohibited if:

- The possession is otherwise prohibited by a state or federal law;¹⁶⁵
- The vehicle is owned or leased by the employer and is used in the course of employment, unless the employee is required to carry the firearm in accordance with his or her official duties or if the employer consents;¹⁶⁶
- The property owner provides a parking lot that is secured by a fence, limits access with a security guard or other security measure, and provides secure temporary firearm storage;¹⁶⁷
- Compliance with the law would violate another applicable state or federal law;¹⁶⁸
- The property is part of a nuclear generating station, or the property owner is a United States department of defense contractor and the property is located on a military base or installation;¹⁶⁹
- The parking lot is part of an owner or tenant occupied single family residence.¹⁷⁰

Property owners can also choose to provide alternative parking in close proximity, for no extra fee, if they wish to restrict firearms in certain parking areas.¹⁷¹

F. Guns in Restaurants and Bars

On September 30, 2009, related legislation also went into effect which allows patrons with concealed weapons permits to carry their firearms in restaurants, bars, and other establishments including those where alcohol is sold.¹⁷² A.R.S. § 4-229 provides a provision for licensees who want to prohibit patrons from carrying firearms in their licensed premises. Under the statute, licensees must post a sign meeting exact specifications, including the depiction of a firearm with a red circle with a diagonal red line across the firearm, and the words “no firearms allowed pursuant to A.R.S. Section 4-229.”¹⁷³ Licensees may pick up a “No Firearms Allowed” sign from an office of the Department of Liquor Licenses and Control, or they may create their own sign, but it must

¹⁶³ A.R.S. § 12-781(A).

¹⁶⁴ A.R.S. § 12-781(A)(1)-(2).

¹⁶⁵ A.R.S. § 12-781(C)(1).

¹⁶⁶ A.R.S. § 12-781(C)(2).

¹⁶⁷ A.R.S. § 12-781(C)(3).

¹⁶⁸ A.R.S. § 12-781(C)(4).

¹⁶⁹ A.R.S. § 12-781(C)(5), (7).

¹⁷⁰ A.R.S. § 12-781(C)(6).

¹⁷¹ A.R.S. § 12-781(C)(8).

¹⁷² A.R.S. § 4-229(A).

¹⁷³ A.R.S. § 4-229(A)(1)-(3) (please see statute for additional requirements).

meet the exact specifications of the statute. Note that patrons may not consume alcohol while in possession of a firearm.¹⁷⁴

G. Workers Compensation

1. In General

An injury suffered by an employee is only compensable when it arises out of and in the course of employment.¹⁷⁵ Recent Arizona decisions addressing the circumstances under which injuries “arise out of” employment indicate that where an employee suffers an injury while on the job, it will most likely be found compensable.

The new liberality began with *Farish v. Industrial Commission*.¹⁷⁶ In *Farish*, the Arizona Court of Appeals held that an unexplained injury is presumed to arise out of employment. The burden is upon the employer to demonstrate a cause independent of employment. The employer then must be vigilant about investigating and documenting alleged injuries occurring on the job. The “positional risk doctrine” adopted by the court in *Farish* holds that the risk of the injury need not be peculiar to or increased by the employment. The mere fact that an injury occurs while performing duties of employment will result in a compensable claim.

This view was reaffirmed by the Arizona Supreme Court in *Circle K v. Industrial Commission*.¹⁷⁷ In *Circle K*, the Arizona Supreme Court applied the “positional risk doctrine” in determining whether an injury “arose out of” employment. The court stated that an employee need not explain how an injury occurs as long as it occurred in connection with the employment. The employee need only show that the injury would not have occurred but for the fact that the conditions and obligations of employment placed the employee in a position to be injured.

Furthermore, other decisions have seemingly obliterated any requirement that the injury be related to a particular risk of the employment. In *Lou Grubb Chevrolet v. Industrial Commission*,¹⁷⁸ an employee injured her neck when she merely turned her head. The administrative law judge found her claim compensable as the injury resulted from a risk of employment and was incidental to the discharge of the duties of her employment. The Court of Appeals affirmed this award and held that a risk may be sufficient for a finding of compensability if it occurs during actual work performance. While observing that actual risk may not be sufficient in an injury that occurs during “personal comfort” activity such as daydreaming, enjoying the view, or idly passing time, the court held that if the injury occurs during the employment, it will be presumed to be connected to the employment. In *Lou Grubb*, the court found that such a connection existed.

2. Reporting Requirement

The employee has a legal duty to notify the employer when he has been injured on the job, and the failure to do so may relieve the employer of the obligation to pay the claim if it is

¹⁷⁴ A.R.S. § 4-244(31).

¹⁷⁵ A.R.S. § 23-1021.

¹⁷⁶ *Farish v. Industrial Comm’n of Arizona*, 167 Ariz. 288, 806 P.2d 877 (1990).

¹⁷⁷ *Circle K v. Industrial Comm’n of Arizona*, 165 Ariz. 91, 796 P.2d 893 (1990).

¹⁷⁸ *Lou Grubb Chevrolet v. Industrial Comm’n of Arizona*, 171 Ariz. 183, 829 P.2d 1229 (1991).

compensable. In *Ball Manufacturing v. Industrial Commission*,¹⁷⁹ the Arizona Court of Appeals held that an employee was not entitled to continuing benefits where he failed to give notice to the employer of continuing medical treatment. In that case, the employee had sustained an industrial injury to his back. The injury was reported and the employer duly submitted a report of injury to the insurance carrier. The claim was processed as a “no time lost” claim. Thereafter, the employee returned to work and continued treatments with various physicians for ongoing back complaints without notifying his employer. Approximately one year later, the employee was diagnosed with a herniated disc and surgery was proposed. The employee filed a petition to reopen his claim. The Court of Appeals stated that the burden of proof was upon the employee to establish “the special circumstances” justifying his failure to give notice to his employer.

The first and most effective strategy a business can implement to stem the workers compensation crisis are measures designed to avoid accidents. Experience shows that most accidents result from poorly-maintained equipment or work areas. While it is true that no employer can constantly police every aspect of its operation to guarantee safety across the board, it is absolutely critical that companies focus upon reducing claims. Liability will often be imposed upon employers for any subsequent injuries sustained by an employee regardless of whether the injury was an aggravation of a pre-existing disability.

***3. The 2005 Arizona Supreme Court Grammatico Decision*¹⁸⁰**

In a unanimous decision, the Arizona Supreme Court held on August 10, 2005 that a law precluding worker’s compensation benefits to workers whose alcohol or drug use contributed to their injury where their employers had drug-free workplace policies conflicted with Article 18, Section 8 of the Arizona Constitution, which mandates payment of worker’s compensation benefits for work-related injuries without consideration of fault by the injured employee.

