Applebee's – Eatin' Good in the Neighborhood

(Unless you don't leave a tip!) – A Case Incident with Analysis

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APPLEBEE'S – EATIN' GOOD IN THE NEIGHBORHOOD

Introduction

Applebee's was founded in 1980 and as of 2013 was under the umbrella DineEquity Inc. which also included IHOP Corp and one of the largest franchisee in the world according to Applebee's 2012 Hourly Restaurant Associate Handbook (NA, 2012). With nearly 2,000 restaurants and Applebee's restaurants are a casual dining, family oriented operation which incorporates the culture of the local neighborhood in which it operates. Giving way to their slogan "Eatin' Good in the Neighborhood".

As a franchisee, Applebee's operates on a decentralized business model and each geographic area is led by a Market President. Area Directors manage the operations and functions of assigned restaurants. General Managers oversee individual restaurants and Assistant Managers oversee the day to day management. "Key employees, team leads and neighborhood experts" make up the staffing of individual restaurants. Company Accounting, Human Resources, Information Technology, Marketing, Payroll, Purchasing, Real Estate, and Training departments is made available through the company's Support Center through field representatives. (NA, 2012)

Applebee's strives to provide excellent service to every guest on a consistent basis without compromising their integrity. According to their 2012 Handbook, Applebee's pledged to their customers, employees, suppliers, communities and shareholders to provide superior service, support, respect enhancement and returns.

Case Incident - *No Tip for you!*

"I give God 10%," "Why do you get 18?" The check was for a party over 8 which triggered an automatic tip. Chelsea Welch said "I thought the note was insulting, but also comical," (STABLEFORD, 2013) Chelsea Welch, a young waitress for Applebee's posted a picture of a note left on a receipt by a customer who disagreed with the restaurant's automatic 18% tip of her colleague on her Reddit account in early January 2013.

The customer's distinguishingly recognizable handwriting was notice and it was further posted on social media to be that local Pastor Alois Bell (see Appendix A). Welch did find the note rude but also funny and thought others would find it funny as well. The post went viral on Yahoo, and when word got back to Pastor Bell she called the manager to complain.

When interviewed, Chelsea stated her intentions were not ill-willed, she just wanted to share a picture of something she found interesting. She was surprised seeing how there was nothing in the employee handbook forbidding posts to social media. When Bell was interviewed she stated she was embarrassed by her actions. (STABLEFORD, 2013) Chelsea was fired a few days after Bell complained. When word got out that Chelsea had lost her job, the matter gained more notoriety on social media and fueled backlash on the chain. The individual handling the chain's social media responded negatively and even deleted comments. (LUSSENHOP, 2013)

APPLICABLE THEORIES

Employee Rights

Right to Free Speech

The First Amendment protection of Freedom of speech includes protection of government employees. Private sector employees do have protections under the National Labor Relations Act (NLRA) in that they can discuss employment terms amongst colleagues regarding unfair and unlawful conditions in their workplace (Concerted Activity). (NAGELE-PIAZZA, 2018) If employees exercise their Right to Free Speech and in doing so their expressions harm their employer or other employees than the employer has the right to take disciplinary actions. (LUSSIER & HENDON, 2018)

Under the NLRA employers must also be mindful of employees' social media posts to ensure that any disciplinary actions do not violate the policies of the act. This then puts employers in a position to strategically and effective create social media policies and procedures that aren't perceived to be restrictive of employees' rights under the NLRA.

It should be noted there are individual state laws in which allow for employees to discuss certain topics other than labor relations which are protected which could be in disagreement to a firm's beliefs, policies, visions, missions or business objectives. Additionally, Spiggle (2018) further noted that if an employer's restrictive policy is geared to single out a specific protected class of employees, the policy could be deemed unlawful and discriminating.

