by Jaclyn L. West

Alternative dispute resolution saves hoteliers time, money, and frustration

What is alternative dispute resolution? More importantly, why should hoteliers care about and make use of alternative dispute resolution?

At its most basic, alternative dispute resolution is exactly what it seems: a way to resolve disputes without recourse to the courts. Alternative dispute resolution, or "ADR," is generally less expensive, faster and simpler than traditional litigation, and in the fast-paced hotel world it can often be the best option for solving a problem in a fair but convenient forum.

Hoteliers engage in ADR every day, often without thinking about it. When a front desk attendant suggests a creative solution to a guest's complaint, he is engaging in a form of *negotiation*. When a supervisor resolves a situation between two members of the housekeeping staff, she is engaging in a form of *mediation*. Without giving it much thought or possibly even realizing it at all, hoteliers utilize a variety of ADR skills to respond to situations with guests, vendors, and hotel staff on a daily basis.

Informal problem-solving may work much of the time, but what happens when a dispute is too contentious for an open-door policy and some creative thinking to resolve it? Hoteliers facing claims of employment discrimination or other workplace issues, for instance, may turn to an ever-growing field of talented ADR professionals to assist them.

Mediation

Trained mediators are available to assist hotels in resolving such claims by acting as neutrals. In mediation, both parties to a dispute come together to discuss their situation with a neutral third party, who allows the parties an opportunity to describe a disagreement from their own perspectives and then facilitates a conversation about how the parties can remedy the issue, whatever it may be. As a neutral, a professional mediator will not take sides and will not impose a resolution on the parties but, instead, will work with both parties to reach a mutually agreeable solution.

Trained mediators charge fees, which can rise to several hundred dollars per hour in major cities, but parties often consider the fees to be a bargain compared to the costs of litigating a case in court or responding to a claim before the Equal Employment Opportunity Commission or other federal, state or local agency. Still, hoteliers who find themselves facing an employment discrimination charge need not despair; many agencies make mediation available at the parties' option, and some even require mediation before a charge or claim is investigated.

Many courts are also beginning to recognize the value of ADR, and some now require that parties attend mediation before a lawsuit can proceed to trial. Even many federal appeals courts have instituted mediation programs in response to the growing acceptance of mediation as a fair, cost-effective way to resolve contentious disputes. Thus, hoteliers who wish to pursue the cost-effective strategy of mediating employment disputes, even after a charge or suit is filed, will often have that opportunity.

Arbitration

More formal than mediation, but less formal than litigation, arbitration provides parties the opportunity to present a "case" before a neutral arbitrator, who will then render a decision to resolve the situation. The arbitrator acts much like a judge, but generally will not hold the parties to the same standards of procedure and stringent evidentiary rules as they would face in a traditional courtroom.

Many hoteliers will be familiar with arbitration already, as grievance arbitration procedures are a fundamental element of the collective bargaining agreements that hoteliers negotiate with their staff members' unions. In a heavily unionized industry such as the hospitality industry, grievance arbitrations are "old hat" for many. However, as arbitration becomes better known and as courts and lawmakers begin to accept arbitration as a convenient, cost-effective method of achieving a fair result in all manner of disputes, hoteliers will be able to make better and better use of arbitration in situations that extend beyond the traditional union-management relationship.

Employment discrimination claims are a particularly fertile area for arbitration. Workplace issues, which often involve smaller sums of money than large commercial disputes, can nonetheless create disruptions and inconvenience for managers and employees alike. For an industry such as the hotel industry, which requires prompt and thoughtful service to guests, arbitration of employment disputes can provide an avenue to resolve distracting workplace disputes in a convenient and cost-effective manner, thus allowing the staff members and managers involved to return to the important business of providing world-class hospitality to guests. Utilizing arbitration rather than engaging in the costly, contentious, and inconvenient process of litigating a case gives individuals the opportunity to have their "day in court" while saving time and money. Many hoteliers see arbitration as a win-win solution, and for good reason.

However, the law has not always supported the use of arbitration to resolve employment discrimination disputes. As the use of arbitration became prevalent in many types of situations, judges and legislators alike expressed concern as to arbitration's ability to provide the same equitable results as traditional litigation. Subsequently, the Supreme Court addressed those concerns and expressed confidence in arbitration when, in *Gilmer v. Interstate/Johnson Lane Corp.*, it determined that an individual employee, who had signed an employment agreement requiring arbitration of work-related disputes, could be required to arbitrate a statutory age discrimination claim with his employer. The Court explained that an employee who signed an employment agreement with an arbitration clause did not waive his statutory right to be free from employment discrimination, but merely chose arbitration as his remedy instead of traditional litigation. Earlier this year, the Supreme Court reaffirmed its approval of arbitration as a vehicle for resolving employment discrimination claims in *14 Penn Plaza LLC v. Pyett*, in which it found that arbitration clauses in union collective bargaining agreements were enforceable as well.

Hoteliers' bottom line

What does this decision mean for hoteliers? Simply put, it may allow hoteliers to utilize arbitration, often a far more cost-effective and convenient dispute resolution method than traditional litigation, when union members – as, indeed, many hotel employees are – complain of discrimination. The Supreme Court has recognized and explained that arbitration provides benefits to both employers and employees and has allowed employers, such as hotels, to bargain for the benefits that arbitration provides during union negotiations.

From the day-to-day negotiations that take place between staff, managers, vendors, and guests in a hotel to professional mediation and arbitration, alternative dispute resolution provides useful tools for resolving problems and smoothing disagreements in the often hectic hotel world. ADR will only continue to grow in prevalence as more and more employers, including hoteliers, recognize and reap the benefits provided by its convenient, cost-effective methods of solving workplace problems and preserving relationships. As hoteliers turn to mediation and arbitration to resolve disputes with non-union and unionized staff alike, hotels can only benefit from smoother operations and reduced litigation costs… and the workplace just might become a little bit more hospitable. ✧

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