In its decision, the Arizona Supreme Court gave a detailed history of the enactment of Arizona’s worker’s compensation law, and explained the two principles underlying recovery for worker’s compensation are medical causation (that the accident caused the injury) and legal causation (the employee was acting in the course of employment, the employee suffered an injury arising out of an in the course of employment, and the injury was caused in whole or in part or contributed to by a necessary risk or danger of employment). The Court then focused on whether A.R.S. § 23-1021 (C) and (D) impermissibly defined legal causation by requiring proof that the presence of alcohol or illegal drugs in an injured worker’s system was not a contributing cause of the accident.

Article 18, Section 8 states that an employee establishes legal causation by showing that a necessary risk or danger of employment cause or contributed to the accident “in whole or in part.” The Court found, however, that A.R.S. § 23-1021 (D) denies coverage to employees unless the employee is able to show that a necessary risk or danger of employment *wholly* caused the accident. The Court concluded that “Article 18, Section 8 does not permit the legislature to limit legal causation in that manner.” The Court also held that A.R.S. § 23-1021 (C) similarly runs afoul of Article 18, Section 8 because (C) denies worker’s compensation benefits if alcohol or drugs contributed to the accident even if the accident was caused, in part, by a necessary risk or danger of

¹⁷⁹ *Ball Mfg. v. Industrial Comm’n of Arizona*, 171 Ariz. 26, 827 P.2d 487 (1992).

¹⁸⁰ 211 Ariz. 67 (Ariz. 2005).

employment. Section (C) impermissibly would preclude benefits if alcohol was anything more than a slight contributing cause of the injury.

The Court then concluded that because the necessary risks and dangers of employment could have partially caused or contributed to Grammatico and Komalestew's injuries, A.R.S. § 23-1021 (C) and (D) are unconstitutional as applied to deny their benefits.

This ruling does not preclude an employer from conducting drug testing and imposing discipline on its employees in accordance with their drug-free workplace policies. It merely requires that should an employee testing positive for drugs or alcohol be injured on the job, the company cannot prevent that employee from recovering worker's compensation benefits.

H. Labor Unions

1. Legal Bases for Union Activity and Organization. National Labor Relations Act ("NLRA") and Arizona Law.

The NLRA is a federal statute that gives employees the right to organize collectively, to form, join or assist unions, to bargain collectively, and to engage in other concerted activities as well as the right to refrain from any and all such activities.

Based on the NLRA, it is unfair labor practice for an employer to interfere, restrain, or coerce employees in the exercise of the activities mentioned in the above paragraph. It is also an unfair labor practice for an employer to discriminate against (i.e., treat differently) employees who are engaging in those rights. Unfair labor practice charges are made to the National Labor Relations Board ("NLRB").

Arizona is a "right to work" state. Thus, it is unlawful for an Arizona employer to penalize an employee (including by denial of employment) because the employee does not belong to a union.¹⁸¹ It is also unlawful for an employer, labor organization, or officer, agent or member thereof, to threaten or interfere with a person, his immediate family, or property to compel or attempt to compel the person to join a labor organization, strike, or leave his employment.¹⁸²

2. Union Activity

There are several signs that may indicate that a union has approached employees about forming or joining a union. Some of the most common signs include discarded union information or materials, the presence of non-employees talking to groups of employees, employees asking for lists of employee names, and increased social and personal interaction both at and outside of work.

When an employee becomes aware of union activity, there are certain specific requirements to which the employer must adhere in order to avoid an unfair labor practice charge. Employers cannot threaten employees with discipline or discharge if they sign cards or participate in union activity. Also, employers cannot threaten to reduce benefits, close the hotel, or not grant wage

¹⁸¹ A.R.S. § 23-1302.

¹⁸² A.R.S. § 23-1304.

increases because of protected activity. Employers cannot question or interrogate employees about their union activities or membership, including who may be passing out union membership cards or who is attending union meetings. Employers cannot make promises to employees, such as offering wage increases or fringe benefits deliberately timed to defeat union organization, or promises to “take care of ‘friends’ of the hotel” after the union election. Lastly, employers cannot spy on union gatherings or attend union or employee meetings. Likewise, employers cannot send employees to meetings and have them report back. However, employees can volunteer such information, as long as they are not coerced to do so and the employer does not reward them for doing so

Employers can, however, share their own opinion and experience with employees, as well as offer any factual information. For example, employers can compare their hotel’s record to that of the union or use other factual information to demonstrate the current existence of competitive wages and benefits. Employers can explain that no one is obligated to join a union and no one is obligated to talk with a union organizer. Employers can also explain the hotel’s position on unions, and explain the various reasons why the hotel opposes the union assuming no unlawful threats or promises are made.

3. Union Organization

A union’s goal in contacting employees is to get employees to sign authorization cards. If the union gets 30% or more of the employees to sign authorization cards, the union can force an election. The union takes the authorization cards to the NLRB and requests an election. Generally, the election is set for only a few weeks following the union’s petition for an election. During that time, the union and the employer “campaign,” hoping to sway the employees’ votes. The election itself will occur under the supervision of the NLRB. If the union receives “yes” votes from 50% of the employees plus one, the union wins the election. If the union receives authorization cards from more than fifty percent (50%) of the employees, the union can request that the employer voluntarily recognize the union as the exclusive bargaining representative of the employees. Employers are not required to voluntarily recognize a union. A union representative may request that the employer look at the signed authorization cards to prove its point. It is recommended that the employer not examine the cards to determine the authenticity of signatures and the number of cards. Rather, the employer should consult with his labor counsel. The better strategy may be to insist on an NLRB-conducted election. Examining the cards gives the union a potential claim that the employer has recognized the union and therefore must bargain with it upon demand. If the union wins the election or is recognized, the employer has a duty to bargain in good faith with the union, which is now the exclusive representative of the employees. All terms and conditions of employment, except those that remain in the management’s discretion per an agreement with the union, are subject to this bargaining process.

4. Dealing with Union Activity

Supervisors are the representatives of management and have an undivided duty of loyalty to the company. Supervisors may not involve themselves on behalf of the union. Note, however, that supervisors’ actions often bind the company and supervisors can commit unfair labor practices on behalf of the company. Therefore, when union activity begins (and even before preferably), supervisors should be told their responsibilities concerning union activity, and what to avoid.

I. Wage and Hour Law

1. . Fair Labor Standards Act (FLSA)¹⁸³

The Fair Labor Standards Act (FLSA) establishes standards for minimum wages, overtime pay, record-keeping, and child labor. These standards affect more than 100 million workers, both full time and part time, in the private and public sectors. The Act applies to businesses with employees who engage in interstate commerce, produce goods for interstate commerce, or handle, sell, or work on goods or materials that have been moved in or produced for interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies (i.e., the Act does not cover enterprises with less than this amount of business). Employees of firms that do not meet the \$500,000 annual dollar volume test may be covered in any workweek when they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to the production of such goods. The Act covers domestic service workers, such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters, if they receive at least \$1,900 (2014) in cash wages from one employer in a calendar year, or if they work a total of more than eight hours a week for one or more employers.

The Act exempts some employees from its overtime pay and minimum wage provisions, and it also exempts certain employees from the overtime pay provisions alone. Because the exemptions are narrowly defined, employers should check the exact terms and conditions for each by contacting their counsel or the local Wage and Hour Division office within the Department of Labor.

The following are examples of employees exempt from both the minimum wage and overtime pay requirements:

- Executive, administrative, and professional employees, outside sales employees, and certain skilled computer professionals (as defined in the Department of Labor’s regulations).
- Employees of certain seasonal amusement or recreational establishments.
- Employees engaged in newspaper delivery.
- Casual babysitters and persons employed as companions to the elderly or infirm.

Certain commissioned employees of retail or service establishments are exempt from the overtime pay requirements only.

Certain employees may be partially exempt from the overtime pay requirements. These include:

- Employees of hospitals and residential care establishments that have agreements with the employees that they will work 14-day periods in lieu of 7-day workweeks (if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over eight in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours); and

¹⁸³ 29 U.S.C. § 201 *et seq.*

- Employees who lack a high school diploma, or who have not completed the eighth grade, who spend part of their workweeks in remedial reading or training in other basic skills that are not job-specific. Employers may require such employees to engage in these activities up to 10 hours in a workweek. Employers must pay normal wages for the hours spent in such training but need not pay overtime premium pay for training hours.

The Act requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage of not less than \$7.25 an hour as of July 24, 2009. Youths under 20 years of age may be paid a minimum wage of not less than \$4.25 an hour during the first 90 consecutive calendar days of employment with an employer. Employers may not displace any employee to hire someone at the youth minimum wage. Employers may pay employees on a piece rate basis, as long as they receive at least the equivalent of the required minimum hourly wage rate. Employers of tipped employees (those who customarily and regularly receive more than \$30 a month in tips) may consider such tips as part of their wages, but employers must pay a direct wage of at least \$2.13 per hour if they claim a tip credit. They must also meet certain other conditions.

The Act also permits the employment of certain individuals at wage rates below the statutory minimum wage under certificates issued by the Department of Labor:

- Student learners (vocational education students);
- Full-time students in retail or service establishments, or institutions of higher education; and
- Individuals whose earning or productive capacities for the work to be performed are impaired by physical or mental disabilities, including those related to age or injury.

The Act does not limit either the number of hours in a day or the number of days in a week that an employer may require an employee to work, as long as the employee is at least 16 years old. Similarly, the Act does not limit the number of hours of overtime that may be scheduled. However, the Act requires employers to pay covered employees not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek, unless the employees are otherwise exempt.

Employers must keep records on wages, hours, and other information as set forth in the Department of Labor's regulations. Most of this data is the type that employers generally maintain in ordinary business practice.

It is a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act. The Act also prohibits the shipment of goods in interstate commerce that were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

More detailed information about the FLSA, including copies of explanatory brochures and regulatory and interpretative materials, is available on the Wage and Hour Division's Web site, or by contacting the local Wage and Hour Division offices.

2. Arizona Wage and Hour Law

On November 7, 2006 Arizona voters passed the “Arizona Minimum Wage Act”, also known as Proposition 202. The Industrial Commission of Arizona (“ICA”) was given authorization to enforce and implement the Act.¹⁸⁴ Under the Act, minimum wage shall continue to be increased on January 1 of successive years according to the increase in the cost of living.¹⁸⁵ As of January 1, 2014, the Arizona minimum wage was \$7.90.

According to ICA guidance, every employer covered under the Act must pay every employee at least the minimum wage amount.¹⁸⁶ Thus, Arizona does not provide sub-minimum wages for different classes of workers, such as young workers or students.¹⁸⁷ Note that this is different, and more restrictive than the FLSA. The Act provides a narrow exception for small businesses that are not subject to the FLSA and which have less than \$500,000 in gross annual revenue.¹⁸⁸

The Act also includes a separate provision for employees who customarily and regularly receive tips or gratuities from patrons. Tipped employees may include waiters, waitresses, bellhops, busboys, valets, and service bartenders.¹⁸⁹ For employees falling in this category, the employer may pay up to \$3.00 less per hour than the minimum wage if the employer can establish that the employee received not less than the minimum wage.¹⁹⁰ To establish that the employee received the minimum wage, the employer must maintain a record of the tips considered and the amount per hour that the employer takes as a tip credit must be reported to the employee, in writing, each work week.¹⁹¹ If the employee is receiving less than the minimum wage, the employer must make up the difference.¹⁹²

Employers must maintain records showing the hours worked for each day worked, and the wages paid to all employees for a period of four years.¹⁹³ Employers are required to post the Arizona Minimum Wage Poster in an area where employees can read the poster.¹⁹⁴

Employees must be paid their wages at least twice a month, on fixed paydays, and not more than 16 days apart.¹⁹⁵ However, if the employer’s headquarters and payroll offices are located outside the state of Arizona, once-a-month paydays can be designated for executive, administrative,

¹⁸⁴ A.R.S. § 23-364(A).

¹⁸⁵ A.R.S. § 23-363(B).

¹⁸⁶ Arizona Minimum Wage Act: Frequently Asked Questions and Answers, http://www.ica.state.az.us/Labor/Labor_MinWag_FAQs_English.aspx.

¹⁸⁷ Id.

¹⁸⁸ Id.

¹⁸⁹ Id.

¹⁹⁰ A.R.S. § 23-363(C).

¹⁹¹ Arizona Minimum Wage Act: Frequently Asked Questions and Answers, http://www.ica.state.az.us/Labor/Labor_MinWag_FAQs_English.aspx

¹⁹² Id.

¹⁹³ A.R.S. § 23-264(D).

¹⁹⁴ Id.

¹⁹⁵ A.R.S. § 23-351, *et seq.*

and professional employees who are exempt from coverage of the FLSA and supervisory personnel who are excluded from the National Labor Relations Act.