Right to Due Process

The Right to Due Process is defined as ensuring employees are not disciplined without rhyme or reason. The process allows for the employee to be told what they are accused of and afforded the opportunity to present their side of the story or reasoning for their actions. (LUSSIER & HENDON, 2018) Due Process is covered under the Fourteenth Amendment of the constitution and notes employees have the right to defend themselves prior to disciplinary actions are taken by their employer. (FALCONE, 2017) Falcone (2107) further explained there are five elements of due process:

1. Performance expectations and consequences of not achieving said expectations should made clear to employees.
2. Consequences must be consistent. Meaning disciplinary actions must be adhered to, based on the stated policies. Failure to follow through with stated policies could be seen as arbitrary and not credible. However, it should be noted that if practices are consistent but contradictory to policy precedent can be established.
3. Disciplinary actions must be a reasonable response to the infraction/violation.
4. Employees must be afforded the opportunity to defend themselves.
5. Opportunity should be offered to allow the employee to correct their non performance or under performance. If not allowed it could be viewed an arbitrary case has been made simply to terminate them.

While Due Process is protective of employees, management also has protections as follows:

1. Organizations have the right to chance policies with proper notification/warning to employees.
2. Consistency in disciplinary actions must be met, but there is leeway for occasional versus habitual violations of employees.
3. Final incident, oftentimes resulting in termination should be well documented of prior warnings.

Management Rights

Codes of Conduct

Firms have the right to establish a code of conduct in which employees are required to comply with. (LUSSIER & HENDON, 2018) The Ethics and Compliance Initiative noted a firm's Code of Conduct lays out the values and vision of the firm and desired behavior (representation of the firm) of its employees. It serves as a guide for decision making for ethical situations. The Code of Conduct serves to:

- Comply with regulations of public companies
- A public statement of a company's core values and standards
- As a "good faith effort" to prevent violations and illegal activities. (UNKNOWN, NA)

The 2002 US Sarbanes-Oxley Act required US publicly traded companies to create and maintain a Code of Conduct. (LUNDAY, 2018) Lundy (2108) explained that the standards embodied in the Code of Conduct are "the ethics and compliance risks that a company seeks to prevent, detect and mitigate, should a violation occur." In addition to the above mentioned purposes of a Code of Conduct, it can also aid in increased Customer Lifetime Value through loyalty and retention; foster better relationships with suppliers and other business partners; and trust and respect of stakeholders.

Everything said, an organization's Code of Conduct lays out the standard of which it conducts business, outlines the desired behavior and company representation it expects of its employees, provides assurance of ethical and legal practices to business partners and stakeholders. Employees, business partners and stakeholders have an understanding of the type of organization they are in relationship with and everyone knows what to expect of one another.

Employment-at-will

Employment-at-will allows for employees and employers to legally terminate at any time without reason or warning as long as no violations are made. (LUSSIER & HENDON, 2018) All states in the US and Washington, D.C. are employment-at-will states.

However, some states adhere to the following exceptions:

- Public Policy – termination cannot take place if it violates the public policy of the state any state or federal law. (UNKNONWN, 2020)
- Implied Contract – termination cannot take place if there is an implied contract between the employer and employee. Burden of proof of said contract is on the employee. (UNKNONWN, 2020)
- State regulations – varying by state and could include terminating employees for refusing to perform illegal activities or if they take a protected leave of absences. (UNKNONWN, 2020)
- Discrimination – Covered by Title VII of the Civil Rights Act (MILLER, 2014)
- Retaliation for legally protected actions – discrimination or harassment suit; whistleblowing; workplace investigation; seeking disability accommodation; raising awareness of unfair, unsafe or illegal work place conditions or wage practices. (MILLER, 2014)
- Employer provided protections – forgoing at-will employment based on employer protections. (MILLER, 2014)

Most employers tend to feel as though employment-at-will benefits them more than employees as they can terminate employees at any time without notice as long as no violation to regulation has been made. Employees on the reverse also feel empowered in that they too can terminate a work relationship on their own terms without reason or warning. However, Employment-At-Will seems to suffer significantly from unintended consequences. ISIXSIGMA defines Unintended Consequences as "situations where an action results in a potential outcome that is not what was initially intended." (UNKNOWN, NA) Ryan (2016) noted how through unintended consequences employment-at-will is detriment to both the employer and the employee because:

1. Employees do not provide constructive or important information in fear of upsetting their employer;
2. Important areas of improvement or opportunity for change are not presented by employees;
3. Poor performing managers are not identified;
4. Fear of missing targets, quotas and goals of direct line management leave little room for employees to explore areas of opportunity for change and improvement for the larger organizational goals;
5. Employees are not afforded the opportunity to explore creative options;
6. Employees are afraid to speak freely;
7. Mangers hold an authoritative ruling over employees rather than fostering teamwork and collaboration;
8. Clear separation of employees and management/HR which strains the working relationship;
9. Employees focus more on safeguarding their actions rather than production, creativity and innovation;
10. Fear is the overall culture and sentiment of the workplace rather than a collaborative effort of excellent performance and promotion.

