



# NYSRA NEWS

*We serve you* A New York State Restaurant Association Newsletter

[www.nysra.org](http://www.nysra.org)

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## New York State Insurance Fund-Backed NYSRA Workers Compensation Program Offers Safe Alternative as other Programs Close Doors in New York

New York State Restaurant Association members who have obtained their workers compensation coverage through NYSRA Services can sleep soundly at night not worrying that a bill is coming due that they didn't expect.

Unfortunately, for those who chose to obtain their coverage through self-insured trusts, this may not be the case.

With many self-insurance trusts in the state failing, thousands of business owners are anxiously awaiting an additional bill that may come due. In New York State, the Workers' Compensation Board can retroactively assess members of underfunded trusts for the liabilities not only of their own trust, but of all underfunded trusts.

Fortunately, NYSRA's Workers' Compensation Program is not connected with these trusts and is fully underwritten by the New York State Insurance Fund. NYSRA's workers compensation program has also paid participants an average dividend of 36 percent annually over the past five years.

For more on this story and how you can get coverage through NYSRA's workers compensation program, please turn to page 6



## NYSRA LABOR NEWS ASK THE PROS

### UNEMPLOYMENT INSURANCE

#### *The ABCs of Unemployment*

The Unemployment Insurance ("UI") law of New York State seems to be quite clear about what unemployment insurance is:

- temporary income
- for eligible workers
- who become unemployed through no fault of their own
- who are ready, willing, and able to work; and
- who have sufficient work and wages in covered employment.

Within each of those qualifications are an array of rules of interpretation and some exceptions or superseding principles. It is the Department of Labor (DOL) that determines whether an unemployed worker qualifies for unemployment insurance. Consequently, there is also the uncertainty of any legal system where appeal of an initial finding, either in favor of the employee or employer, is at a hearing presided by administrative law judges of the NYS DOL.

There is nothing simple or absolutely certain in the area of applying UI law to any given workplace,

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## save the date

### 2009 International Restaurant & Foodservice Show of New York

March 1-3, 2009  
Jacob K. Javits Convention Center  
New York, New York



## the menu

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## Legal Bites



### How To Prevent Your Restaurant's Employees From Stealing Your Proprietary Information And Starting A Competing Restaurant Business *By Yuval H. Marcus*

How would you feel if your employees took your best recipes, your operating procedures, your customer lists and opened a competing restaurant? Unfortunately, this scenario often happens. With proper planning, however, your restaurant can protect itself against the threat of employees leaving with your proprietary information and using that information to compete against you.

To prevent the misappropriation of confidential information, your restaurant should take steps to create enforceable trade secrets and require your employees to sign confidentiality and non-compete agreements. A trade secret is any information utilized by a company: (1) that gives the owner of that information a competitive advantage; and (2) that is maintained in a manner that is expected to prevent the disclosure of the information to competitors or the public. Examples of trade secrets include the Coca-Cola soda formula, secret recipes and customer lists.

The key to creating a trade secret is that the information must be kept confidential. If there are no procedures in place to prevent access to, and disclosure of, the information, trade secret rights will be lost. Your restaurant should establish a system for sensitive information that limits who has access to the information, and all confidential materials should be clearly marked to indicate that the information is confidential. In addition, you should require your employees to sign confidentiality agreements that restrict the use of any confidential information to which they gain access. Such confidentiality agreements may also include provisions that prevent the employee from competing with your restaurant for a limited period of time in a particular geographic area.

A recent case demonstrates the power and importance of having proper procedures in place. The operator of Quizno's Sub restaurants commenced a lawsuit in Denver Federal District Court against a competing restaurant business, Earl of Sandwich LLC, and its Chief Executive Officer, Michael Grondi, a former Quizno's employee. The lawsuit alleged that Earl of Sandwich and Mr. Grondi misappropriated Quizno's trade secrets by using confidential information that Mr. Grondi had access to while he was employed by Quizno's and that Mr. Grondi breached his confidentiality agreement with Quizno's by disclosing Quizno's confidential and proprietary information to Earl of Sandwich and

by soliciting Quizno's employees. Several months after this lawsuit was filed, the case was settled and Mr. Grondi was replaced as Chief Executive Officer of Earl of Sandwich. It is likely that the existence of a confidentiality agreement and other confidentiality procedures contributed to the quick resolution of the case.

If your restaurant does not have proper procedures in place to protect its confidential and proprietary information, it will be much more difficult to prevent that information from being used against you by competing restaurants.

## NEW MEMBER OF NYSRA?

Be sure to visit the NYSRA web site at [www.nysra.org](http://www.nysra.org) for information such as

- *upcoming chapter activities,*
- *latest legislative updates,*
- *what's new in member programs, and*
- *past columns of "NYSRA Labor News: Ask the Pros" in the NYSRA News archives.*

Have suggestions on what you would like to see on NYSRA's web site? Contact Dawn Brien at [dawnb@nysra.org](mailto:dawnb@nysra.org).