Upon written consent, the employee's pay may be deposited on the payday to the employee's designated account in a financial institution of the employee's choice that is a member of the federal deposit insurance corporation or any comparable agency, which consent is revocable by the employee at any time prior to the transmittal of the wages to the financial institution.¹⁹⁶ An employer's deposit plan must entitle the employees to one withdrawal for each deposit free of any service charge and the employees must be provided a written or electronic statement of the employees' earnings and withholdings.¹⁹⁷

Employers may not withhold or divert any portion of an employee's wages unless: (1) the employer is required or empowered to do so by state or federal law; (2) the employer has prior written authorization from the employee; or (3) there is a reasonable good faith dispute as to the amount of wages due, including the amount of any counterclaim or any claim of debt, reimbursement, recoupment or set-off asserted by the employer against the employee.¹⁹⁸

Additionally, as of July 20, 2011, employers have the option to pay employees who decline to authorize payments by direct deposit using a "payroll card account."¹⁹⁹ A "payroll card account" is defined as an account that is "directly or indirectly established through an employer and to which electronic fund transfers of an employee's wages are made on a recurring basis whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person."²⁰⁰ Employees paid by deposit to a payroll card account also must receive the following: (1) a written or electronic statement of the employee's earnings and withholdings; (2) at least one free withdrawal for each deposit of wages per pay period, but not more frequently than once per week; and (3) a list of all fees associated with the payroll card account.²⁰¹

Discharged employees must be paid wages due them within seven working days from the date of discharge, or at the next regular payday, whichever is earlier.²⁰² If employees resign, they are to be paid no later than next regular payday for the pay period during which the termination occurred.²⁰³ If requested by the resigning employee, wages must be paid by mail. The only exceptions to the pay date requirements are wages still undetermined at time of termination, such as commissions and bonuses.

J. Arizona Leave Laws

1. Voting Leave

¹⁹⁶ A.R.S. § 23-351(D)(4), (E).

¹⁹⁷ A.R.S. § 23-351(E).

¹⁹⁸ A.R.S. § 23-352.

¹⁹⁹ A.R.S. § 23-351(H).

²⁰⁰ A.R.S. § 23-350(5).

²⁰¹ A.R.S. § 23-351(F).

²⁰² A.R.S. § 23-353(A).

²⁰³ A.R.S. § 323-353(B).

Arizona law prohibits employers from reducing employees' wages or otherwise penalizing an employee who take time off from work to vote, if an employee does not have three consecutive hours before or after work in which to vote.²⁰⁴ Employers must provide up to three hours paid time off to enable an employee to vote in a primary or general election if the employee has less than three hours either before or after work in which to vote. Employers may specify the hours that an employee may be absent to vote.

2. *Jury Duty Leave*

Arizona employers are prohibited from requiring or requesting that an employee use annual, vacation, or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process or actually serving on a jury.²⁰⁵ Employers are not required to compensate an employee when the employee is absent from employment because of jury service. Absences from employment for jury service are not to affect any vacation rights an employee may be entitled to. Upon return to employment, the employee must be returned to the previous position worked in, or to a higher position commensurate with the employee's ability and experience and in accordance with seniority or precedence.

3. *Crime Victim Leave*

Arizona employers with 50 or more employee must allow their employees leave to exercise their rights, as victims of a crime, to be present at certain court proceedings or obtain or attempt to obtain an order of protection, an injunction against harassment or any other injunctive relief to help ensure the health, safety or welfare of the victim or the victim's child.²⁰⁶ An employer may not dismiss an employee who is a victim of a crime because the employee exercises the right to leave work as provided by Arizona law. An employer is not required to compensate an employee for the time spent on leave.

K. Legal Arizona Workers Act

The Legal Arizona Workers Act, also referred to as the "Employer Sanctions Law," became effective as of January 1, 2008. It was amended by the legislature effective May 1, 2008. The Act prohibits businesses from knowingly or intentionally hiring an "unauthorized alien."²⁰⁷ An "unauthorized alien" is defined by statute as "an alien who does not have the legal right or authorization under federal law to work in the United States."²⁰⁸ The Act also requires employers in Arizona to use the "E-Verify" system to verify the employment of all new employees.²⁰⁹

The "E-Verify" system is an internet-based system operated by the Department of Homeland Security's U.S. Citizenship and Immigration Services Bureau (USCIS). It is currently free to all employers. To enroll, employers must register online and sign a Memorandum of

²⁰⁴ A.R.S. §16-402.

²⁰⁵ A.R.S. § 21-236.

²⁰⁶ **A.R.S. § 13-4439.**

²⁰⁷ A.R.S. § 23-212(A), A.R.S. § 23-212.01(A).

²⁰⁸ A.R.S. § 23-211(11).

²⁰⁹ A.R.S. § 23-214(A).

Understanding. Employers can visit the following website to register: <http://www.uscis.gov/e-verify>.

There are various penalties for violation of this law. For a first violation, if an employer *knowingly* hires an “unauthorized alien,” a court will order the termination of the employee and will place the employer on mandatory three year probation for the location where the employee performed work.²¹⁰ The employer will also have to provide a sworn affidavit stating that the employer has terminated all “unauthorized aliens” in this state, and will not intentionally or knowingly employ “unauthorized aliens” in this state.²¹¹ For a first violation, if the employer *intentionally* hires an “unauthorized alien,” a court, in addition to the penalties above, will place the employer on mandatory five year probation, and the court will order the appropriate licensing agency to suspend all licenses held by the employer for a minimum of ten days.²¹²

For a second violation, if it occurs during the probationary period, a court will order the permanent revocation of all licenses held by the employer, specific to the location where the employee performed work.²¹³

L. Document Retention

Employers should make sure that they retain certain employment-related documents that may be crucial in responding to an employee who files a charge with the EEOC, Arizona Civil Rights Division, OSHA, or Department of Labor alleging discrimination or claiming additional wages. Note that Arizona unemployment requires employers to keep certain records for four years. This is longer than the three year requirement under the FLSA and the ADEA.

1. Ledbetter Fair Pay Act

On January 29, 2009, President Obama signed the Ledbetter Fair Pay Act, which has a significant impact on anti-discrimination laws, and specifically document retention laws. The Act overturns the United States Supreme Court’s decision in *Ledbetter v. Goodyear Tire and Rubber Co., Inc.*, 550 U.S. 618 (2007), where the Court held by a 5-4 vote that the plaintiff’s EEOC charge of pay discrimination under Title VII was untimely because she did not file the charge within the statutory 180/300-day time limit after any allegedly discriminatory decision.

The law allows individuals to file charges alleging pay discrimination under Title VII and other Federal anti-discrimination laws without regard to the normal 180/300-day statutory charge filing period. The statute adopts the so-called “pay-check accrual” rule, “under which each paycheck, even if not accompanied by discriminatory intent, triggers a new EEOC charging period during which the complainant may properly challenge any prior discriminatory conduct that impacted the amount of that paycheck, no matter how long ago the discrimination occurred.”²¹⁴

²¹⁰ A.R.S. § 23-212(F)(1).

²¹¹ *Id.*

²¹² A.R.S. § 23-212.01(F)(1).

²¹³ A.R.S. § 23-212(F)(2), § A.R.S. 23-212.01(F)(2).

Because employees can now challenge pay decisions made in the distant past and because the decision-makers may no longer be available, employers should review the types of records that they currently create. Additionally, even if employers can demonstrate the absence of systemic discrimination, the Ledbetter Fair Pay Act reinforces the importance of being able to defend even isolated, individual decisions. Thus, employers should consider modifying their record retention policies and should at least consider retaining records surrounding pay decisions indefinitely.

²¹⁴ Ledbetter v. Goodyear Tire and Rubber Co., Inc., 550 U.S. 618, 127 S. Ct. 2162, at 2172 (2007). The quoted passage from the Supreme Court’s *Ledbetter* decision describes the “pay check accrual” rule which the Court rejected but which Congress validated in the Ledbetter Fair Pay Act.

2. General Guidelines

The following provides general guidelines regarding document retention requirements.

Age Discrimination and Employment Act (ADEA).

- Payroll records including name, address, date of birth, occupation, rate of pay, and compensation earned each week. **Three years**
 - Personnel records including job applications, resumes and inquiries; records pertaining to decisions regarding hiring, promotion, demotion, transfers, layoffs, recalls, selection for training, or discharge of employee; job orders submitted by the employer to any employment or unions for the recruitment of employees; test papers; advertisements or notices of job opportunities; and results of physical examinations. **One year from the date of the personnel action to which the record relates**
 - Employee benefit plans, seniority, and merit systems. **One year after termination of the plan or system**
- Personnel records, including the above, relevant to an enforcement action commenced against the employer **Until final disposition of the action.**

Americans With Disabilities Act.

- The Americans With Disabilities Act incorporates the Reporting and Recordkeeping Requirements of the Civil Rights Act (Title VII). Employers must prepare and maintain the records identified below in the section addressing Civil Rights Act (Title VII). **See below**

Arizona's Employment Security Act (Unemployment).

- Records regarding the number and identity of employees, dates worked, and dates of any separation from work, place of work, and compensation paid to employees in each pay period and calendar quarter. **Four years**

Arizona's Minimum Wage Act

- Records regarding the employee's full name, home address, date of birth, occupation, time of day and day of the week the employee's workweek begins, **Four years**

regular hourly rate and explanation of basis of pay, including commissions or any other basis of pay, hours worked each workday and workweek, total daily or weekly straight-time wages due for hours worked during the workday or week, exclusive of overtime compensation, total overtime pay and calculation of overtime pay, total additions to or deductions from wages paid each pay period, total wages paid each pay period, date of payment and pay period covered by payment.

Civil Rights Act (Title VII) and Genetic Information Nondiscrimination Act (GINA).

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • General personnel records including, but not limited to, requests for reasonable accommodation, application forms, other records related to hiring, promotion, transfers, discharges, tests, training, rates of pay, etc. | <p>One year from the time the record is made or the personnel action is taken, whichever is later</p> |
| <ul style="list-style-type: none"> • All personnel records relating to a charge filed with the EEOC or ACRD, including records related to similarly situated employees. | <p>Until disposition of the charge or action</p> |
| <ul style="list-style-type: none"> • Apprenticeship program records including name, address, sex, race, and date of application. | <p>Two years from date of application, or the length of apprenticeship, whichever is longer</p> |

EEO Reports.

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> • Employers with 100 or more employees must retain a copy of the most recently filed EEO-1, Employer Information Report | <p>Copy of most recent report filed for each reporting unit must always be retained at each unit or at company or divisional headquarters</p> |
| <ul style="list-style-type: none"> • EEO-2 reports regarding apprenticeship programs must be filed with the EEOC. | <p>One year from date of report</p> |

Equal Pay Act (EPA).²¹⁵

- All records an employer makes relating to the payment of wages, wage rates, job evaluations, job descriptions, merit and seniority systems, collective bargaining agreements, or other matters which explain the basis for payment of a wage differential to employees of the opposite sex. **Two years**

Fair Labor Standards Act (FLSA).²¹⁶

- Payroll records, certificates, agreements, plans, notice, etc., including full name, identification number, home address, date of birth if under age nineteen, gender, occupation, day and time work week begins, hours worked each day and week, total daily or weekly earnings, overtime compensation, basis of overtime computation, total wages for each pay period, payment date, and pay period. **Three years**
- Supplementary basic records such as time cards, work time schedules, wage rate tables, additions to and deductions **Two years**
- Individual employment contracts, collective bargaining agreements, trusts, required notices, etc. **Three years**
- Sales and purchase records by total dollar volume and bids purchased or received. **Three years**
- Order, shipping, and billing records. **Two years**
- Certificates of age (if applicable). **Until termination**
- An employer may be required to keep different or additional wage and hour records on employees in certain specialized occupations and on employees who may otherwise be exempt from overtime pay requirements of FLSA.

Family and Medical Leave Act (FMLA).

- Dates and hours of FMLA leave taken by eligible employees. **Three years**
- Notices of FMLA leave by employees provided to employer, copies of FMLA notices provided to employees by the employer, documents relating to the employer's policies and practices regarding the **Three years**

²¹⁵ All records required to be kept by the Fair Labor Standards Act also must be maintained for the purposes of the EPA.

²¹⁶ All records required to be kept by the FLSA also must be maintained for the purposes of The Equal Pay Act.

taking of FMLA leaves and information relating to any conflicts with employees regarding FMLA leave.

- Basic payroll records identifying details about the employees and their compensation and hours, premium payments for employee benefits, and confidential records pertaining to medical certifications, including those created for FMLA purposes regarding medical histories of employees and/or their qualifying family members.
- An employer may be required to keep different or additional wage and hour records on employees in certain specialized occupations and on employees who may otherwise be exempt from overtime pay requirements of FLSA.

Three years

Immigration Reform and Control Act.

- I-9 form, which is used when an employee is hired to verify the applicant's employment eligibility. Employers are not required to keep copies of the backup documentation the employer reviewed when completing the I-9 form (i.e., driver's license, birth certificate, etc.).

Three years after date of hiring or one year after date of employee's termination, whichever is later

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Occupational Safety and Health Acts (OSHA).²¹⁷

- All federal reports, including OSHA 300 logs, containing basic information about work-related illness and injury; supplemental records detailing information to be completed within six working days of the illness or injury (OSHA 101 log); and an annual summary, using the OSHA 300 log, of all recordable occupational injuries and illnesses.
- Material safety data sheets containing detailed information about hazardous chemicals.

Five years from the end of the calendar year to which the record relates

Must be maintained and made accessible to employees in their work area during each shift

²¹⁷ Employers who have ten or less employees may be relieved from complying with some of OSHA's requirements.