Workplace Monitoring

Organizations have the right to monitor websites or other forms of social media to ensure employees are not harming the company or infracting on stated company policies. (LUSSIER & HENDON, 2018). Workplacefairness.org noted that employers can terminate an employee for information on personal websites, blogs, social networking or social media websites which it deems is offensive to the firm, its clients or has a negative reflection of the company. (UNKNOWN, nd) Going a step further, employees do not have the protection under the First Amendment regarding information on personal social media unless they are government employees and that protection is very limited. In a Wall Street Journal article, Nancy Flynn of Epolicy Institute stated that firms should monitor employee social media activity to avoid facing serious problems. (WEBER, 2014) Being unaware of negative company representation, angry employees or harmful information regarding clients could present firms with huge trouble and potential litigation.

BRIEF CASE ANALYSIS

Chelsea's freedom of speech. Chelsea's post of the receipt which shows the customer's name and recognizable to friends seems to be the catalyst of a series of issues, from the feeling of a breach of privacy, embarrassment and anger by the customer to ultimately Chelsea's termination.

One might argue was Chelsea's freedom of speech violated? Due to the fact that Chelsea is a private employee, her freedom of speech is highly limited. Her post to Reddit resulted in a breach of customer privacy and put the restaurant in an unpleasant light - Chelsea's right to free speech was not violated given the potential harm to the customer and the firm.

Chelsea's right to due process. While Chelsea's employment was at-will and she was told why she was being terminated (customer privacy breach) she was not given an opportunity to explain and defend her actions. It could be argued she was treated unfairly because of lack of due process (specifically the right to appeal) and the disciplinary action was too harsh for the infraction. In review of Applebee's Employee Handbook, the company pledges to its employees to treat them "fairly and with dignity and respect". (NA, 2012)

Applebee's Employee Handbook does outline the expectations and requirements for employees. In fact, after review it can be argued Chelsea was in fact in violation of a few policies, specifically (NA, 2012):

- Employees are prohibited from using cameras, audio or video recording devices
- Mobile devices are prohibited from being carried while on duty
- Personal business may not be conducted while on duty
- Guest Treatment
    - Employees are prohibited from making negative or derogatory remarks to guests
    - Discussion regarding tips is prohibited with the caveat of grounds for immediate suspension and possible termination
    - Employees cannot preference guest types to service
- Violation of social media policy (see appendix B)

The Employee Handbook further details violations of state company policy results in disciplinary actions. However, the disciplinary actions are left very vague, left to discretion and references termination and at-will employment relationship. It could be viewed as a very employer biased definition.

Conclusion

The management was within their rights to terminate Chelsea for her social media post as she was in violation of several company policies. An alternative may have been a suspension and written warning with the caveat of a future similar offense would result in termination.

