

Restaurant Rebound: How Employers Can Build and Keep Top-Notch Service Teams

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Jackson Lewis P.C. Restaurant Rebound: How Employers Can Build and Keep Top-Notch Service Teams

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Takeaways

Restaurant Rebound: How Employers Can Build and Keep Top-Notch Service Teams

The restaurant industry continues its slow, but steady recovery from the impacts of COVID-19. One of the most critical issues facing employers is attracting and retaining talent in the face of increasing difficulties to do so.

What Employers Need to Know

- Turnover rates in the restaurant industry at an all-time high.
- Increased wages and other monetary incentives are one way to attract employees. Employers should ensure they are including the appropriate monetary incentives in the regular rate of pay for purposes of calculating overtime.
- Non-monetary incentives should also be considered. Examples include:
 - Creating a path to promotion, so restaurant work is viewed as a career, not just a job;
 - Reimbursing education or job-related training;
 - Establishing mentorship programs;
 - Providing management training;
 - Displaying flexibility in scheduling to accommodate school and other non-work activities; and

Hosts



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Industries

Hospitality

- Encouraging and providing unpaid, childcare, personal, educational and other leaves.
- Health and safety protocols allow employers to create a sense of community and care.
- Employers can consider offering 401K plans to encourage employees to stay for the long term.

Transcript

Alitia (00:00):

Welcome to Jackson Lewis' podcast, We get work™. Focused solely on workplace issues everywhere and under any circumstances. It is our job to help employers develop proactive strategies, strong policies, and business oriented solutions to cultivate a workforce that is engaged, stable, and diverse. Our podcast identifies the issues, dominating the workplace and its continuing evolution and helps answer the question on every employer's mind, how will my business be impacted? As the restaurant industry continues it's slow but steady recovery from the impacts of COVID-19, one of the most critical issues facing employers, one that could make or break recovery is attracting and retaining talent in the face of increasing difficulties to do so. On this episode of We get work™, we explore outside the pre-pandemic box ideas employers are piloting in an attempt to become an employer of choice in the industry and not only stay in business, but ultimately thrive.

Our host today are the co-leaders of our restaurant industry group Felice Ekelman and Amanda Simpson. A frequent and popular speaker at restaurant industry events and co-caster of multiple We get work™ episodes, Felice has defended a substantial number of major restaurant groups in wage and hour claims. And investigates claims of wrongdoing asserted by employees and customers. A native Floridian, it is hardly surprising that Amanda's first job was as a hostess for a well-known nationally recognized restaurant chain. And since then has always felt a connection to an industry that brings people together to socialize over good food and drinks. Felice and Amanda, the question on everyone's mind today is how can I creatively keep up the buzz about my restaurant, both for my customers and my employees and how will that impact my business?

Felice Ekelman (02:03):

Amanda we had scheduled this conversation to talk about how we can help our restaurant industry employers recover from the COVID pandemic and figure out how to find and retain talent. And lo and behold, this morning what came across my desk was a CNN news wire corroborating just what we've been hearing anecdotally. Which is that the rate of quits in this industry is higher than in any other industry. And that employers, according to CNN, are responding by increasing wages. And I know you and I wanted to offer some ideas to restaurant employers about what else can be done aside from simply increasing wages, which of course is effective. But for those employers whose resources are limited right now we wanted to come up with a few new ideas.

Amanda Simpson (03:12):

That's right Felice. And initially we had talked about what we were seeing with respect to the increased wages and offering bonuses. And how it makes a lot of sense that most employers' initial reaction to attracting and retaining employees is that if I just pay them more then they'll join the team and stay. So it's really not a surprise that we're seeing that as an initial gut reaction. Especially because in the background there was a lot of discussion about increasing minimum wage and companies trying to stay ahead of the curve. And also companies obviously felt like they needed to compete with unemployment compensation as we all venture through COVID-19. So the discussion in the industry does seem like initially an effective way to get people in the door is to pay them more.

In fact, I was reading another article this morning where there was one national fast food chain that's invested \$2.5 million in hiring and referral bonuses this year. So there's really no doubt that additional money can increase hiring and retention in the short term. But there were a couple of concerns that you and I had talked about. The first, which I'm sure many listeners are aware of but we always like to highlight is that if you get into a scenario where you have nondiscretionary bonuses that are being handed out to employees, I.e., money that is tied to an employee's production or performance, they must be included in the regular rate of pay for purposes of overtime. So this isn't a situation where a good deed sometimes turns into a class or collective action down the road.

And for those listening who do not know what the regular rate of pay for purposes of overtime is, is under the fair labor standards act when you have non-exempt hourly employees like servers and bartenders, they're generally entitled to time and one half the regular rate of pay for all hours worked over 40 hours in a workweek. Now, without getting into a lot of math, an employee's regular rate of pay not only includes their regular hourly pay and tip credit, but also any nondiscretionary bonuses that an employer has created an expectation of payment for which is tied to an employee's quality or quantity of work. So if for example you have restaurants that are paying attendance bonuses or quality bonuses in an effort to hire and retain talent, then they need to make sure that those amounts are included in

the overtime calculation. And this is especially true because in that article that you sent me this morning from CNN, they were talking about how it's kind of a loop that you have individuals leaving the industry, meaning the team member count is down resulting in more people working overtime.