- The identity of a substance or agent identified in MSDS sheets, and information regarding where it was used, and when it was used must be maintained. However, the following exceptions apply: medical claim records, medical records of employees who worked less than one year if such records are provided to employers upon separation of employment, and one-time first aid records. **Thirty years**
- Exposure records and medical records for all employees working in areas which may expose them to toxic substances or harmful physical agents. **Duration of employment plus thirty years**
- Medical surveillance and exposure monitoring records. **Duration of employment plus thirty years except if employee employed less than one year and provided record upon termination of employment.**
- Medical removal records. **At least to the duration of the person's employment**

***Rehabilitation Act of 1973.*²¹⁸**

For each known or voluntarily identified disabled applicant or employee, complete and accurate records detailing the employment decisions involving the individual as well as accommodations considered or undertaken

Two years from the date record was made or employment action was taken; except one year for contractors with fewer than 150 employees and contracts less than \$150,000

- Records regarding complaints about discrimination against handicapped persons and actions taken. **One Year or until final disposition whichever is longer**

²¹⁸ This law applies only to federal government contractors.

- Affirmative action plans and related records pertaining to employment decisions involving known handicapped employees. **Three Years**

Executive Order 11246.²¹⁹

- Written affirmative action programs and supporting documentation. **Two years**
- EEO-Report. **Two years**

Vietnam Era Veterans Readjustment Act.

- Records regarding complaints about discrimination against disabled veterans. **One year or until final disposition whichever is longer**
- Affirmative action plans and related records pertaining to employment decisions involving disabled veterans. **Three Years**

M. EEO Policies

As a result of increasing federal, state, and local legislation governing nondiscrimination in employment, employers must be certain that all their human resources decisions are made and carried out in a nondiscriminatory manner. Meeting Equal Employment Opportunity obligations is the responsibility of employers and their managers, supervisors, and other representatives, and of employees as well. Therefore, all individuals employed by the company must be sensitive to EEO issues and to their attendant rights and responsibilities with respect to these issues. Employers must communicate on an ongoing basis their EEO obligations and policies to their management representatives and to their employees. EEO policy statements in employee handbooks satisfy both this objective and that of continuously reinforcing the company’s commitment to EEO.

1. Prohibited Forms of Discrimination Under Federal Law

Title VII of the Civil Rights Act of 1964,²²⁰ as amended, prohibits discrimination in employment against any person (including applicants and employees) on the basis of race, color, religion, sex, or national origin. Title VII defines a covered employer as “a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.”

²¹⁹ This law applies only to certain federal government contractors.

²²⁰ 42 U.S.C.A. §§ 2000e-1 to 2000e-16

It should also be noted that the Supreme Court has held that Title VII also applies to “former” employees.²²¹ For example, efforts to “blacklist” a former employee in retaliation for charges of employment discrimination he brought while employed may be challenged under Title VII. Employers should ensure that no information concerning a former employee’s discrimination complaints is communicated to any prospective employer or employment agency.

The Age Discrimination in Employment Act of 1967 (ADEA),²²² as amended, prohibits discrimination in employment on the basis of age against any person (including applicants and employees) age 40 or older. The ADEA applies to employers with twenty or more employees and to U.S. employees assigned to work overseas as expatriates. Covered employers should thus include the term “age” in their EEO policy statements.

Under the ADEA, it is not unlawful for a covered employer to take any action otherwise prohibited where age is a bona fide occupational qualification (BFOQ) reasonably necessary to the normal operation of the particular business. It should be noted, however, that this exemption has been narrowly construed by the courts. In *TransWorld Airlines, Inc. v. Thurston*,²²³ for example, age was not considered a BFOQ for the position of airline flight engineer.

Although it is generally unlawful under the ADEA to force an employee to retire, the ADEA does contain an exemption for “bona fide executives” who have attained the age of 65. To be qualified under this exemption, an individual must have been employed in a bona fide executive or high policymaking position during the two-year period before retirement and must be entitled immediately to a nonforfeitable, specifically defined retirement benefit of at least \$44,000 per year exclusive of social security.²²⁴

Finally, federal statutes prohibit discrimination on the basis of a disability or perceived disability. There are two Titles of the ADA that are relevant to the Hotel and Lodging industry. Title I prohibits employment discrimination on the basis of disability, and Title III prohibits places of accommodation from discriminating on the basis of a disability.

Title I of the ADA, which became effective in January of 1992, prohibits employers from discriminating against *qualified individuals* with a *disability* and requires employers to make *reasonable accommodation* for disabled employees if the accommodation can be made without *undue hardship* to the employer.²²⁵ An employee is “disabled” under the ADA if he or she: (1) has an *impairment that substantially limits one or more major life activities*; or (2) has a record of having such an impairment; or (3) is *regarded as* having such an impairment.²²⁶

²²¹ *Flannery v. Recording Industry Ass'n of America*, 354 F.3d 632, 643 (7th Cir. 2004) (citing *Veprinsky v. Fluor Daniel, Inc.*, 87 F.3d 881 (7th Cir. 1996)) (“[F]ormer employees, in so far as they are complaining of retaliation that impinges on their future employment prospects or otherwise has a nexus to employment do have the right so sue their former employers.”)

²²² 29 U.S.C.A. §§621 to 634

²²³ 469 U.S. 111 (1985)

²²⁴ 29 C.F.R. §§ 1625.12(d)(2), (e), (f)

²²⁵ 42 U.S.C. § 12112(a), (b)(5)(A).

²²⁶ 42 U.S.C. § 12102(1).

On September 25, 2008, President Bush signed the ADA Amendments Act of 2008 (ADAAA). This Act overturns two U.S. Supreme Court decisions that narrowed the definition of “disability.” It also expands what conditions are considered disabilities under the ADA. These new amendments became effective on January 1, 2009, and make it easier for employees to bring disability discrimination claims and harder for employers to defeat these claims.

The ADAAA emphasizes that the definition of “disability” should be broadly interpreted and expands a number of key definitions, including the terms “substantially limits,” “major life activities,” and “regarded as disabled.” Most significantly, the ADAAA specifically directs the EEOC to revise its current regulations, with the ultimate goal in mind that a “disability” should be interpreted broadly. On September 17, 2009, the EEOC approved a proposed rule to revise its ADA regulations to conform with the ADAAA’s directive.

Title III of the ADA, which also became effective in January of 1992, provides that places of public accommodations, including hotels and motels, are prohibited from discriminating on the basis of disability. The intent of Title III is to open up places of public accommodation so that they are fully accessible to individuals with disabilities. The most common disabilities are mobility, hearing and visual impairments. However, persons with other types of disabilities are beneficiaries of the Act. Hotels and motels must provide to disabled individuals *full and equal enjoyment* of goods, services, facilities, privileges, advantages, and accommodations. Title III of the Act requires that such establishments remove architectural and communication barriers to assure integration of the disabled. “Full and equal enjoyment” does not mean that individuals with disabilities must achieve the same result, but only that they must be given an equal opportunity to achieve the same result. Indeed, at the heart of the Act the duty to make reasonable modifications. A hotel’s failure to make reasonable changes in policies, practices and procedures when modifications are necessary to provide goods, services, facilities, privileges, advantages, and accommodations to individuals with disabilities, is a violation of the Act. An exception is made if the modification would fundamentally alter the nature of the benefit offered.