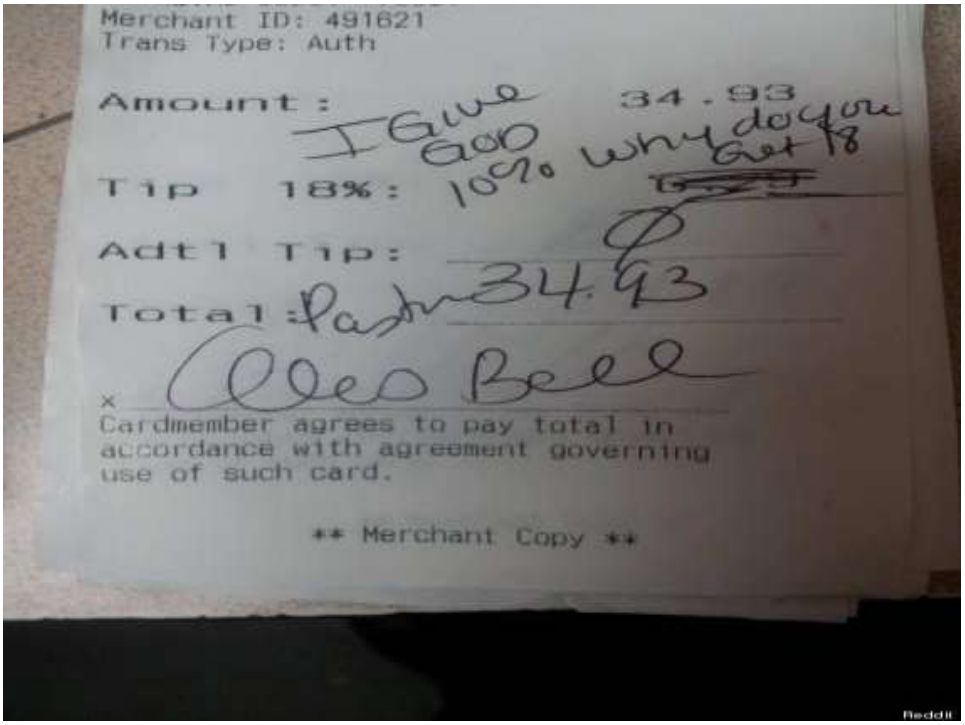
Additionally, mandatory training especially regarding the company's code of conduct and policies in the Employee Handbook seems warranted. Chelsea's statement that she was surprised seeing how there was nothing in the employee handbook forbidding posts to social media, was surprising. The Employee Handbook has a social media policy (appendix B) which in fact requires a separate signature of acknowledgement at hiring.

Chelsea could have taken advantage of the firms very details Dispute Resolution Program (see appendix C) after her termination to determine of the disciplinary actions were reasonable and justified. The fact that she did not do so may indicate either her lack of knowledge of this program (not surprising given her lack of knowledge about social media postings) and/or her acceptance of the firm's decision to terminate her employment.

APPENDICES

APPENDIX A

PICTURE OF RECEIPT (Fairchild, 2013)



APPENDIX B
APPLEBEE'S REMINDER REGARDING THE CODE OF CONDUCT AND INTERNET/SOCIAL MEDIA

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APPLE AMERICAN GROUP

Reminder Regarding the Code of Conduct and Internet/Social Media

With the proliferation of social media sites such as Facebook, Twitter, and the like, AAG would like to issue this reminder regarding our employee conduct policy and clarify how it applies when writing, posting, commenting or otherwise communicating on the internet.

AAG fully respects the legal rights of our employees. In general, what you do on your own time is your affair. However, activities in or outside of work that affect your job performance, the performance of others, or AAG's business interests are a proper focus for company policy.

The Code of Conduct contained in your employee handbook outlines specific behavior that will not be tolerated by the company, including but not limited to, unlawful harassment and conduct that threatens security, personal safety, employee welfare and Company operations. As the Code of Conduct applies to the internet and social media, please observe the following rules:

- Refrain from posting items that could reflect negatively on AAG, its customers, suppliers, managers or employees. You may disagree with company actions, policies or management and discuss your wages and other conditions of employment in your postings but such communications must not be abusive or threatening. Linking to statements, pictures or otherwise indirectly communicating abusive or threatening materials on a website, Facebook, Twitter, or other personal account on the internet is also prohibited.

- Statements about AAG, its customers, suppliers, managers or employees that contain recklessly or maliciously false accusations, ethnic slurs, personal insults, obscenity, harassing comments, pornography, or sexually explicit references may result in discipline up to and including termination. Linking to statements, pictures or otherwise indirectly communicating such information on a website or personal social media account may also result in discipline up to and including termination.

- Confidential information should not be disclosed. While you may discuss your wages and other terms and conditions of employment, you may not disclose unrelated and non-public items including, but not limited to, AAG's business and financial information, proprietary information, trade secrets or information that could compromise company or employee security. If you are not clear on what information is prohibited by virtue of being confidential, please ask your manager or call the employee hotline at 800-837-3667, ext. 1300. Also, AAG encourages you to honor the privacy rights of your co-workers by seeking their permission before writing about or displaying internal company happenings that might be considered to be a breach of their personal privacy and confidentiality.

Remember that your managers, Human Resources Generalist and the confidential employee hotline (800-837-3667, ext. 1300) are available to you if you have issues in the workplace. We encourage you to take advantage of these resources.

