Welcome

Eighth Annual Tennessee Hospitality and Tourism Law Symposium

July 11, 2019

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Hot Topics in Wage and Hour Law

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Agenda

• Overtime Basics and Updates

• DOL Rulemaking and Actions
  – Overtime
  – Regular Rate
  – Joint Employer

• Trends in Wage and Hour Claims/Litigation

• Options for Employers
Why Wage and Hour Claims?

- Recovery for the Employee
  - Recover back wages and liquidated damages (double amount owed)
- Recovery for the Attorney
  - If employee is owed money, employer must pay employee’s attorneys’ fees
- Recovery for Other Employees (i.e., “the Collective”)
  - Little downside for plaintiff’s counsel to bringing case as collective action – i.e., claiming the wage and hour violation impacts other employees
  - The bar to get conditional certification of a class is low
- FLSA was enacted in 1938 – statute doesn’t have clear answers to the ever-evolving digital workforce of 2019

Why Wage and Hour Claims? (continued)

- In 2018, there were 7,494 collective actions filed in federal court.
- Regulatory developments in 2019 could cause a spike in wage and hour litigation.
- Top ten private plaintiff FLSA wage and hour settlements for 2018 totaled $253.5 million:
  - $54.4 million Bloomberg L.P. (failure to pay proper overtime)
  - $27.5 million Wells Fargo (failure to pay proper overtime)
  - $25 million Abercrombie & Fitch (improper deductions – buying clothes to wear on job)
  - $19.1 million Carlson Restaurants (improper tip credits)
  - $16.8 million Kellogg Co. (misclassification)
Overtime Basics & Proposed Changes

HOT TOPIC

Starting at the Beginning…
Wage & Hour Law

• The Fair Labor Standards Act (FLSA) is the federal law that governs wage and hour. The FLSA has three basic requirements:
  – Employees must be paid at least federal minimum wage ($7.25) for all hours worked;
  – Employees must be paid an overtime premium (at time and one-half the regular rate of pay) for all hours worked over 40 hours in a workweek; and
  – Strict recordkeeping requirements.

• The FLSA is an employee protection act and employees are generally presumed entitled to minimum wage and overtime.
“White Collar” Exemptions

• Categories of “white collar” employees that may be exempt from both minimum wage and overtime requirements of the FLSA:
  − Executive
  − Administrative
  − Professional
  − Outside salespersons
  − Highly skilled computer employees
  − Highly compensated employees

FLSA – Wage & Hour Law

Non-exempt employees = eligible for overtime
Exempt employees = ineligible for overtime

SO WHICH EMPLOYEES ARE “EXEMPT”?

• For most employees whether they are exempt or non-exempt depends on:
  − how they are paid;
  − how much they are paid; and
  − what kind of work they do.
3 Requirements for Exemption

Remember, exemption depends on three things:

1. How employees are paid
2. How much they are paid
3. What kind of work they do

3 Requirements for Exemption (continued)

Remember, exemption depends on three things:

1. **How** employees are paid  
   - Employee must be paid a pre-determined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed
   - Must be paid the full salary for any week in which the employee performs any work
   - Need not be paid for any workweek when no work is performed
   - No partial day deductions
   - Deductions can result in a loss of the exemption
3 Requirements for Exemption (continued)

Remember, exemption depends on three things:

1. How employees are paid ➡️ SALARY BASIS

2. How much they are paid ➡️ SALARY LEVEL

   - currently $455/week ($23,660/year)

Changes to Salary Level
Round 1… 2015–16

- June 2016, DOL proposed new salary threshold of $50,440/year ($970/week) (NPRM – Notice of Proposed Rulemaking)
- On May 23, 2016, the final rule raised the salary threshold to only $47,476/year ($913/week) effective December 1, 2016
  - Would have raised the HCE exemption from $100,000/year to $134,004/year or more
  - Would have increased the salary threshold automatically every three years
  - Would have allowed employers to use nondiscretionary bonuses and incentive payments, including commissions, to meet the salary basis test
Changes to Salary Level
Round 1… 2016

- In October 2016, the business community (and 21 states) sued the DOL in federal court in Texas, challenging the rule
  - On November 22, 2016, 10 days before the implementation date, the Texas Court ruled that the DOL did not have the authority to implement such a large increase in the threshold. (i.e., the salary threshold stayed at $23,660)
  - Obama DOL appealed to the Fifth Circuit shortly before President Obama left office
  - Trump DOL did not withdraw the appeal but the case was stayed pending the DOL issuing a new proposed rule
    - July 2017 – DOL request for information from the public
    - August 2017 – final ruling from Texas court striking down 2016 Overtime Rule

Changes to Salary Level
Round 2… 2019

- NPRM – formal rulemaking process again

- Proposed rule was published in Federal Register on March 22, 2019
  - Comment period closed May 21, 2019
Changes to Salary Level
Round 2…2019 (continued)

New: $679/week, $35,308/year

• Only applies to “white collar” exemptions
• DOL estimates that 1.1 million workers will become OT eligible
• Up to 10 percent of the salary may be made up of nondiscretionary bonuses
  – i.e., minimum of $611.10 must be paid weekly if intending to make up difference with bonus

Changes to Salary Level
Round 2… 2019 (continued)

Highly Compensated Salary Threshold

OLD: $100,000/year or more, which includes at least $455 per week paid on a salary basis.

NEW: $147,414/year or more, of which at least $679 per week must be paid on a salary basis

• 10 percent bonus rule does not apply to the HCE exemption
• But…under the FLSA, employers may use commissions, nondiscretionary bonuses, and other nondiscretionary comp to satisfy the HCE salary basis
Changes to Salary Level
Round 2… 2019 (continued)

- The DOL proposes to review the salary threshold once every four years, and any update would require notice and comment rulemaking
- Special Salary Tests
  - If employed in the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands, the salary threshold would be $455/week
  - If employed in American Samoa, the threshold would be $380/week

Changes to Salary Level
Round 2… 2019 Timeline

- The comment period ended May 21, 2019. Now DOL will review the comments and prepare a final rule (CAN CHANGE!)
  - Final rule goes to Office of Management & Budget for review
  - Then final rule gets published (likely 2020)
- Last time, the comment period closed September 4, 2015 and final rule was published May 18, 2016.
3 Requirements for Exemption (continued)

Remember, exemption depends on three things:

1. How employees are paid        →  SALARY BASIS

2. How much they are paid        →  SALARY LEVEL

3. Kind of work performed        →  JOB DUTIES
   - Exempt work must be the employee’s “primary duty”

Primary Duty

• The principal, main, major or most important duty that the employee performs
• Factors to consider include, but are not limited to:
  - relative importance of the exempt duties;
  - amount of time spent performing exempt work;
  - relative freedom from direct supervision; and
  - relationship between the employee’s salary and the wages paid to other employees for the same kind of nonexempt work.
• Employees who spend more than 60 percent of their time performing exempt work will generally satisfy the primary duty requirement.
## Round 2
### Duties Test for EAP Exemptions?