So it's especially critical to be on the watch for that. But you and I had also discussed how it looks great in the short term, but we're interested in seeing whether those short-term bonuses and increased wages actually result in people staying longterm. Or whether they stay on for the two month bonus and then go somewhere else in the industry where they're also offering another bonus. And how there might be a culture shift in the industry to look at the industry as a career path for individuals. And Felice I know you had some ideas about non-monetary solutions in that realm.

Felice Ekelman (07:16):

Yeah. So we've been talking to a lot of employer clients in the restaurant industry about trying to establish policies and protocols that this industry didn't necessarily have in place prior to the pandemic. So first of all, there's always been a lot of recruitment in the industry. But the question about recruitment as you say is it for a job or for a career? So to keep folks in restaurants, a good step is management training, establishing a path to promotion. Providing for regular wage increases, evaluating performance, perhaps even supporting education with reimbursement for education that's related to the job. So let's talk about some of these ideas and how restaurant employers can start to use some of these protocols and techniques to build community within their organization and not only retain, but also attract people who are looking for a real future. So there is a long history of learning and working through an organization in hospitality and progressing to a management position. But not a lot of employers in the industry have spent the time and energy putting together real protocols like mentorships.

So let's talk about that. What is a mentor? A mentor is a coworker, not necessarily a supervisor. But a coworker who is more experienced, who takes a colleague under their wing and shows them the ways so to speak. So a mentor program is a great way to create community and to help people progress and be successful in their jobs. I mean one of the problems in the industry is turnover. So I talked to a lot of employers who are frustrated, who train employees only to find that they leave because the job is not what they expect or that their performance is just not as good as is necessary. So I don't think mentorship has been popular in the restaurant and hospitality industry, but I think it's something that employers should start to consider more seriously.

Amanda Simpson (09:58):

I agree Felice, because when we think about training in the hospitality industry it's normally a couple of weeks on the job and then they're sent off to do their work. But if a company wants to be serious about career paths for employees, they could think about a mentorship or buddy program where they continue to be mentored by a more senior employee once they get the basics down. And then they can also work on things like cross training to determine what other areas of the restaurant, what they actually do. And pair for example a server up with somebody in the back of the house and this not only invests the employee in the company, but like you said it gives them a sense of community. Also improves communications within the restaurant and then can act as a stepping stone to prepare them for a managerial role.

Felice Ekelman (10:56):

And as far as management training is going, I don't think it needs to be anything terribly fancy. But I think the most important thing is to put together some kind of protocol so that employees know that there is a future ahead in the organization, which will hopefully encourage them to stick around. And as you said earlier, consider restaurant work more than a job but rather a career. And so reimbursing employees for education is one item that could be advantageous to employers. There are lots of culinary and trade schools in most cities. And those schools could help many employees hone their skills and could help employers if they pay for of the costs have a higher level of hospitality. And that is something that I don't think a lot of employers in the industry look at as a benefit, but it's one which I think could really make a difference in retaining talent.

Amanda Simpson (12:14):

And if some restaurants say, "Can't pay for education." At least be flexible. Right? We know that there's a number of employees who are both working and attending school. And I think after this last year there's something to the industry being flexible. We see a lot in the news about companies offering various working arrangements like remote a hundred percent or partial remote. Well, unfortunately in the hospitality industry the majority of the jobs can't be remote. So things like flexibility when they know someone's going to school or even in scheduling can really go a long way. We have to think for example there's a number of individuals in the industry who primarily work night and weekends. And that may not be a long-term option for most. So if you give them the opportunity to work every other

weekend or every other holiday, take two days off in a row during the week, it may lead to more retention.

So I know you and I had also talked about leave policies and that's another way that companies can be flexible. I know it's going to vary jurisdiction by jurisdiction because for example Felice, you're in New York and I'm here in Florida. And I know in New York there's the state paid sick leave law, but some restaurants here in Florida for example have discussed the option of offering some sort of paid leave. Or if they have paid leave for managerial employees having it accrue earlier. However, I know you and I discussed that the industry was hit so bad that paid leave might not be an option, but at least offering unpaid leave is another great option for restaurants to show that they care about the individuals and want to form this sense of community besides when they're just on the clock.

Felice Ekelman (14:18):

You know it takes a lot of work to train employees in any industry and once restaurants trained group of team members, it's always tough to see people go after that investment. And so all of these policies with respect to flexibility in terms of scheduling and leave laws may seem in the short term to be a great inconvenience when employers are trying to get a schedule together, particularly when there are shortages. But in the long run we think that if employers have well thought out policies and are more empathetic about providing time off to employees pursuant to those policies. And particular employer will be known as an employer of choice because if every hospitality employer in a city or in a neighborhood is paying the same rate, what is going to distinguish one employer from another? I mean obviously whether employees like the workplace is going to be an important consideration and more thoughtful leave and attendance policies may in the long run go a long way towards employee retention and building a steady workforce.

