

“Tradition” is Still a Problem for The Hospitality Industry

Roger Gerard, Hospitality Management, Shasta College

During my career as a server and dining room manager in hotels, I have admittedly worked in “all-male” service staff establishments. There was and still is a perception that men provide better service in formal dining than women. Similarly, a stereotype continues to exist that women should be working in fast-paced coffee shops. When I was a manager, guests made requests that a man, not a woman, be their server for the evening. For some reason, women are usually cocktail servers in bars and lounges, sometimes wearing uniforms that market more than the drinks they serve. Nation’ Restaurant News (NRN) recently resurrected this “ongoing” topic in their November 16, 2009 article “[Gender-based hiring invites scrutiny](#)” stating:

“According to EEOC’s preliminary statistics for fiscal 2009, there were 21 discrimination lawsuits filed against restaurant companies for hiring practices based on gender, nine of which were filed by men and 12 by women. Across all industries, there were 5,447 such cases filed in 2009.”

The U.S. Equal Employment Commission (EEOC) investigates and enforces complaints made by applicants and employees regarding discrimination practices in hiring and the workplace. Considering that the Hospitality Industry is one of the United State’s largest employers, 21 out of 5,447 does not look too bad. However, NRN mentions a list of California restaurant and hotel employers that have been found not to be following the law over the years to present. Some names include The Tam O’Shanter Inn Los Angeles, Lawry’s Prime Rib Los Angeles, The Palm Los Angeles, Hooters of America, Inc and Le Parker Meridien Hotel, Palm Springs.

The real problem stems from many Hospitality employers relying on traditional and historical practices of hiring instead of carefully researching what is a “Bona Fide Occupational Qualification” (BFOQ) for an existing position. Legally, any employer should hire the best-qualified person for the job. To hire a person based on gender, there would have to exist a BFOQ defining its exclusivity. A specific example, may be hiring a female attendant for a women’s locker room at a country club. In this case, the employer is able to legally “discriminate” by specifically opening this position exclusively to women.

Section 703 of the Title VII of the Civil Rights Act of 1964 states regarding BFOQ:

“It shall not be an unlawful employment practice for an employer to hire and employ employees ... on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.” (http://www.law.cornell.edu/uscode/42/usc_sec_42_00002000---e002-.html)

Try thinking about positions that may require male employees and not female or vice versa. It is difficult to even come up with a short list. Most employers do not realize that

there are three criteria that may make a position a BFOQ. In terms of gender discrimination, the employer must prove that the BFOQ is reasonably necessary for the business in terms of privacy, safety, and authenticity

(<http://www.thefreelibrary.com/The+BFOQ+defense:+Title+VII's+concession+to+gender+discrimination.-a0194701439>)

The privacy defense would be applicable in the case I mentioned with the women's locker room. A person of the same sex is protecting the privacy of a third party. In terms of safety, there have been cases in the airlines industry where not hiring a pregnant woman was upheld due to the applicant not being able to effectively perform emergency procedures on an aircraft. Authenticity would apply if a restaurant were hiring actors and actresses that had distinct roles as servers, and perhaps had to wear period costumes.

Reasons that are sometimes used by hospitality employers as a BFOQ that are not defensible are the following examples:

- Stereotyping- the employee manual states that all restaurant applicants need to be able to lift at least 30 pounds in the kitchen areas. Your mistake would be to assume that all women couldn't lift 30 pounds.
- Customer Preference- a restaurant hires only male servers because "all" of the clientele wants to be served by men. The EEOC would find this difficult to believe.
- Selling Sex Appeal- a restaurant that would require women only servers to wear short skirts and revealing blouses. If the primary focus of the restaurant were selling food and beverage and not sexual entertainment, the hiring women only policy would not hold.

On a final note, if you currently own, manage or eventually plan on opening a hospitality business, I would recommend reviewing the legalities associated with gender discrimination and hiring. Some useful websites associated with this topic are listed below.

http://blogs.findlaw.com/free_enterprise/2009/04/can-men-be-hooters-girls-when-can-businesses-hire-only-women.html

http://findarticles.com/p/articles/mi_qa5452/is_200601/ai_n21407078/

http://www.bankersonline.com/operations/gp_appearance.html