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Real Estate and Labor & Employment Update

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New York City Council Passes New York Safe Hotels Act Imposing New Requirements and Restrictions on Hotel Owners and Operators

On November 4, 2024, Mayor Eric Adams signed into law the Safe Hotels Act (SHA), Int. No. 991-C, which regulates hotel operations through mandatory licensing, staffing, safety, and worker protection requirements.

The SHA mandates that all hotels operating in New York City obtain a license from the Department of Consumer Protection (DCWP), which may exercise broad discretion in determining license-application criteria and rendering decisions on license applications. The SHA also generally prohibits hotels with more than 100 employees from using subcontractors to fill housekeeping, front desk, or front service roles, instead requiring hotels to “directly employ” such “core employees,” with the notable exception of certain hotel operators as described below. In addition, the SHA permits hotel operators to continue existing third-party employment relationships based on the terms of existing contracting arrangements. Hotel operators, and by extension hotel owners and lenders who hold a security interest in hotels as collateral, should make efforts to ensure compliance with the SHA and to prepare for its financial and operational implications.

Licensing and Application

The SHA makes it unlawful for hotel operators to operate a hotel in New York City without a license. Licenses are valid for two years and must be obtained from the DCWP commissioner at a cost of \$350.

The provisions governing the issuance and renewal of licenses do not contain any explicit criteria. The law simply mandates hotel operators to furnish sufficient information “as the commissioner shall require” to show the operator has “adequate procedures and safeguards to ensure compliance” with the SHA, including its staffing, employment, and guest-room cleanliness standards as set forth in more detail below. Despite this ambiguity, the SHA does not on its face require the commissioner to issue standards for such compliance.

The law largely defers to the terms of existing or future collective bargaining agreements between hotel operators and unionized employees. Rather than being required to document the sufficiency of their compliance procedures and safeguards for the commissioner, such operators subject to a collective bargaining agreement need show only that they have signed a collective bargaining agreement and that it “expressly incorporates the [SHA’s] requirements.” Doing so would yield a license that lasts for the longer of 10 years and the duration of the collective bargaining agreement.

Transfers of Ownership

The SHA also prohibits the transfer (assignment) of hotel licenses except those that comply with a separate law, section 22-510, which was enacted in 2020 and imposes employee-retention requirements on hotels that change hands.

Further, the commissioner may revoke a license from a hotel operator provided the licensee was notified of the anticipated revocation and given 30 days to correct the condition that warranted the revocation. The SHA does not set forth the conditions that would permit revocation of such license.

Direct-Employment Requirements and Exceptions for Pre-Existing Contracts

The SHA generally requires that hotels with more than 100 guest rooms “directly employ” all “core employees,” defined as employees “whose job classification is related to housekeeping, front desk, or front service at a hotel.” Such employees include, but are not limited to, room attendants, house persons, and bell or door staff. The definition of “core employees” excludes laundry employees, valet employees, concierge, reservation agents, telephone operators, engineering and maintenance employees, specialty cleaning employees, parking employees, security employees, lifeguards, spa, gym, and health club employees, minibar employees, audio-visual employees, cooks, stewards, bartenders, servers, bussers, barbacks, room service attendants, and other employees primarily working in food and beverage service operations. The SHA thus prohibits using staffing agencies or other contractors or subcontractors to fill core-employee roles, with a notable exception: hotel owners may retain “a *single* hotel operator to manage *all* hotel operations involving core employees.” These provisions will thus significantly impact how, going forward, hotel owners will be able to staff “core employee” positions, as

defined by the SHA, particularly for hotels with business models that traditionally leverage several subcontractors for direct employment of their “core employees.”

In addition, the SHA creates an important temporary exemption from its direct-employment requirements for certain pre-existing agreements. Specifically, the law makes clear that its direct-employment requirements are not applicable to hotel owners or operators and contractors that have entered into an enforceable agreement before the SHA’s “effective date” of May 3, 2025, so long as the agreement terminates “on a date certain.” The direct-employment requirements do not go into effect for contracting agreements entered into before the SHA’s effective date (a) until 30 days after the agreement’s termination date for those agreements that terminate “on a date certain,” and (b) until December 1, 2026, for those agreements without a definite termination date. For agreements entered into on or after the SHA’s effective date, the direct-employment requirements do not go into effect until 180 days after the SHA’s effective date, on October 30, 2025.

Safety Requirements

The SHA mandates safety and cleanliness standards such as 24/7 front desk coverage, security when rooms are occupied, regular linen changes, daily room cleaning, a prohibition on bookings under four hours (except at airport hotels), and a prohibition “against facilitating human trafficking.” It also requires human trafficking training and free panic buttons for core employees. To safeguard employees, the SHA also includes an anti-retaliation measure to prevent retaliation against hotel staff who report alleged violations or unsafe practices.

Hotels should note that, effective *immediately* (as of November 4, 2024), the SHA prohibits hotel owners or operators from entering into an agreement that violates the SHA’s front desk staffing requirements. This section of the law is repealed once the rest of the law goes into effect on May 3, 2025.

Penalties for Non-Compliance

Violations of the SHA’s provisions carry escalating civil penalties, beginning with \$500 for the first violation, \$1,000 for the second violation issued for the same offense within a two-year period, \$2,500 for the third violation issued for the same offense within a two-year period, and \$5,000 for the fourth and all subsequent violations issued for the same offense within a two-year period.

Consideration for Lenders and Owners

- a. Underwriting: As noted above, the SHA’s licensing requirement affords the DCPW commissioner wide discretion in issuing licenses. Its more lax application process for operators with collective bargaining agreements favors such operators over those without such agreements, creating market incentives that will impact the balance of power in negotiations between labor and hotel owners, and among owners with such agreements and those without them. Hotels that choose to enter into collective bargaining agreements will see an increase in labor costs and other associated costs. Additionally, the SHA’s direct-employment requirement substantially limits the work that hotels may

delegate to subcontractors and staffing agencies, potentially increasing labor costs for hotel operators. These increased costs should be considered when underwriting the purchase of a hotel or the origination or purchase of a loan for which a hotel is collateral.

- b. Preexisting subcontracts: Hotel owners and lenders should consider how best to leverage subcontracts or contracts that already exist or that may be executed before the SHA's effective date of May 3, 2025.

As noted above, hotel owners have a window of time before the SHA's effective date, during which time they can arrange their business operations to ensure compliance. Certain changes may require capital improvements or installation of new equipment. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update.

The full text of the bill may be found at the link below.

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The following Gibson Dunn lawyers prepared this update: Andrew Lance, Anne Champion, Harris Mufson, Jonathan Soleimani, Nicole Jibrine, and Shlomo Rubinfeld.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more, please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's Real Estate or Labor & Employment practice groups, or the following authors in New York:

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