So these leave policies and again, we talked about sick leave. That's one. There can be childcare leave, personal leave, educational leave. Simply providing employees with time off to take care of whatever is going on in their lives can be very helpful as a retention tool. And recognizing that the industry was hard hit financially over the past year and a half, whether these leaves are paid or unpaid is obviously going to be up to the economics. But having the policies in place I think will make a big difference. So scheduling is huge. Scheduling is a huge issue. It's an issue because some employees want more shifts, some employees want fewer shifts. It's virtually impossible to accommodate every request, even in the best of times.

And now with shortages and pressure to have staff on accommodating employees who may have limited opportunity to work is going to feel very frustrating. But that may be the difference between holding onto staff and losing staff at this point in time. So let's talk about some other benefits that may be meaningful in the hospitality industry. And we've just come from a moment where employees in all parts of the country did not feel safe at work. And so health and safety policies and protocols and emphasizing these policies is something that hospitality employers should continue to do as we go forward. Particularly because we may not be done with this pandemic and because one never knows what lies ahead. What do you think Amanda?

Amanda Simpson (17:41):

I know you had mentioned the other day that you had a New York specific client who had a really unique way of incorporating some additional health and safety benefits to its employees. Can you tell listeners what that was about?

Felice Ekelman (17:56):

Yeah. So I'm working with a restaurant group in New York that has discovered without mandating vaccines in a formal way every employee is vaccinated and will as a result mandate vaccines going forward, obviously recognizing accommodation issues. And for those of you who are not familiar with that, the EEOC, the Equal Employment Opportunity Commission has said that a vaccine mandate is not necessarily unlawful. But employers who are going in that direction and are asking all of their employees to be vaccinated must accommodate those employees who can't take a vaccine because of either a medical or religious issue. So this particular employer realized when everyone was coming back to work that everyone was vaccinated. And so they have instituted safety protocols requiring guests to be vaccinated or recently tested before coming to the restaurant, both for indoor and outdoor dining.

Now this is something that may or may not work in every part of the country, but without politicizing the situation the staff was very much in favor of this protocol and want to serve guests, want to provide hospitality, but were afraid to do so but this protocol is giving them a sense of safety. And it really has helped to create a stronger community among that workforce. Now this may not work in every location or in every venue, but I think it demonstrates just how important health and safety is to employees, particularly hospitality employees who have been front and center with the risk in some ways as much as some of our first line responders. So that is one example about how health and safety protocols can

help employers signify to their staff that they do care about their wellbeing and are willing to take steps to ensure that working is not going to create undue risk.

Amanda Simpson (20:25):

And so now we've talked about ways that restaurant employers can get people in the door and show them that they're committed to them now and dedicating to them a community and a culture that helps them grow beyond it just being a job for a couple months. But another possibility we talked about was offering a 401K to demonstrate that this really is a career that can be viewed akin to a professional. And that the hospitality employer cares about these individuals, even after they've left the restaurant. Now, I know when many employers hear 401Ks in the restaurant industry the initial reaction is that's too expensive and it's not an industry standard. And some employers will say, "Absolutely not." Like you said Felice, it might not be for everyone. But again, some companies may want to take a long view. And oftentimes the 401Ks aren't as costly as most people think.

And the fact that they aren't an industry standard is the main reason why they could give hospitality employers a leg up when it comes to hiring and retaining talent. Actually 401Ks are oftentimes cited by employees as one of the reasons they join and stay at many companies because they demonstrate we're not just throwing a quick bonus at you, but actually invested in your future beyond the company. So it's interesting because the employers in the industry are looking back and even prior to COVID-19 they were known for having one of the highest turnover rates, right? But when company pays an onboarding and training of new employees like you said it's so expensive, they could put that towards administering a 401K.

And I'm not suggesting that companies have to have a match, but by simply offering this as an option it has been shown to increase employee retention. Additionally, the company could also look into things like eligibility for tax credits and deductions. So it's something employers could consider along with many of the other options we've discussed today. And Felice, I don't know what your thoughts are but regardless of what route a hospitality employer chooses, I think it's most important during these times to be transparent and open with employees about the benefits the company offers and why they deem them important to help foster a sense of community.

Felice Ekelman (23:13):

I think that's a good point. And certainly as employers dust off their employee handbooks, as they're hiring up, they should make sure not only that their handbooks are compliant, but that they're understandable. That employees don't just sign off on a receipt, but that time has spent explaining what the benefits are so that employers can reap the benefits of the policies that they've already promulgated. So you and I are co-chairs of the restaurant industry group here at Jackson Lewis. And we'd like to speak again to our industry listeners about issues that are important.

One thing that we've written about in the last couple of weeks is the new proposed rule regarding the 80/20 test for whether an employer can pay tipped employees at the tip credit rate and for what periods of time. That proposed rule has been issued by the US department of labor. It's not finalized yet, comments are going to be received by the department of labor this summer. And then we'll probably get the final rule in the fall. And we'll be talking more about that rule in the fall, but between now and then if you would like to hear from us on another topic, please feel free to contact me or Amanda at Jackson, Lewis. And we will consider your idea for another conversation on this podcast. Thank you.

Alitia (24:50):

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