**NO CHANGES!**

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## Summary of 2019 Proposed Overtime Rule Changes

<table>
<thead>
<tr>
<th></th>
<th>Current Regulations</th>
<th>NPRM</th>
<th>Final Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Salary Level</strong></td>
<td>$455 weekly</td>
<td>$679 weekly</td>
<td>?</td>
</tr>
<tr>
<td><strong>HCE Total Annual Compensation Level</strong></td>
<td>$100,000 annually</td>
<td>$147,414</td>
<td>?</td>
</tr>
<tr>
<td><strong>Adjustments</strong></td>
<td>None</td>
<td>Reviewed every four years</td>
<td>?</td>
</tr>
<tr>
<td><strong>Bonuses</strong></td>
<td>No provision</td>
<td>Request for comment on counting nondiscretionary bonuses and commissions toward standard salary level</td>
<td>?</td>
</tr>
<tr>
<td><strong>Standard Duties Test</strong></td>
<td>See WHD Fact Sheet #17A for a simplified description of EAP duties.</td>
<td>No changes</td>
<td>No changes</td>
</tr>
</tbody>
</table>
3 Requirements for Exemption (continued)

Remember, exemption depends on the following:

1. **How employees are paid**
   - SALARY BASIS

2. **How much they are paid**
   - SALARY LEVEL

3. **Kind of work performed**
   - JOB DUTIES

   - **Exempt work must be the employee’s “primary duty”**

   - Paying salary alone is not enough!
   - Salaried employee is not the same as “exempt” employee.

More Activity from the DOL…

**Regular Rate**

**HOT TOPIC**
Proposed Rule – Regular Rate

• On March 28, 2019, the DOL announced a proposed rule “to clarify, update, and define basic rate and regular rate requirements under…the FLSA.”
  − have not been comprehensively revised in more than 50 years
• What the heck is the regular rate?
  − Not the base rate!
  − It is the rate at which overtime must be paid – includes commission, incentive pay, nondiscretionary bonuses and more
  − Calculated each week by dividing the employee’s total weekly pay by the number of hours worked

Calculating OT: Regular Rate

• Included in regular rate:
  − Wages or salary
  − Non-cash wages in form of goods, boarding and lodging
  − Pay differentials and premium pay for hazardous work
  − Non-discretionary bonuses
  − Commissions
  − Other incentive payments based on hours worked, production or efficiency
Calculating OT: Regular Rate (continued)

- **NOT included in regular rate:**
  - Sums paid as gifts
  - Payments for time not worked (paid leave)
  - Reimbursement for expenses
  - Discretionary bonuses
  - Profit sharing plans
  - Retirement and insurance plans
  - Overtime premium payments
  - Stock options

Proposed Rule – Regular Rate (continued)

- DOL proposes to confirm that the following types of employer-paid benefits may be **excluded:**
  - the cost of providing wellness programs, onsite specialist treatment, gym access and fitness classes, and employee discounts on retail goods and services;
  - payments for unused paid leave, including paid sick leave;
  - reimbursed expenses, even if not incurred solely for the employer’s benefit;
  - benefit plans, including accident, unemployment, and legal services;
  - tuition programs, such as reimbursement programs or repayment of educational debt; and
  - pay for time that would not otherwise qualify as hours worked, including bona fide meal periods.
Proposed Rule – Regular Rate (continued)

- The DOL states that the proposed rules will not require employers to take any affirmative measures to come into compliance and do not impose any new requirements on employers (the rules will be relaxed, rather than tightened).
- The rule on regular rate was published in the Federal Register on March 29, 2019.
  - The comment period was set to end May 28, 2019, but was extended to June 12, 2019.

More Activity from the DOL…
Joint Employer

HOT TOPIC
Proposed Rule – Joint Employment

• In 1958 (yes, you heard that correctly), DOL issued a formal interpretation saying multiple entities can be deemed a joint employer if they are “not completely disassociated” with respect to the employment of a particular employee
  – DOL has not updated its joint employer interpretation in more than 60 years.

(continued)

• On April 1, 2019, the DOL announced a proposed rule to clarify joint employment under the FLSA.
  – Comment period was set to close on June 10, 2019, but was extended to June 25, 2019

• Clear, four-factor balancing test for joint employer status of whether the potential joint employer has the power to:
  – hire or fire the employee;
  – supervise and control the employee’s work schedules or conditions of employment;
  – determine the employee’s rate and method of payment; and
  – maintain the employee’s employment records.
Proposed Rule – Joint Employment (continued)

• The rule also rejects various factors that have fueled recent litigation
  − A worker’s economic dependence on a potential joint employer
  − The potential employer’s business model (e.g., a franchise model)
  − Agreements between entities (e.g., requiring an employer in a business contract to institute a sexual harassment policy)
  − Unexercised power over the worker (ability, power, or reserved contractual right to act with respect to the employee’s terms and conditions of employment not relevant – only actions actually taken)
Arbitration Waivers

- On May 21, 2018, Supreme Court held in a 5-4 decision that employers may require employees, as a condition of employment, to enter into arbitration agreements that contain waivers of the ability to participate in a class or collective action under various employment statutes.

- On April 24, 2019, Supreme Court held in a 5-4 decision that courts cannot order an arbitration to be conducted on a class-wide basis unless there is an arbitration agreement that expressly authorizes class arbitration.
  - Ninth Circuit had ruled an ambiguous arbitration provision should be construed against the drafter and held that the agreement allowed for class arbitration.

Arbitration Waivers (continued)

- Workplace arbitration agreements with class waivers, if they are well-drafted, should provide employers with a highly-effective class action defense.
EEO-1 Report Drama

HOT TOPIC

Who?
- Employers subject to Title VII with 100 or more employees
- Federal contractors and first-tier subcontractors subject to Executive Order 11246
  - With 50 or more employees
  - With a contract, subcontract, or purchase order amounting to $50,000 or more

Component 1 of EEO-1 Report
- Race, ethnicity, and sex of the workforce in ten job categories
- Due May 31, 2019 deadline
EEO-1 Report Drama (continued)

- In 2016, the EEOC decided to require employers to include compensation information by race, sex, and ethnicity for each of the 12 EEO categories ("Component 2" data).
- The EEOC submitted a proposed form to the (Obama) OMB, which was approved in 2016. In 2017, after the election, the (Trump) OMB stayed the requirement, so it never took effect, and employers were never required to report compensation data.
  - On March 4, 2019, D.C. Circuit Court lifted the stay
  - On April 25, 2019, issued second order giving EEOC until September 30, 2019 to collect Component 2 data

EEO-1 Report Drama (continued)

- On May 3, 2019, the EEOC confirmed that employers will be required to submit Component 2 pay data for years 2017 and 2018 to the EEOC by September 30, 2019.
  - Same day DOJ filed a notice of appeal
  - "Does not stay the district court orders or alter EEO-1 filers’ obligations to submit Component 2 data. EEO-1 filers should begin preparing to submit Component 2 data"
Trends in Wage and Hour Claims/Litigation

Common FLSA Claims

• Misclassification Crackdown
  – Exempt vs. Nonexempt
  – Employee vs. Independent Contractor
• “Off the Clock” Time
  – Pre- or post-shift work
  – Work from home
  – Travel
  – Breaks
• Improper Calculation of Overtime
  – Regular Rate
• Pay Equity
Common Pay Claims – Pay Equity

- Pay Equity is compensating jobs based upon skill, effort, responsibility and working conditions required, not on the people who hold the jobs.
  - i.e., equal pay for equal work

- There is no legal requirement that private sector employees be paid fairly – as long as a pattern of pay inequity is not related to a legally protected class.

Common Pay Claims – Pay Equity (continued)

- The Equal Pay Act of 1963 amended the Fair Labor Standards Act to prohibit gender-based discrimination in compensation paid for similar jobs performed under similar conditions.
  - Men and women in “substantially equal” jobs must receive equal pay – skill, effort, responsibility, working conditions.
  - Allows for pay differences based upon:
    - seniority
    - merit
    - productivity
    - education
    - factors other than sex
  - All kinds of pay (including benefits)
Why More Pay Equity Claims Now?

• The "MeToo" Movement has renewed the focus on pay equity in the workplace.
• EEO-1 Expansion – Hearing was April 16
• More pay transparency laws at state and local level:
  – are moving from "equal work" to "similar work;"
  – define bona fide reasons for pay disparities, such as education and tenure;
  – pay transparency so that workers know how their wages compare to the target range for the job; and
  – ban salary-history inquiries to stop perpetuating historic pay discrimination.

Options to Prepare for Wage & Hour Claims
Audits

**Self Audit**
- Identifying affected employees and possible impact issues
- Gathering data for compensation analysis
- Reviewing policies on pay practices, leave, etc. and impact on newly classified non-exempt employees

**Outside Audit**
- **Privileged**
- Assist in compiling data and providing legal alternatives on re-classification
- Golden opportunity to analyze and correct any misclassification… “The law made us do it”

Audits (continued)

- Key areas to review:
  - Classification (exemptions and employee/independent contractor)
  - Overtime calculations for non-exempt employees (regular rate)
  - Possible “off the clock” claims
  - Deductions (amount asking employees to pay for uniforms, tools of trade, laundering, etc.)
  - Equity in pay between comparable jobs (similar in skill, working conditions, etc.)
Workplace Violence: Identification, Prevention and If the Worst Happens, Evaluating Exposure

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Violence In Our Society

• Virginia Beach, VA (Government Office)

• Sebring, FL (Bank)

• Aurora, IL (Warehouse)

• Aurora, CO (Movie Theater)

• Intersection of Labor & Employment
Overview

• Problem Confronting Employers – Why is it important to be proactive?
• Potential Exposure
• Implementing Workplace Violence Prevention Programs

Workplace Violence

• What is Workplace Violence?
  – Employees directing violence at other employees or employers
  – Customer, patient, or visitor violence against employees
  – Domestic-related violence spilling over into the workplace
  – Property-directed violence
  – Terroristic violence
Numbers

• Nearly 2 million Americans yearly report having been a victim of workplace violence

• A study by the Maricopa Community College Department of Public Safety found that the majority of those committing this type of crime have an outside connection, such as being a vendor or the recipient of a service.

• Perpetrators often have a past or present employment relationship or personal relationship with an employee.

Numbers (continued)

• When it comes to workplace violence, women are overwhelmingly victims, according to the Bureau of Labor Statistics.
• 24% of roadway fatalities were men, while 22% were women.
• With falls, slips and trips, 17% of fatalities were men and 11% women.
• But when it comes to homicides, 24% of fatalities were women, while 9% were men. Of those women, 40 percent were killed by a relative or domestic partner, compared to 2% of men, and 33% died as a result of a robbery compared to 16% of men.
Would You Hire?

![Image Source: http://clipart-library.com/clipart/71155.htm](http://clipart-library.com/clipart/71155.htm)

What About This Guy?
**What to Do?**

Steps to Prevent Workplace Violence

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**STEP ONE**

- Establish a Workplace Violence Prevention Team to create, communicate, and implement all violence prevention plans, policies, and guidelines
STEP TWO

Complete a Violence Vulnerability Audit

• Analyze all premises, systems, employees, and customers who interact with employees
• Also look at security systems to assess preparation for violent incidents

STEP THREE

Establish Policy and Procedures

• Adopt a formal, written Workplace Violence Policy
• Include the Policy in your procedures manual
• Implement results of the Vulnerability Audit and the planned security procedures for responding to violent incidents
• Delineate prohibited behaviors/actions and warning signs
• Establish levels of discipline
• Establish an employee assistance program to help employees deal with stress-related problems
Establish Policy and Procedures

• Five components to an effective violence prevention program:
  − Management commitment and employee involvement
  − Worksite analysis
  − Hazard prevention and control
  − Safety and health training
  − Recordkeeping and program evaluation

STEP FOUR

Communicate the Policy and Procedures
• All employees must receive a copy
• Educate all employees on the types of violence and warning signs
• Tell workforce how to report a threat or act of violence
STEP FIVE

