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MEMORANDUM

FROM: Kane Kessler, P.C.
[Labor and Employment Practice Group](#)

DATE: March 26, 2008

RE: Banquet Service Charge and Section 196-d Labor Law

By Memorandum dated February 19, 2008, we apprised clients of the decision of the New York State Court of Appeals in Samiento v. World Yacht, Inc., which held that Section 196-d of New York State's Labor law requires the full distribution of the banquet service charge to service staff where it is shown that the employer represented or allowed its customers to believe that the charges were, in fact, gratuities for the service staff. In World Yacht, the plaintiffs alleged, *inter alia*, that the customers were misled because inquiring customers were told that World Yacht's 20% service charge is given to the wait staff as the gratuity.

Even though there may not be an evidence of misrepresentation to your customers, we believe that it is advisable that you take steps to conform your banquet contract and other related materials to clearly set forth the distribution of the service charges. We understand that the New York State Department of Labor, Wage-Hour Division, is preparing interpretive guidelines which may include suggested banquet contract language.

Our suggestions to conform your banquet contract and other materials, are as follows:

Example 1: We charge a 20% service charge of which 15% is distributed to servers, bussers and, where applicable, bartenders and captains assigned to your event and the remainder to other personnel involved in your event.

Example 2: We charge a mandatory 15% gratuity, all of which is distributed to the servers, bussers and, where applicable, bartenders and captains assigned to your event, and a 5% administrative fee which is retained by us.

Example 3: 15% of the Food and Beverage Total will be added to your account as a gratuity and is fully distributed to servers, bussers and, where applicable, bartenders and captains assigned to your event. 5% of the Food and Beverage Total will be added to

your account as a Service Charge. This Service Charge is not a gratuity and is our property, to cover discretionary costs of your event.

If you choose to make these changes to your banquet contract and related materials, it is also imperative that you accurately state the tax treatment of the above items. We understand that gratuities are not subject to sales tax, that service charges and administrative fees are subject to sales tax and that room rental is subject to sales and occupancy tax; however, you are encouraged to consult with your tax counsel or controller.

If you have any questions, please do not hesitate to contact [David R. Rothfeld](#), [Judith A. Stoll](#), [Robert L. Sacks](#), [Lois M. Traub](#), [Alexander Soric](#), [Michael C. Lydak](#) or [Jaclyn Ruocco](#).

*This memo is provided for informational purposes only.
It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances*