

JUST CONFIRMED!

James will be a featured speaker at the
2019 International Restaurant & Foodservice Show

Sunday, March 3, 2019

11:45am to 12:45pm

Jacob K. Javits Convention Center

655 West 34th Street, New York, NY

***"Implications of Refusing to Serve a Guest
Legal Principles vs. Foundations of Hospitality"***

See a Q&A article with James previewing this below ...



Fall 2018

Legal Trends E-Update

"Can My business Refuse to Serve a Guest?"

Q&A with Hospitality Attorney and Counselor-at-Law, James Henry Dunne, Esq.

In June 2018, two nationally prominent events had a direct impact on hospitality operators across the United States: The Supreme Court decision regarding a Colorado bakery, Masterpiece Cakeshop, declining to create a cake for a same-sex couple due to the baker's religious faith, and White House press secretary Sarah Huckabee Sanders being asked to leave The Red Hen, a restaurant in Lexington, Va., because co-owner Stephanie Wilkinson said she disagreed with the current policies Ms. Sanders defends. James Henry Dunne, Esq., provides a neutral analysis, which avoids the politics of the matter, and instead analyzes settled legal precedent, and best-practices of successful hospitality organizations, to provide an objective perspective and organizational strategy.

Was Stephanie Wilkinson within her legal rights to ask Sarah Huckabee Sanders to leave the restaurant?

To the best of my knowledge, no federal laws prohibit discrimination based on political affiliation in places of public accommodation. Some states have laws that provide such protections. Pursuant to the

laws in the state of Virginia, it appears that the restaurant owner was within their rights to do so. However, in other places, including New York, this would not have been within the restaurant owner's rights. New York has statutes that prohibit discrimination based on political (or social) affiliation of consumers. As for the Commonwealth of Virginia, its laws appear to prohibit discrimination in employment on the basis of political affiliation; for example, to which political party an individual might belong. It does not appear, however, to have anything that applies to consumers.

Are there specific instances when a business owner can always refuse service to a customer?

You may refuse service for a number of reasons as long it is done fairly in a "bias-neutral" manner. Some common examples:

- ✓ Guest not properly dressed (unless dress code has the intent or impact of discriminating against a protected group, like preventing certain religious clothing)
- ✓ Guest is visibly intoxicated
- ✓ Guest is harassing other guests or employees
- ✓ Establishment is fully occupied
- ✓ Non-paying guests (no ability to pay for goods or services)
- ✓ Inadequate hygiene
- ✓ Serving guest would interfere with the safety and well-being of other guests.

A business might try to argue that Ms. Huckabee Sanders' presence might have incited violence, but that clearly was not what the restaurant gave as its reason in its written statement.

A place of public accommodation may take reasonable actions to prevent a hostile environment. That said, while a place of public accommodation in certain states may or may not refuse service based on political affiliation, it may choose not to serve a guest if they reasonably believe that the guest is hostile toward other patrons based on race, religion, sex, or other protected characteristics. In this case, the guest gave no reason for the owner to reasonably feel that way.

When refusing to serve individuals with a particular affiliation, the business policy must be neutral. Thus, it can be argued that if Ms. Huckabee Sanders was in the restaurant with a sign supporting President Trump (or anything/anyone else, for that matter), the business could have asked her to leave, since it might deter others from walking in the restaurant, ultimately inhibiting the business' profitability. Any bias-neutral and reasonable attempt at preventing this would be considered a "legitimate business interest" as long as that person is not being denied because of a particular protected class or group affiliation.

How is this different from the June 2018 Supreme Court decision where the Colorado bakery was found to have the legal right to refuse to bake a cake for a same-sex couple?

In this case, the Supreme Court ruled 7 to 2 in favor of the Masterpiece Cakeshop having the right to refuse to make a custom-designed cake for the same-sex couple. Why? The Court weighed the baker's religious faith, which was the baker's reason for declining to bake the custom artistically designed caked for a wedding. The baker had explained to the couple that he would be glad to serve or sell them anything that was pre-made in his shop that they might wish to purchase, including pre-made cakes, but, since his faith did not condone same-sex marriage, he reserved the right not to have be forced to bake them a custom designed cake utilizing his artistic creativity and skills. The Court ruled that this violated the Free Exercise Clause of the 1st Amendment of the Constitution and must therefore be set aside.

From a hospitality perspective, was it a good idea to ask Huckabee Sanders to leave the restaurant?

I feel that this was unprofessional and inappropriate. If this were acceptable, where would the line then be drawn? What if you just don't like the individual (what if it was your ex-boyfriend or ex-girlfriends new lover that you despise)? Would it just be up to an owner to decide on whether or not to serve a guest? What about the manager? Supervisor? Would each and every employee then be able to assess whether or not they want to serve a guest? Would it go beyond politics to other values and beliefs? What about other industries? What about colleges, for example? Would it be appropriate to screen college applicants based on political, social, or other values or beliefs? What about diversity of thought? Was it right to pass this judgment onto Ms. Huckabee Sanders' family (including young minor children) that were with her?

What impact might this have on the restaurant's business? Was this actually a savvy business decision to raise its popularity among certain constituents?

This restaurant may see a short-term spike in diners who have similar beliefs, but in the long run, history has shown it will mostly have an adverse impact (those Yelp and Google ratings never do go away, and as time passes, people will only see those ratings and not remember this situation). Restaurants, hotels, and other hospitality sectors welcome guests from around the world every day. Many come from places and countries with human rights records and political leanings that are far from the values of this country. Does this mean that we decline reservations from these guests? Or ask whether they align with those beliefs before we check them in? Can a vegan waiter, sincerely against animal cruelty, refuse to serve you a burger because of his or her values and beliefs? If that is the case, the waiter should find another industry to work in!

For a business owner, where is the line between how you run your business and moral convictions?

I feel that hospitality is universal. It should be provided in an unbiased manner. Many say, “the customer is always right.” I do not necessarily agree, but I do strongly believe you have to *treat them* as if they are always right. The Ritz Carlton motto is something I always fall back on: “We are ladies and gentlemen serving ladies and gentlemen.” Ms. Huckabee Sanders did nothing in that restaurant to incite this. Whether I align with her politically or not, she deserved a meal served hospitably to her and her family. Whether you are a Hollywood actor, sports celebrity, business owner, or anyone else, I strongly feel that inserting yourself into political discussion can only adversely impact your profitability and long-term success. Restaurants are places to ‘get away’ from your troubles, not places for them to be re-ignited. As a business operator, you should rise above it. In the fall of 2016, if you walked into a restaurant with a Sanders shirt, Johnson shirt, Stein shirt, Clinton shirt, or Trump shirt, you should have been given service by management and staff with a smile.

What do you do if you’re a co-owner and you don’t agree with your partner’s actions?

As an attorney, if I had drawn up their partnership agreement, I would have included a ‘morals clause’ that would have addressed matters such as this (the clause includes a stipulation that a partner cannot bring the business or partners into disrepute, contempt, or scandal), providing the other partners the legal foundation to remove this particular partner in violation of the agreement.

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James Henry Dunne, Esq. is available to provide a comprehensive risk assessment and review of your organization to ensure legal compliance across a broad spectrum of areas, from the NYS Hospitality Industry Wage Order / payroll review, to the new NYS mandatory sexual harassment training requirements, responsible alcohol service, employee manual drafting, event / catering contracts, partnership agreements, and much more.



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