Training
• Goal: To educate all employees and supervisors to spot warning signs and what to do once they recognize them
• Training methods should be different and increasingly detailed for employees, managers and supervisors, and Prevention Team members

STEP SIX

Put the Program Into Action
• Thorough pre-employment screening (Reexamine and Reevaluate)
• Drug testing
• Following the interview, thoroughly check references
Put the Program Into Action (continued)

- Terminate employees in the proper way
- Take all threats seriously (Investigate — interview all witnesses, take written statements, and obtain a complete version of the facts from the accused employee)
- Maintain a strong and workable employee communications network. Establish a confidential “hotline” for employees to report concerns and/or troubling incidents
- Conduct opinion and attitude surveys to ascertain how employees feel about the work environment and encourage participation of all

Program in Action

- Screen employees with an eye toward identifying employees with predictive criminal histories or aggression issues
- Deal with aggression in the workplace immediately, protecting the company in the process
- If necessary to terminate, do so with an eye toward protecting the workplace
Screening/Careful Review of Application

- Blank portions
- Failure to adequately explain departures
- Gaps in employment
- Asking that former employers not be contacted
- Failure to provide true references
- Failure to fully explain criminal convictions, if asked OR failure to answer question about criminal convictions.
Are you at least 18 years of age? — [ ] Yes [ ] No

Have you ever been convicted of a crime (federal or misdemeanor) other than a minor traffic violation? (Note: You are not obligated to disclose sealed or expunged records of conviction or arrests). [ ] Yes [ ] No

If yes, please state the date of conviction(s), the county and state, and the nature of the offense. Include additional pages if necessary.

Bad checks in Hialeah & Doral... all 4 times can do.

NOTE: The existence of a criminal record will not automatically disqualify you from the job for which you are applying.
Pre-Employment Screening
Effective Interviews

- Focus less on hypotheticals
- Focus more on their own experiences
- Ask about stressful situations
- Ask about conflict
- Don’t stick to “scripted” interview questions – ask follow-up questions
Sample Interview Questions

- What would you change about your previous job?
- What would your former employers say about you? List some positives and negatives.
- When was the last time you became very angry at work? What was it about? How did the situation resolve?
- Give an example of a goal you reached and tell me how you achieved it.
- Give an example of a goal you didn’t meet and how you handled it.
- Tell me about the biggest mistake you made at your last job.
- Who found out about the mistake? How did it come to light? What happened?
- Do you think that was fair?
- Can you name an area where you need to grow?
- Tell me about a company policy you don’t agree with? Have you ever gotten in trouble for violating that policy?
- What do you find most challenging about working on a team? Describe a situation where you had that challenge and how it resolved.
- What do you do if you disagree with your boss?
- What did you like most about your last job?
- Tell me about a failure in your last job?
- Tell me about an important success in your last job?
- Describe a situation in which you did something positive that wasn’t in your job description?
- Tell me about a situation in which you depended on someone else to get the job done?

Checks of Employees’ Criminal Backgrounds

- At inception of employment
- Conduct periodic re-do of background checks (e.g., every 5 years)
- Subject employees to periodic drug screens
- Require employees to report arrests
- Require employees to report restraining orders
Employment Conduct and Threat Reporting

- Prohibits actually engaging in violence or threatening to engage in violence
- Zero tolerance?
- Includes prohibitions on violence from third parties, such as vendors and intimate partners
- Have a policy of what and where to report
- Requires employees to report protective/restraining orders

Risk Factors:

- Occupational Characteristics
  - Exchange of money
  - Solo work and isolated work sites
  - Sale of alcohol
  - Poorly lit stores and parking areas
  - Lack of staff training in recognizing and managing escalating hostile and aggressive behavior
- Industry Context
- Fatalities
  - taxicab services, liquor stores, detectives and protective services, commercial gas stations, retail jewelry
- Non-fatalities
  - service and retail trades
    - nursing homes
    - social services
    - grocery stores
    - hospitals
    - eating and drinking establishments
Weapons Prohibitions

- You can still prohibit employees from bringing firearms into your facility.
- But in Tennessee, an employee with a handgun-carry permit may keep a firearm and ammo out of sight in a locked vehicle in the parking lot.
- Should you allow employees to carry at work? Or out in the community?

Termination Protocols

- Don’t signal
- Fire remotely
- Hire security
- Keep security in place
- Get employee out immediately
When DV Comes to Work

- Disruptive personal visits to workplace by present or former partner or spouse
- Domestic partner drops her off and picks her up from work
- Domestic partner hangs out in the parking lot
- An unusual number of phone calls/text messages, strong reactions to those calls/text messages, and/or a reluctance to converse or respond to phone/text messages
- Co-workers receive insensitive or insulting messages intended for the colleague experiencing abuse

Balance Confidentiality With Protection
Care for the Victim/Employee:

- Ask the employee what changes in the work environment would make her or him feel safer, such as providing priority parking and escorts from the parking area
- Change the employee’s phone number, and remove the employee’s name from automated contact lists
- Install panic buttons
- Move employee out of proximity to entrance
- Provide EAP and numbers to DV shelters and resources
- Provide time off or flexible work hours for counseling and court appearances

What if Your Employee is Alleged to be the Abuser?

- Don’t automatically fire
- Draft liberal policies allowing you to fire for criminal, as well as non-criminal violence
- Offer your EAP
Practical Solutions to Limit Exposure

- Some recommended engineering and administrative controls
- Physical barriers such as bullet-resistant enclosures or shields, pass-through windows, or deep service counters
- Alarm systems, panic buttons, global positioning systems (GPS), and radios ("open mic switch")
- Convex mirrors, elevated vantage points, clear visibility of service and cash register areas
- Bright and effective lighting
- Adequate staffing
- Arrange furniture to prevent entrapment
- Cash-handling controls, use of drop safes
- Height markers on exit doors
- Emergency procedures to use in case of robbery
- Training in identifying hazardous situations and appropriate responses in emergencies
- Video surveillance equipment, in-car surveillance cameras, and closed circuit TV
- Establish liaison with local police

Post-incident Response and Evaluation

- Several types of assistance can be incorporated into the post-incident response, including:
  - trauma-crisis counseling;
  - critical incident stress debriefing; or
  - employee assistance programs to assist victims.
COST

QUESTIONS?
Workplace Violence: Identification, Prevention and If the Worst Happens, Evaluating Exposure

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Immigration and E-Verify

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Introduction

“Traditionally, immigrants have been a valued source of talent for our industry. That’s been true for decades.... We’re extremely proud of that record. Immigrants make our industry – and our country — stronger – and they provide a huge boost to America’s economy.”