_____
Employee Signature and Date

_____
Employee Print Name

APPENDIX C
APPLEBEE'S DISPUTE RESOLUTION PROGRAM

APPLE AMERICAN GROUP

DISPUTE RESOLUTION PROGRAM

This Dispute Resolution Program is adopted for Apple American Group (Apple American Group LLC and Apple American Group II LLC) and all subsidiaries or affiliated entities, and all successors and assigns of any of them, all of which are collectively hereinafter referred to as the "Company."

The Company is committed to building a strong relationship between the Company and all of our employees - a relationship that is based on trust and open communication. The Company is an equal opportunity employer and strives to maintain an atmosphere of mutual trust and open, honest communication. By working together, we can reach any goal we set for ourselves. We do not and will not tolerate harassment or discrimination by any employee, regardless of their status with the Company, and no employee will be retaliated against for using this Program.

We understand, however, that problems and disagreements are unavoidable when people with different viewpoints spend a lot of time together. We cannot entirely eliminate disagreements, but we can provide a process for resolving them when they do occur by taking prompt constructive action.

Based on these beliefs and values, we developed this DISPUTE RESOLUTION PROGRAM (the "Program"). The Program is a four- step process for resolving workplace problems quickly and fairly. This policy describes the steps that both you and the Company must take to resolve many types of workplace problems. The Company is also obligated to follow the Program and will also be bound by arbitration. The types of problems covered by the Program are explained in detail in this policy.

THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH DISPUTES BETWEEN YOU AND THE COMPANY MAY BE RESOLVED, SO READ THE INFORMATION IN THIS PROGRAM BOOKLET CAREFULLY.

When you have a work-related problem, follow the steps listed below in this policy.

Step 1: UTILIZE THE OPEN DOOR POLICY
In any relationship, when a disagreement occurs, keeping emotions bottled up inside only causes the problem to get bigger. At the Company we want to encourage open communication so we can solve the problem with the least amount of stress for those involved. To do this, we have developed an Open-Door Policy that encourages you to talk with your manager to get your concerns addressed quickly.

1. **Talk directly to your immediate manager.** If you have a problem, first discuss it with your Manager or General Manager as soon as possible after the problem arises.
2. **Talk to a higher level of management.** Sometimes, you may not be able to resolve the issue with your Manager or General Manager. If this is the case, take your concern to your Area Director, Director of Operations or up to the Market President to get the answers you need.
3. **Talk with Human Resources.** If you have tried the above steps and are not satisfied, or if you are not comfortable talking to your managers for any reason, you can contact your Human Resources Generalist to get the help you need.
4. **Talk with Support Center.** If for any reason you are uncomfortable with following the prior steps, you should feel free to contact the Support Center Human Resource Dept. at 216.525.2775 or Employee Hotline at 800.837.3667 x1300 and ask for help.

Step 2: EXECUTIVE REVIEW
If you have tried the Open Door Policy and are not satisfied, you may request the Executive Review Step. In this step, the Company's President or his designee (the "Executive") will review the issue or problem and attempt to resolve the issue or problem to your satisfaction and to the satisfaction of your Manager and the Company. Failing that, the Executive will make a decision.

Here is how you obtain access to the Executive Review Step:

1. **Request review**. As soon as possible after your exhaustion of the Open Door Policy Step process, you can start the Executive Review process by contacting the Company's Employee Relations department. The Employee Relations department can be reached at 216.525.2775 or you can call the Employee Hotline at 800.837.3667 x1300 and ask for help.
2. **Submit information.** In order to access the Executive Review Step, you should provide a written statement that contains as much of the following information as is reasonably available to you:
a. Describe in detail, to the best of your ability, the factual basis on which your claim is made.
b. Describe the measures you have taken at the Communication Step to resolve the issue including the supervisors you have spoken with about the problem.
c. Describe the nature and extent of any remedy or relief you believe you should have.
*You can obtain a copy of a form to use for this purpose from the Human Resources Department.
3. **The Review**. The Company's Executive will review the problem and make whatever investigation he believes is appropriate under the circumstances. This may include, in all likelihood, a discussion with you and your Manager and a review of all relevant documents.
4. **The Solution.** The Executive will attempt to find a way to resolve the problem to the satisfaction of all the parties involved in the situation. However, if the problem cannot be resolved in this manner, the Executive will make a decision. That decision will be made in writing, generally within thirty (30) days of your request for executive review.
5. **Non-Legal Claims**. If your claim is not a statutory or common law claim ("legal claim"), Executive Review is the final step in the Dispute Resolution Program. (Only legal claims may proceed to mediation or arbitration). For example, mediation and arbitration are not available to review performance evaluations, job elimination or lay-off decisions, Company work rules, policies and pay rates, or increases or decreases in benefits, except to the extent such matters relate to statutory or common law claims.

Step 3: MEDIATION
If you believe you have a legal claim that was not solved through the Open Door Policy or Executive Review, the next step is Mediation. In Mediation, an objective, independent third party tries to help the parties reach a mutually agreeable solution.

When you or the Company requests Mediation, the Company will contact the American Arbitration Association (AAA) or a similar organization specializing in dispute resolution. The agency will assign a professional mediator to mediate the dispute. The mediator will listen, work to open communication lines, and offer creative solutions. But the mediator does not make a final decision. It is up to you and the Company to reach agreement. The goal of mediation is to develop a solution that satisfies both parties involved.

Here is how to put the Mediation Step to work for you:

1. **Advise the Employee Relations department that you request Mediation.** You should request Mediation as soon as possible, generally within sixty (60) days from the date you complete the Executive Review Step, so that the issues will be fresh in your mind. You will be requested to complete a Request for Mediation form, which will be furnished.
2. **Select mediator**. When either you or the Company request Mediation, the parties will select an outside, independent neutral mediator to handle the mediation process. The Company will pay the fees of the mediator and the mediation agency.
3. **You, the mediator and the Company representative meet.** The mediator will schedule a meeting between you and the Company representative. The mediator will guide the discussion and help resolve the problem. However, it is up to both you and the Company to reach agreement. The mediator does not make the final decision.
4. **Written agreement.** If appropriate, after you and the Company have agreed upon a solution, a written agreement will be signed by the parties.

Step 4: ARBITRATION
If you have a work-related problem that involves one of your legally protected rights, which has not been resolved through the earlier steps, you may request Arbitration.

In Arbitration, an outside neutral expert chosen and agreed upon by you and the Company, called an "arbitrator", becomes involved in the resolution process. He or she listens to the facts, then makes a final binding decision and awards any damages, just like a judge in a court of law. Arbitration is less formal than conventional court litigation but is clearly established and governed by rules and standards of conduct, which are designed to assure due process of law is fully protected. The goal of Arbitration is to provide effective and efficient problem resolution.

Here is how the Arbitration process works:

1. Request Arbitration. If you believe you have a legal claim, you may request that your claim go to Arbitration. Simply complete an Arbitration Request Form (provided upon request) and return it to the Company at its Cleveland, Ohio Support Center addressed to the attention of the Apple American Group Employee Relation Department, 6200 Oak Tree Blvd, Suite 250, Independence, Ohio 44131. The form can be obtained from your Human Resources Generalist. The Arbitration will be conducted by the AAA or any similar organization mutually acceptable to you and the Company. The arbitration will be conducted under the AAA's "National Rules for the Resolution of Employment Disputes", which are in effect at the time the demand for arbitration is filed. The rules can be obtained from the AAA's website at ADR.org or from the Company upon request.

The arbitration agency selected (the "agency") will then bill you and the Company each a filing fee. Your portion of that fee is limited to $125.00. The Company will pay the balance of the agency's initial filing fee and will pay the arbitrator's fee. If you establish that you cannot pay the filing fee, the Company will pay your portion of the fee.

2. A hearing is set. The arbitrator will schedule a date, time and place for a hearing. During this hearing, both you and the Company present the pertinent facts, documents, and witnesses. You may hire a lawyer to participate in the Arbitration hearing with you. The hearing will be conducted in the community where you are/were employed by the Company or in another mutually agreeable location.

3. A decision is made. Based on the information presented and the facts gathered, the arbitrator will make a final binding decision in writing that will set forth the essential findings and conclusions on which the award is based. The decision of arbitrator shall have a final and binding effect in any related litigation. If you win, the arbitrator can award you anything you might seek through a court of law. By using Arbitration, your rights are protected and damages can be paid if those rights have been violated.