Another specific prohibition states that improper discrimination includes the failure to take steps that are necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the hotel can demonstrate that taking the steps would fundamentally alter the nature of the benefits being offered or would result in an undue burden. The determination of whether the provision of an auxiliary aid or service imposes an undue burden will be made by taking into account the same factors used in the employment (Title I) of the ADA. Auxiliary aids and services are defined to include interpreters, readers, taped text and other similar devices or services.

The Act makes an exception to the normal rules of compliance where a disabled person poses a direct threat to the health or safety of others, but only where the health or safety risk cannot be eliminated by a modification of policies or the provision of an auxiliary aid or service. Thus, Congress intended to establish a strict standard that businesses must meet before denying goods or services based on a fear that an individual poses risks to others.

The law provides that any new facilities and alterations made to existing facilities must be readily accessible to and useable by individuals with disabilities. For new facilities, a narrow exception is made if the hotel can demonstrate that it is structurally impracticable to comply with this requirement because “the unique characteristics of the terrain prevent the incorporation of the accessibility features.”

2. Prohibited Discrimination Under Arizona State Law

The Arizona Civil Rights Act (“ACRA”) prohibits discrimination based on race, color, religion, sex, disability, national origin, age, or the results of genetic testing. The ACRA’s prohibitions against discrimination are consistent with federal requirements under Title VII, the Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act.²²⁷ Private employers are covered by the ACRA if they have 15 or more employees on each working day in each of 20 or more calendar weeks in the current or preceding calendar year.²²⁸

3. City Anti-Discrimination Policies

On February 26, 2013, the Phoenix City Council approved a proposal to expand the Phoenix City Code’s anti-discrimination ordinance to more broadly prohibit discrimination against gay, lesbian, bisexual, and transgendered residents. It is unlawful for any employer to discriminate against any individual based on the individual’s race, color, religion, sex, national origin, age, genetic information, marital status, sexual orientation, gender identity or expression, or disability.²²⁹ This provision applies to any person “doing business within the City of Phoenix” who employs one or more employees for each working day in twenty or more calendar weeks per year, with the exception of religious organizations, bona fide private membership clubs, Indian tribes, or any federal or state department or agency.

The City of Tucson passed a similar ordinance, prohibiting discrimination in employment on the basis of race, color, gender/sex, national origin, ancestry, disability, age, religion, marital or familial status, gender identity, or sexual orientation.²³⁰ This anti-discrimination provision applies to employers of any size within the Tucson city limits where the protected class does not have any remedies available under the Arizona Revised Statutes or U.S. Code, with the exception of religious organizations, bona fide private clubs, and Indian reservation enterprises.

Likewise, the City of Flagstaff prohibits discrimination by an employer against any person because of the person’s race, color, religion, sex, age, disability, veteran’s status, national origin, sexual orientation, or gender identity or expression.²³¹ The City of Tempe prohibits discrimination in employment against any person on the basis of race, color, gender, gender identity, sexual

²²⁷ A.R.S. § 41-1461 *et seq.*

²²⁸ A.R.S. § 41-1461(6).

²²⁹ Phoenix City Code § 18-4.

²³⁰ Tucson City Code § 17-12.

²³¹ Flagstaff City Code § 14-02-0001-0003.

orientation, religion, national origin, familial status, age, disability, or U.S. military veteran status.²³²

4. Personnel Activities Governed by the Company's EEO Policy

Most federal, state, and local nondiscrimination laws specify that it is unlawful for companies to take any personnel action in a discriminatory way.²³³ Because most statutes apply to all terms and conditions of employment, this provision is important for all companies. It informs employees that their company's policy on nondiscrimination is broadly based, thereby assuring them that they will be treated in a nondiscriminatory manner, regardless of the nature of any given personnel transaction that may affect them during their employment. Such reassurance helps foster positive employee relations.

5. Sexual and Other Forms of Unlawful Harassment

Harassment on the basis of race, color, religion, sex, or national origin is a violation of Title VII. The U.S. Supreme Court has held that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII.²³⁴ The most frequently occurring claims of unlawful harassment are claims of unlawful sexual harassment. However, unlawful harassment based on other factors, such as race, religion, or age often occurs in the workplace as well.

Thus, it is extremely important for companies to indicate in their EEO policy statements that they expressly prohibit *any* form of unlawful employee harassment. Indeed, claims of harassment are so serious that not only have companies been held liable for unlawful harassment, but supervisors and even coworkers have been held personally liable for unlawful harassment in the workplace.

This paragraph lists the most common forms of conduct that the EEOC and the courts have found to constitute sexual harassment. The importance of spelling these out in the policy, is that this helps put employees on notice regarding the types of conduct and behavior that are prohibited by the employer. Examples of the types of conduct expressly prohibited by this policy include, but are not limited to, the following:

- Touching, such as rubbing or massaging someone's neck or shoulders, stroking someone's hair, or brushing against another's body;
- Sexually suggestive touching;
- Grabbing, groping, kissing, fondling;
- Violating someone's "personal space;"
- Whistling;
- Lewd, off-color, sexually oriented comments or jokes;

²³² Tempe City Code § 2-603.

²³³ 42 U.S.C.A. § 2000e; 29 C.F.R. § 60-1.4; 41 C.F.R. § 60-741.4; 29 C.F.R. § 1630.4.

²³⁴ Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998).

- Foul or obscene language;
- Leering, staring, stalking;
- Suggestive or sexually explicit posters, calendars, photographs, graffiti, cartoons;
- Unwanted or offensive letters or poems;
- Sitting or gesturing sexually;
- Offensive E-mail or voice-mail messages;
- Sexually oriented or explicit remarks, including written or oral references to sexual conduct, gossip regarding one's sex life, body, sexual activities, deficiencies, or prowess;
- Questions about one's sex life or experiences;
- Repeated requests for dates;
- Sexual favors in return for employment rewards, or threats if sexual favors are not provided;
- Sexual assault or rape;
- Any other conduct or behavior deemed inappropriate by the Company.

Employers must familiarize their managers and supervisors with the types of conduct that constitute sexual harassment. Under the EEOC's guidelines, employers are responsible for the conduct of supervisory personnel. Many employers routinely have their supervisors undergo sexual harassment training. And in some states, such training is required.