Jonathan Tisch
CEO of Loews Hotels

State of the U.S. Economy

- 224,000 jobs added in June 2019
- GDP growth 3.1% (Q1 – 2019)
- Durable Goods Orders (down 1.3% in May 2019)
- Inflation at target (2%)
- Rising stock market
- Stable interest rates
State of Immigration Law

- Top 5 Immigration Headlines in 2017
- Top Immigration Headlines in 2018
- Headlines in 2019

Top 5 Immigration Headlines in 2017

- Buy American Hire American
- Increased Scrutiny of H-1B Visa Program
- Travel Ban Impacting Employers
- Employment Verification Discrimination Changes
- Suspension of H-1B Visa Premium Processing
Top Immigration Headlines in 2018

- H-1B and L-1 visas under scrutiny
- Premium processing
- Increases in RFEs from USCIS
- Decline in school enrollment
- Increase in visa related fees
- Termination of TPS
- Increase in I-9 Audits
- Employers are struggling to find workers

Top Immigration Headlines in 2019

- H-1B and L-1 visa under scrutiny
- Increases in RFEs from USCIS
- Large-Scale Enforcement Actions and Raids
- Struggle to find workers
- Social Security Administration sending no match letters
- Temporary increase numerical limit (cap) on H-2B visas
Employment Verification

- What should you do?
- Should you use E-Verify?
- How should you handle Form I-9?
- Should you consider ICE IMAGE and train people?
- How often should you audit your I-9s?
- What should you do with “no-match” letters?
- What type of immigration-related policies do you have at your business?

Authorized to Work in the U.S.

- U.S. individuals
  - Citizen
  - Permanent Resident
  - Refugee
  - Asylee
  - National
- Foreign national authorized to work
Form I-9

N.B.: N/A should be used when skipping a field
### Unique Situations:
- F and J Students and Exchange Visitors
- Extension based on receipt notices:
  - Automatic 240 days rule for certain workers
  - I-766 EADs

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N.B.: N/A should be used when skipping a field
Form I-9 (continued)

- Retention Requirements
  - To copy or not to copy
  - Paper v. electronic
  - When using E-Verify
  - Separate from personnel files
  - Would you able to produce documents in 3 days?
  - Control access with audit trail
- Do you hire remotely?

Form I-9 (continued)

- Avoiding Discrimination
  - Common mistakes
  - You hear an accent?
  - Should you re-verify?
  - Battling union?

<table>
<thead>
<tr>
<th>LIST OF ACCEPTABLE DOCUMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>List A</strong> employees that already have a Social Security number.</td>
</tr>
<tr>
<td>A. U.S. Passport or U.S. Consular Report of Birth</td>
</tr>
<tr>
<td>A. U.S. Passport or U.S. Consular Report of Birth</td>
</tr>
<tr>
<td>B. Laissez-passer or Travel Document</td>
</tr>
<tr>
<td>C. U.S. Immigration Card with photo</td>
</tr>
<tr>
<td>D. Laissez-passer or Travel Document</td>
</tr>
<tr>
<td>E. U.S. Immigration Card with photo</td>
</tr>
<tr>
<td>F. Laissez-passer or Travel Document</td>
</tr>
<tr>
<td>G. U.S. Immigration Card with photo</td>
</tr>
</tbody>
</table>

| **List B** employment documents that the employee must show |
| A. Driver’s License or state issued identification card |
| B. Repair Card or state-issued identification card |
| C. Federal ID number or social security card |
| D. Identity card issued by state, local government agency, military, foreign embassy, or international organization |

| **List C** documents that establish eligibility to work |
| A. Birth Certificate or other evidence of U.S. citizenship |
| B. Certificate of Naturalization or Naturalization Certificate |
| C. Green Card or Permanent Resident Card |
| D. Certificate of Naturalization or Naturalization Certificate |
| E. Certificate of Naturalization or Naturalization Certificate |
| F. Certificate of Naturalization or Naturalization Certificate |
| G. Certificate of Naturalization or Naturalization Certificate |
| H. Certificate of Naturalization or Naturalization Certificate |
Form I-9 (continued)

• Audits
  − What to do with errors or omissions?
  − Backdate, erase or white-out?
  − Better to complete a new form?
  − Avoid discrimination
  − Document that does not “reasonably appear on its face to be genuine”?
  − Destruction of Form I-9s

<table>
<thead>
<tr>
<th>Type</th>
<th>FY 2018</th>
<th>FY 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worksite investigation</td>
<td>6,848</td>
<td>1,691</td>
</tr>
<tr>
<td>I-9 audits</td>
<td>5,981</td>
<td>1,360</td>
</tr>
<tr>
<td>Criminal arrests</td>
<td>779</td>
<td>300</td>
</tr>
<tr>
<td>Administrative arrests</td>
<td>1,525</td>
<td>750</td>
</tr>
</tbody>
</table>

The arrests are worksite-related.
E-Verify

How it Works

E-Verify (continued)
E-Verify (continued)

VERIFICATION PROCESS

Verification Process Overview

1. CREATE A CASE
   - The employer uses information from the employee’s Form I-9 to create a case in E-Verify.

2. GET RESULTS
   - E-Verify displays an initial case result within a few seconds, though some cases may require additional action.

3. CLOSE THE CASE
   - The employer closes the case once E-Verify displays a final case result.
E-Verify Results

Employment Authorized

Tentative Non-confirmation

Verification in Process

E-Verify Results (continued)

- Tentative Non-Confirmation:
  - Social Security Administration?
    ▪ Notify employee and refer him to SSA
  - Department of Homeland Security?
    ▪ Was DHS unable to verify employment eligibility?
      ▪ Refer employee to DHS
    ▪ Did the employer indicate that photo did not match?
      ▪ Scan and upload image of the document to E-Verify
E-Verify Results (continued)

- Tentative Non-Confirmation:
  - Do not assume the worst:
    - No match Social Security
    - Unreported event
    - Incorrect information
- Print TNC Further Action Notice
  - Determine what employee wants to do
  - Wait on employee for update
  - Do not terminate employee because of TNC

Registering with E-Verify

- Pros
  - Federal contractors are required to register
  - STEM OPT requires employers to be registered
  - Helps avoid no-match letters
- Cons
  - Will not avoid I-9 audit
  - Dedicate a couple employees to E-Verify
  - Open the door to investigations
  - Unavailability in case of government shutdown
  - Still have to rely on I-9
E-Verify Versus Form I-9