PROGRAM RULES CLAIMS SUBJECT TO ARBITRATION

Claims and disputes subject to arbitration include all those legal claims you may now or in the future have against the Company or against its officers, directors, shareholders, employees or agents, including claims related to any Company employee benefit program or against its fiduciaries or administrators (in their personal or official capacity), and all claims that the Company may now or in the future have against you, whether or not arising out of your employment or termination, except as expressly excluded under the "Claims Not Subject to Arbitration" section.

Legal claims that are subject to arbitration include, but are not limited to:

- ☐ claims for wages or other compensation;
- ☐ claims for breach of any contract, covenant or warranty (expressed or implied);
- ☐ tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims);
- ☐ claims for wrongful termination;
- ☐ claims for sexual or other illegal harassment or discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability whether under federal, state or local law);
- ☐ claims for benefits or claims for damages or other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans);
- ☐ "whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance;
- ☐ claims for a violation of any other non-criminal federal, state or other governmental law, statute, regulation or ordinance; and
- ☐ claims for retaliation under any law, statute, regulation or ordinance.

CLAIMS NOT SUBJECT TO ARBITRATION

The only claims or disputes not subject to arbitration are as follows:

- ☐ any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure;
- ☐ any statutory workers compensation claim; and
- ☐ unemployment insurance claims;

Your agreement to adhere to this Dispute Resolution Program does not prohibit you from pursuing an administrative claim with the National Labor Relations Board, any state or federal department of labor, the Washington State Human Rights Commission, or the United States Equal Employment Opportunity Commission. This Agreement, does, however, preclude you from personally pursuing court action regarding any such claim.

Additionally, nothing in this Agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration conducted hereunder and either of us may apply to the appropriate state or federal court for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgement of the powers of the arbitrator.

The parties also agree that any arbitration between the employee and the Company is of their individual claim and that any claim subject to arbitration will not be arbitrated on a collective or class-wide basis. However, this provision does not preclude employees from exercising their rights under the National Labor Relations Act to joining other employees in a collective action to improve working conditions.

Also, any non-legal dispute is not subject to arbitration. Examples include disputes over a performance evaluation, issues with co-workers, or complaints about your work site or work assignment which do not allege a legal violation.

Neither the employee nor the Company has to submit the items listed under this "Claims Not Subject to Arbitration" caption to arbitration under this Program and may seek and obtain relief from a court or the appropriate administrative agency.

REQUIRED NOTICE OF ALL CLAIMS

When seeking arbitration, the claimant must file the Request for Arbitration form and give written notice of any claim to the other party within one year of the act complained of or within the applicable statute of limitations period, whichever is longer. Subject to any exceptions under applicable law, the day the act complained of occurred shall be counted for purposes of determining the applicable period.

Use the Request for Arbitration form when submitting a claim for arbitration. Identify and describe the nature of all claims asserted and the facts on which your claims are based. Send this written notice by certified or registered mail, return receipt requested. If the Company wishes to invoke Arbitration, it will also complete a Request for Arbitration form identifying and describing the nature of all claims asserted and the facts on which the claims are based and send this written notice to you at the last address recorded in the Company's payroll records.

ARBITRATION PROCEDURES

You must use the Mediation Step explained in this policy before requesting Arbitration. The agency will administer any Arbitration under the AAA's "National Rules for the Resolution of Employment Disputes" and in conformity with this Dispute Resolution Program. Go to ADR.org to obtain a copy of the rules or request a copy from the Company. The rules in effect on the date a demand is made shall control.

The arbitration will be before a neutral arbitrator who is licensed to practice law and who has significant experience in the employment law area. The arbitration shall apply the substantive law and the laws of remedies, if applicable, of the state in which the claim arose, or federal law or both, depending upon the claims asserted. The decision of the arbitrator shall be in writing and shall provide the reasons for the award unless the parties agree otherwise.

The arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold a pre-hearing conference by telephone or in person, as the arbitrator deems necessary. The arbitrator shall have the authority to rule on a motion to dismiss and/or a motion for summary judgment by any party and, in doing so, must apply the standards governing such motion under the Federal Rules of Civil Procedure.