6. Procedure for Reporting EEO Complaints

One of the most important elements of a company's EEO policy statement is the EEO complaint procedure. Organizations may be able to minimize their liabilities in the EEO area by establishing such a procedure. Indeed, the Supreme Court in *Burlington Industries, Inc. v. Ellerth*,²³⁵ held that an employer may be able to avoid liability in a hostile environment sexual harassment case where it can demonstrate that it acted reasonably, by exercising reasonable care to correct any sexually harassing behavior, and that the plaintiff acted unreasonably by failing to take advantage of any preventive or corrective opportunities provided by the employer (such as utilizing an employer's sexual harassment complaint resolution procedure, which promises the employee that he or she will not be retaliated against for using the procedure) or to avoid harm otherwise. If employees are aware of the company's procedure, they may be more inclined to file EEO-related complaints internally, that is, within the organization, rather than turning first to outside agencies for assistance. However, companies must be prepared to promptly investigate such complaints and, when necessary, administer appropriate discipline to the offending manager, supervisor, or employee.

A company's EEO complaint procedure must allow employees to circumvent the normal chain of command when reporting EEO and, especially, sexual harassment complaints. Since it is often the supervisor who is the harasser in sexual harassment situations, requiring employees to report such incidents to the supervisors in every instance could render the complaint procedure

²³⁵ 524 U.S. 742 (1998)

meaningless. In *Meritor Savings Bank v. Vinson*,²³⁶ the U.S. Supreme Court recommended that employers have an explicit policy statement addressing sexual harassment and containing a formal procedure for the investigation and evaluation of sexual harassment complaints that *does not* require the employee to first complain to the supervisor, who is often the harasser. In *Meritor*, the Court discounted the employer's grievance procedure because it required the employee to complain to her supervisor, the alleged offender.

It should be noted that once employees sign a copy of the handbook acknowledgment form indicating that they have received a copy of the handbook, and this form is placed permanently in their personnel file, they will find it difficult to prove at a later date that they were never informed of the company's EEO policy and complaint procedure. Thus, if such an employee files a complaint with an outside agency such as the EEOC, alleging unlawful sexual harassment, the company may in certain situations be able to minimize its liability by indicating that it had no knowledge of such harassment at the time it occurred, because of the employee's failure to bring it to the attention of management in accordance with published policy. Thus, it could not investigate the complaint or take appropriate disciplinary action at that time.

a. Confidentiality

Employees should be provided with assurance that, as much as possible, the company will treat their complaints in a confidential manner. Such a confidentiality provision is also recommended in the EEOC's guidance memorandum on establishing an effective sexual harassment procedure. However, a thorough investigation of an EEO-related complaint is likely to require divulging the complainant's identity at least to a select number of individuals, such as the employee's department head or, possibly, the alleged harasser. Therefore, companies must avoid promising employees "*strict*" or "*absolute*" confidentiality. Including the suggested language should give employees some reassurance about the confidentiality of their complaints while protecting companies from making promises of absolute confidentiality, which they may not be able to fulfill.

b. Anti-Retaliation

For the protection of both employees and the integrity of the EEO complaint procedure, employees should be told that they will not be retaliated against for filing bona fide EEO-related complaints or for assisting the company in the investigation of a complaint. Moreover, in the EEOC's guidance memorandum on how to establish an effective sexual harassment complaint procedure, employers are advised to include such a nonretaliation provision. Title VII, most other antidiscrimination statutes, and most labor statutes prohibit companies from retaliating against individuals who file complaints with outside administrative agencies. Some of these statutes protect individuals from retaliation for filing a complaint within the company as well.

c. Investigation Procedure

²³⁶ 477 U.S. 57 (1986)

All complaints should be in writing and all aspects of the investigation should be thoroughly documented. (Note, however, that if an employee prefers not to put his or her complaint in writing, it should nevertheless still be investigated.) The investigation should be conducted in a timely manner, as soon as possible after the company becomes aware of the alleged improper conduct. The investigation should be thorough, fair, objective, and considerate of the rights and emotions of all of the parties involved. The investigation should be kept private and confidential to the greatest extent possible, to prevent claims such as defamation of character. Employees (including the charging party and witnesses) should never be promised strict or absolute confidentiality because this would preclude an investigation that is fair to all parties concerned and because any of these employees may later be compelled to give testimony in an agency proceeding or before a court of law. Investigative files should be kept separate from the regular personnel files. In addition, company or outside investigators may wish to consider the factors listed below, which the EEOC recommends that its investigators weigh when processing a charge that involves hostile environment harassment:

- Consider the totality of the circumstances. Examine, among other things, the nature of the conduct (i.e., whether it was verbal or physical), the context in which the alleged incident(s) occurred, the frequency of the conduct, its severity and pervasiveness, whether it was physically threatening or humiliating, whether it was unwelcome, and whether it unreasonably interfered with an employee's work performance.
- Consider whether a reasonable person in the same or similar circumstances would find the challenged conduct sufficiently severe or pervasive to create an intimidating, hostile, or abusive work environment. An investigator should keep the victim's perspective in mind.
- Consider whether the charging party perceived the environment to be hostile or abusive, that is, whether the conduct was unwelcome. In making this analysis, the investigator should consider the charging party's behavior.

Resource List

State Resources

Arizona Department of Revenue

<http://www.revenue.state.az.us/>
(602) 542-4576 – License and Registration

Arizona Department of Health Services – Licensing Division

<http://www.azdhs.gov/als/index.htm>
(602) 364-2536

Arizona Department of Liquor License and Control

<http://www.azliquor.gov/>
(602) 542-5141

Industrial Commission of Arizona

<http://www.ica.state.az.us/>

Arizona Revised Statutes

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

Arizona Civil Rights Act

http://www.azsos.gov/public_services/Title_10/10-03.htm

Federal Resources

U.S. Department of Labor – Family and Medical Leave Act

<http://www.dol.gov/esa/whd/fmla/>

U.S. Department of Labor – Fair Labor Standards Act

<http://www.dol.gov/esa/whd/flsa/>

U.S. Department of Labor – Occupational Safety and Health Administration

<http://www.osha.gov/>

National Labor Relations Board – National Labor Relations Act

http://www.nlr.gov/about_us/overview/national_labor_relations_act.aspx

Equal Employment Opportunity Commission

<http://www.eeoc.gov/>
<http://eeoc.gov/policy/vii.html> - Title VII of the Civil Rights Act
<http://www.eeoc.gov/policy/adea.html> - Age Discrimination in Employment Act
<http://www.eeoc.gov/abouteeoc/35th/thelaw/owbpa.html> - Older Workers Benefit Protection Act
<http://www.eeoc.gov/policy/epa.html> - Equal Pay Act

<http://www.eeoc.gov/facts/fs-preg.html> - Pregnancy Discrimination Act

Americans with Disabilities Act

<http://www.ada.gov/>

<http://www.ada.gov/reg3a.html#Anchor-Appendix-52467> – ADA Standards for Accessible Design

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