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ME TOO: NEVADA REGULATORS SHINE A SPOTLIGHT ON THE SEXUAL HARASSMENT POLICIES OF GAMING LICENSEES

by Jennifer Gaynor, Kate Lowenhar-Fisher, Greg Gemignani, Jeff Silver and Kenneth Ching

As the “Me Too” movement sweeps the nation, the topic of sexual harassment in the workplace has been put in the spotlight. And with the highly publicized situation involving casino mogul Steve Wynn, that spotlight is being focused on the gaming industry in a big way.

Nevada’s regulators were quickly inundated by reports of sexual harassment after the Wynn situation became public. In response, Gaming Control Board Chair Becky Harris issued a notice to licensees on March 1, 2018, informing them that the Board would be enacting regulations or minimum internal control standards that set out procedures and requirements regarding licensees’ sexual harassment policies. In that notice, Chair Harris noted that “Sexual harassment continues to be one of the most frequent complaints raised in the workplace” and that “it is the policy of the Nevada Gaming Control Board to protect public confidence and trust in the gaming industry” and a licensee’s “policies, procedures and training related to sexual harassment in the workplace are relevant to the Board’s ... policy goals” in this area.

On May 3, 2018, the Board held a workshop to discuss some proposed amendments to NGC Regulation 5, which would add new requirements regarding sexual harassment policies for Nevada gaming licensees. The Board circulated draft regulations, which included requirements for licensees to adopt and maintain a comprehensive written plan addressing sexual harassment prevention that should include the procedures for reporting, investigation, and potential consequences for violators of sexual harassment policies, along with a requirement for annual verification of compliance to be filed with the Board.

At the workshop, representatives from the industry voiced support for efforts to curb and prevent sexual harassment in the gaming industry, but they also voiced concerns that the proposed regulations may conflict with or duplicate existing state and federal requirements. It was suggested that regulators and the industry will need more time to fine-tune the proposed regulations and that there will be more workshops to come.

Although there are not yet revisions to Reg. 5, licensees would be well-advised to revisit their sexual harassment policies and

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procedures, with an eye on the Board's proposed amendments and with an understanding that, new regulations or not, the Board has made it clear that failure to provide and follow sufficient sexual harassment policies may be grounds for disciplinary action against licensees.

Nevada gaming licensees are also facing pressure regarding sexual harassment issues from the unions that represent large numbers of their workers. Union workers at the Board workshop on May 3 requested that the new regulations should include protections and polices regarding sexual harassment by casino patrons as well as gaming employees. This is certainly a topic of importance for members of UNITE HERE's Culinary and Bartenders Unions, whose members recently voted to authorize calling a strike if needed in the lead-up to the June 1, 2018, expiration of union contracts covering 50,000 union workers at 34 casino resorts on the Las Vegas Strip and Downtown Las Vegas.

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