PRE-HEARING PROCEDURES

You and the Company each have the right to take the deposition of individuals and expert witnesses designated by another party. Depositions and other pre-trial discovery will be taken in accordance with the order of the arbitrator selected under the Program, who shall allow adequate discovery. You and the Company have the right to subpoena witnesses to the Arbitration in accordance with the Federal Rules of Civil Procedure. At least thirty (30) days before the Arbitration, you and the Company must exchange lists of witnesses, including any experts, and copies of all exhibits to be used at the Arbitration.

ARBITRATION FEES AND COSTS

There are two types of administrative fees and costs associated with Arbitration; a filing fee with the arbitration agency selected and payment to the arbitrator for his or her services and expenses. Such fees and other expenses shall be allocated as follows:

1. The party requesting Arbitration must pay a $125.00 filing fee to the agency to request Arbitration. If you request Arbitration the Company will pay the balance of the initial filing fee, and will pay the entire fee if it requests Arbitration.
2. Either party, at its expense, may arrange for and pay the cost of a court reporter to provide a stenographic record of the Arbitration proceedings.
3. Each party shall be responsible for its own attorneys' fees and related litigation expenses, if any; however, if any party prevails on a statutory claim, which allows the prevailing party to be awarded attorneys' fees the arbitrator may award reasonable fees to the prevailing party.
4. Where permitted by law, the arbitrator may assess attorneys' fees against a party upon showing by the other party that the first party's claim is frivolous or unreasonable or factually groundless.
5. If either party pursues a legal claim covered by the Dispute Resolution Program in court or by any means other than Arbitration, the responding party shall be entitled to stay or dismissal of such action, the remand of such action to Arbitration, and the recovery of all costs and attorneys' fees and expenses related to such action.

MULTI-STATE BUSINESS

The Company is engaged in transactions involving interstate commerce and your employment involves such commerce; therefore, the parties agree that the Federal Arbitration Act shall govern the interpretation, enforcement and proceedings under the Dispute Resolution Program.

PROGRAM PROVISIONS/ENFORCEMENT

The provisions of the Program document are severable and, should any provision be held unenforceable, all others will remain valid and binding. No provision of the Program document will be held unenforceable if such provision can be reasonably interpreted in a manner that results in such provision being enforceable. The arbitrators, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, arbitrability, applicability, enforceability or formation of the agreement to arbitrate including, but not limited to, any claim that all or any part of the agreement to arbitrate is void and voidable.

If a court should determine that Arbitration under this Program is not the exclusive, final, and binding method for the Company and its employees to resolve disputes and/or that the decision and award of the arbitrator is not final and binding as to some or all of a party's claim(s), the party must submit the claim(s) to Arbitration and pursue the Arbitration to conclusion before filing or pursuing any legal, equitable, or other legal proceeding for any eligible claim in a court of competent jurisdiction.

PROGRAM STEPS

While we encourage you to use all of the steps in the Program in the order outlined, we realize that in some cases it may not be appropriate to use the preliminary steps. Accordingly, if your claim involves a legal claim that is subject to Arbitration hereunder, you may proceed directly to Step 3, Mediation, without first using Step 1, Open Door Policy or Step 2, Executive Review. The Company may skip Steps 1 and 2 if a legal claim is involved.

NOT AN EMPLOYMENT CONTRACT/EXCLUSIVE REMEDY

While this Program constitutes a binding promise between you and the Company to resolve all disputes pursuant to the process outlined herein, this Program is not and shall not be construed to create any contract of employment, expressed or implied. Nor does this Program in any way alter the "at will" status of any employment.

This Program will prevent you from filing a lawsuit in Court for individual, class, or collective relief for a legal claim subject to arbitration.

Apple American Group (Apple American Group LLC and Apple American Group II LLC) includes the following subsidiaries and affiliates: Apple Delaware LLC, Apple Indiana I LLC, Apple Indiana II LLC, Apple Indiana III LLC, Apple New Jersey LLC, Apple NorCal LLC, WineCountry Apple LLC, Apple Ohio LLC, Apple Pennsylvania LLC, B.T. Woodlipp, Inc, Apple Washington LLC, AppleSoCal LLC, Apple Nevada LLC, Apple Minnesota LLC and Apple New England LLC and all subsidiaries or affiliated entities and all successors and assigns of any of them.

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