VERIFICATION PROCESS

CREATE A CASE

1. The employer uses information from the employee's Form I-9 to create a case in E-Verify.

GET RESULTS

2. E-Verify displays an initial case result within a few seconds, though some cases may require additional action.

CLOSE THE CASE

3. The employer closes the case once E-Verify displays a final case result.

E-Verify Versus Form I-9 (continued)

• Employees:
  – Complete Form I-9
  – Choose and present acceptable documents

• Employers
  – Maintain I-9s on all employees
  – Use most recent I-9s
  – Complete I-9
  – No discrimination or prescreening
E-Verify Versus Form I-9 (continued)

• Employees:
  − Social Security Number on Form I-9
  − Select List B documents with photo

• Employers
  − Use info in completed Form I-9
  − Create E-verify
  − Maintain copy of photo matching document
  − Re-verify in Section 3 of I-9 ONLY

E-Verify Versus Form I-9 (continued)

Mandatory v. Optional

<table>
<thead>
<tr>
<th>E-Verify Participation/Enrollment Notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of E-Verify Participation</td>
</tr>
</tbody>
</table>
Best Employment Practices

- Use E-Verify
- Use Social Security Number Verification Service
- Hiring and employment eligibility verification policy
- Internal compliance and training program
- Personnel in charge of program
- Annual audits by external providers
- Contractors and subs use of same policies and procedures
- Anti-discrimination policies
- Report to ICE credible information of suspected misconduct
- Tip line for employees to report unauthorized workers
- Copies of documents submitted with I-9

Questions?
Immigration and E-Verify

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Guests Who Overstay Their Welcome: How to Roll Up the Welcome Mat

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How Can Guests Wear Out Their Welcome?

- Refusing or otherwise failing to pay
- Staying beyond the dates reserved
- Engaging in drunk, disorderly, or other conduct that places others at risk
- Violating the law
- Engaging in other objectionable behavior

Grounds for Refusing Accommodations to a Guest

Under Tennessee law, an innkeeper may refuse accommodations to a guest:

1. for nonpayment;
2. for public intoxication or disorderly conduct;
3. if the owner reasonably believes the guest is using the premises for an unlawful purpose; or
4. if the owner reasonably believes the guest brought something into the hotel that may be dangerous to others.

See TCA 68-14-602.
Grounds for Rolling Up the Welcome Mat

Tennessee law allows a hotel to eject a person:
1. for nonpayment;
2. for public intoxication or disorderly conduct;
3. if the owner reasonably believes the guest is using the premises for an unlawful purpose;
4. if the owner reasonably believes the guest brought something into the hotel that may be dangerous to others;
5. for violating a federal, state, or local hotel law or regulation; or
6. for violating a conspicuously posted hotel rule.

See TCA 68-14-605. Ejectment From Premises

The Holdover Guest

- Distinction between a “tenant” and a “transient guest”
- Tenant: a person who rents property with the intent to establish long term residency
- Transient guest: a person who rents property (usually for a brief period of time) who does not intend to establish residency
- Legal implications are different
Removal of Holdover Guests: Best Practices

- Conduct the removal in (1) a reasonable manner and (2) at a reasonable time
- Document the removal (in writing and/or via audio or video)
- Clearly explain to the guest – in writing and/or verbally – why s/he is being removed (cite at least one of the grounds in TCA 68-14-605)
- Send at least two employees
- Refrain from engaging in a verbal altercation, using profanity, threatening the guest, or any conduct that could create independent liability (e.g., defamation, intentional or negligent infliction of emotional distress)

The Holdover Guest: Special Circumstances

- What if the guest is very ill?
- What if the guest is homeless?
- What if the guest is a minor? Or elderly?
- What if the guest threatens physical or other harm?
- What if the guest refuses to leave?
Disposal of Holdover Guests’ Property

- TCA 62-7-108. Sale of Guests’ Baggage by Hotels
  - If a guest leaves any baggage or property at the hotel and has an unpaid bill, the hotel may, at any time 30 days after the person incurring such debt has left the hotel, sell at public auction, for cash, at the hotel office, any or all baggage or property left at the hotel necessary to satisfy the debt or obligation.
  - The sale shall be advertised by written or printed posters for at least ten days before the sale.

Disposing of the Holdover Guests’ Property: Best Practices

- Keep belongings in a safe/secure place until the 30-day period runs
- Create a written and photographic inventory of each item (pictures or video log) and condition of items prior to, and after, removal from room
- Place two or more employees in charge of creating the inventory
The Unruly/Unlawful Guest

Remember: Tennessee law allows you to eject a guest for a host of “bad” behaviors:

- public intoxication or disorderly conduct;
- if the owner reasonably believes the guest is using the premises for an unlawful purpose;
- if the owner reasonably believes the guest brought something into the hotel that may be dangerous to others;
- violating a federal, state, or local hotel law or regulation; or
- violating a conspicuously posted hotel rule.

Unlawful Activities

- Tennessee law on marijuana use
  - Marijuana growth and possession are still illegal (even for medicinal purposes)
  - Exception allows high CBD, low THC cannabis oil to be used by seizure patients
  - State legislature blocked legislation that would legalize medical cannabis and repealed city ordinances passed by Memphis and Nashville that gave officers discretion to issue a civil citation for possession of small amounts of marijuana
Unlawful Activities (continued)

• What should you do if your employees suspect or witness drug activity?
  – smell of marijuana
  – paraphernalia in room
  – large sums of cash, weapons, etc.

• General rule: Individuals have a general expectation and right to privacy in their hotel rooms, and the 4th Amendment protects them from warrantless searches and seizures.

Unlawful Activities (continued)

• Can a hotel owner or manager grant a police officer’s request to search a room?
  • Yes, IF (1) the guest consents or (2) the rental period has either expired or been lawfully terminated by the hotel for, e.g., illegal activity
  • How does a hotel “lawfully terminate” a guest’s occupancy? By taking “justifiable affirmative steps to repossess [a] room … and to assert dominion and control over it,” even if the hotel is not successful in keeping the guest out of the room. *US v. Spicer*, 549 Fed. Appx. 373, 376 (6th Cir. 2013)
The Unruly Guest

- Tennessee law grants hotels both civil and criminal rights of action against any person guilty of “turbulent or riotous conduct” within or about the hotel.
- Any person found guilty of such conduct commits a Class C misdemeanor.
- The owner or persons so offended may sue in the owner’s or offended person’s own name for the turbulent or riotous conduct.
- TCA 62-7-110. Penalty for Riotous Conduct

The Unruly Guest (continued)

- What is “turbulent” conduct?
  - Characterized by conflict, disorder, or confusion; not controlled or calm
- What is “riotous” conduct?
  - Marked by or involving public disorder
- Examples:
  - Lindsey Lohan
  - Charlie Sheen
The Animal Guest

• Know the differences between “service animals” and “comfort animals” (aka “emotional support animals”)

• Hotels are only legally required to accommodate service animals

Definition of “Service Animal” Under the ADA

Two Different Contexts:
1. Title I of the ADA, which covers private employment
2. Titles II and III of the ADA, which cover public/government employment and places of public accommodation like restaurants, hotels, retail establishments, and public areas of commercial facilities

Definition of “Service Animal” under Titles II and III of the ADA: dogs that are individually trained to do work or perform tasks for people with disabilities
“Service Animals” Can Be Dogs or . . .

...Wait for it!

Current ADA regulations have a provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities.

Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.

Entities covered by the ADA must modify their policies to permit miniature horses where reasonable.
“Service Animals” Can Be Dogs or Miniature Horses (continued)

The ADA regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility:

1. whether the miniature horse is housebroken;
2. whether the miniature horse is under the owner’s control;
3. whether the facility can accommodate the miniature horse’s type, size, and weight; and
4. whether the miniature horse’s presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

“Service Animals” versus “Comfort Animals”

- Dogs and miniature horses whose sole function is to provide comfort or emotional support do not qualify as service animals under Titles II and III of the ADA.
What Questions Can Hotels Ask People with Service Animals Under Titles II and III of the ADA?

When it is not obvious what service an animal provides, only limited inquiries are allowed.
Two questions are permitted:
1. Is the service animal required because of a disability?
2. What work or task has it been trained to perform?
They cannot ask about the person’s disability, require medical documentation, require a special identification card or training documentation for the animal, or ask that the animal demonstrate its ability to perform the work or task.

Animal Guests and Tennessee Law

- No proprietor of any inn or hotel shall refuse to permit a blind, physically disabled or deaf or hard of hearing person to enter the place or to make use of the accommodations provided when the accommodations are available, for the reason that the blind, physically disabled or deaf or hard of hearing person is being led or accompanied by a dog guide.
- A dog guide shall be under the control of its handler.
- A place of public accommodation shall not require documentation, such as proof that the animal has been certified, trained or licensed as a dog guide.
- See TCA 62-7-112. Dog Guide to be Admitted–Penalties
QUESTIONS?

Guests Who Overstay Their Welcome:
How to Roll Up the Welcome Mat

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Nashville, TN
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Thank You

Eighth Annual Tennessee Hospitality and Tourism Law Symposium

July 11, 2019
Industry Overview
Memphis, Gatlinburg, Nashville and the NFL Draft

Elizabeth Winkle, Chief Strategy Officer
Kelsey Fenerty, Research Analyst

ewinkle@str.com, kfenerty@str.com
@STR_Data

Agenda
Total U.S. and TN Performance
Memphis and Gatlinburg Performance & Pipeline
Nashville Performance & Pipeline
NFL Draft and Short-Term Rental Supply
Q&A
### Total US: the low/slow growth story continues

<table>
<thead>
<tr>
<th>Metric</th>
<th>% Change</th>
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<tbody>
<tr>
<td>Room Supply</td>
<td>2.0%</td>
</tr>
<tr>
<td>Room Demand</td>
<td>2.5%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>64.4%</td>
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<tr>
<td>ADR</td>
<td>$130</td>
</tr>
<tr>
<td>RevPAR</td>
<td>$84</td>
</tr>
</tbody>
</table>

**% Change**

Total US, YTD May 2019

### Tennessee growth stronger than US

<table>
<thead>
<tr>
<th>Metric</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Room Supply</td>
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</tr>
<tr>
<td>Room Demand</td>
<td>6.4%</td>
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<tr>
<td>Occupancy</td>
<td>62.7%</td>
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<td>ADR</td>
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</tr>
<tr>
<td>RevPAR</td>
<td>$73</td>
</tr>
</tbody>
</table>

**% Change**

Tennessee, YTD May 2019

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Memphis Market

Demand growth driving RevPAR growth

<table>
<thead>
<tr>
<th>Metric</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Room Supply</td>
<td>2.2%</td>
</tr>
<tr>
<td>Room Demand</td>
<td>6.9%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>65.8%</td>
</tr>
<tr>
<td>ADR</td>
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</tr>
<tr>
<td>RevPAR</td>
<td>$64</td>
</tr>
</tbody>
</table>

Memphis Market, YTD May 2019
Class RevPAR Results: A poor showing for four of five classes in Memphis

Memphis Market RevPAR % Change, by Class, YTD May 2019

<table>
<thead>
<tr>
<th>Class</th>
<th>Upper Upscale</th>
<th>Upscale</th>
<th>Upper Midscale</th>
<th>Midscale</th>
<th>Economy</th>
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</thead>
<tbody>
<tr>
<td>% Change</td>
<td>-3.9</td>
<td>-2.5</td>
<td>0.2</td>
<td>-7.3</td>
<td>17.7</td>
</tr>
</tbody>
</table>

Memphis Pipeline In Construction:

- 9 Hotels
- 919 rooms
- 3.8% Growth
Hotels enjoy higher occupancy than Airbnbs

Memphis market occupancy, 6/2017-5/2019
Source: AirDNA, STR

Hotel rates in line with smaller Airbnb rates

Memphis market ADR, 6/2017-5/2019
Source: AirDNA, STR
Hotel rate growth isn’t great but still better than Airbnb

Memphis market ADR growth, 6/2018-5/2019
Source: AirDNA, STR

Gatlinburg/Pigeon Forge Submarket

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Occupancy, ADR see healthy YOY gains

% Change

Room Supply 2.1%
Room Demand 5.8%
Occupancy 52.1% 3.7%
ADR $107 3.4%
RevPAR $56 7.2%

Gatlinburg/Pigeon Forge Submarket, YTD May 2019

Class RevPAR Results: Strong performance across the board for Gatlinburg

Gatlinburg/Pigeon Forge Submarket RevPAR % Change, by Class, YTD May 2019
Gatlinburg Pipeline:

- **9 Hotels**
- **1,090 rooms**
- **~6.2% Growth**
- **0 rooms in construction**

**Hotel occupancy more volatile than Airbnb occupancy (but barely)**

Gatlinburg submarket occupancy, 6/2017-5/2019
Source: AirDNA, STR
Hotel rates lower than Airbnb rates

ADR ($)


- Airbnb - Entire Place
- Airbnb - Hotel Comparable
- Hotel

Gatlinburg submarket ADR, 6/2017-5/2019
Source: AirDNA, STR

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ADR growth decelerating for Airbnbs and hotels

ADR Growth (%)


- Airbnb - Entire Place
- Airbnb - Hotel Comparable
- Hotel

Gatlinburg submarket ADR growth, 6/2018-5/2019
Source: AirDNA, STR

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<table>
<thead>
<tr>
<th>Metric</th>
<th>% Change</th>
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<tbody>
<tr>
<td>Room Supply</td>
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<tr>
<td>Room Demand</td>
<td>9.4%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>72.2%</td>
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<tr>
<td>ADR</td>
<td>$149</td>
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<tr>
<td>RevPAR</td>
<td>$108</td>
</tr>
</tbody>
</table>

RevPAR growth driven by rate growth

Nashville MSA, YTD May 2019
Class RevPAR Results: supply growth takes its toll

Luxury: 12.9
Upper Upscale: -0.8
Upscale: 0.8
Upper Midscale: 1.0
Midscale: 5.2
Economy: 15.0

Nashville MSA RevPAR % Change, by Class, YTD May 2019

Selling 8 out of 10 rooms on the weekend

Sun: 58.1%
Mon: 70.3%
Tue: 76.0%
Wed: 75.3%
Thu: 74.0%
Fri: 78.9%
Sat: 80.1%

Nashville MSA occupancy, 12 months ending May 2019
Very healthy room rates on the weekend

Nashville MSA ADR, 12 months ending May 2019

Compression nights are becoming more rare...

Nashville MSA compression nights, 2015-2019
Nashville Hotel Pipeline

Nashville MSA Pipeline
In Construction:

32 Hotels

4,942 rooms

10.6% Growth
Limited serviced construction is the name of the game

![Bar chart showing percentage of limited serviced construction in different hotel categories.]

Nashville MSA, rooms in construction, May 2019

Who Will Clean All Those Rooms?
Nashville unemployment rate lower than TN, total US

...but civilian labor force is growing faster!
Nashville demand surges during draft weekend

<table>
<thead>
<tr>
<th>Metric</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Room Supply</td>
<td>7.2%</td>
</tr>
<tr>
<td>Room Demand</td>
<td>14.1%</td>
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<tr>
<td>Occupancy</td>
<td>88%</td>
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<tr>
<td>ADR</td>
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<tr>
<td>RevPAR</td>
<td>$172</td>
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</table>

Nashville MSA, Draft weekend (April 25-April 27 2019)
Nashville draft weekend leaps and bounds above other cities

Nashville MSA, Dallas MSA, Philadelphia MSA on respective Draft weekend (Thursday-Saturday)

High supply growth the norm for Airbnbs

Supply Growth, 6/2018-5/2019
Source: AirDNA, STR MSA
Draft weekend supply growth high but not significantly (for Airbnb)

Daily Supply
Thu Apr 26 to Sat Apr 28, 2018 vs. Thu Apr 25 to Sat Apr 27, 2019
Source: AirDNA, STR MSA

Larger Airbnbs more popular Friday, Saturday

Occupancy, Thu Apr 25 to Sat Apr 27, 2019
Source: AirDNA, STR MSA
The bachelorettes send their regards...

Year-over-year Occupancy growth
Source: AirDNA, STR MSA

Occupancy Growth (%)

4/25/2019
21.2
16.0

4/27/2019
7.6
-0.1

4/26/2019
6.1 5.8 7.6

4/25/2019
4/26/2019
4/27/2019

Occupancy Growth, Thu Apr 25 to Sat Apr 27, 2019
Source: AirDNA, STR MSA

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Hotel rate lags behind Airbnb rate

<table>
<thead>
<tr>
<th>Date</th>
<th>ADR ($)</th>
<th>Airbnb Entire Place</th>
<th>Airbnb Hotel Comparable</th>
<th>Hotel</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/25/2019</td>
<td>$349</td>
<td>$236</td>
<td>$189</td>
<td>$236</td>
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<tr>
<td>4/26/2019</td>
<td>$464</td>
<td>$276</td>
<td>$201</td>
<td>$276</td>
</tr>
<tr>
<td>4/27/2019</td>
<td>$462</td>
<td>$272</td>
<td>$197</td>
<td>$272</td>
</tr>
</tbody>
</table>

ADR, Thu Apr 25 to Sat Apr 27, 2019
Source: AirDNA, STR MSA

Hotel rate growth softer likely due to group demand

<table>
<thead>
<tr>
<th>Date</th>
<th>Occupancy Growth (%)</th>
<th>Airbnb Entire Place</th>
<th>Airbnb Hotel Comparable</th>
<th>Hotel</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/25/2019</td>
<td>23.6</td>
<td>27.1</td>
<td>20.1</td>
<td>20.1</td>
</tr>
<tr>
<td>4/26/2019</td>
<td>20.7</td>
<td>20.8</td>
<td>17.5</td>
<td>17.5</td>
</tr>
<tr>
<td>4/27/2019</td>
<td>18.2</td>
<td>18.9</td>
<td>18.5</td>
<td>18.5</td>
</tr>
</tbody>
</table>

Year-over-year Occupancy growth, Thu Apr 25 to Sat Apr 27, 2019
Source: AirDNA, STR MSA
Nashville Short-Term Rental Pilot

Short-term rental occupancy lower than hotels

Nashville Market, May 2019 YTD Occupancy

*The data shown in this slide is based on a sample of participants in the pilot program and may not reflect the entire market.
Hotel-comparable short-term rentals closest in rate to Upscale hotels

Nashville Market, May 2019 YTD ADR

*The data shown in this slide is based on a sample of participants in the pilot program and may not reflect the entire market.

Short-term rental average length of stay (ALOS) decreasing

*The data shown in this slide is based on a sample of participants in the pilot program and may not reflect the entire market.
Questions?

Thank You!

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Presenter Title

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kfenerty@str.com

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LinkedIn