

## Montana Tavern Times

### Management Agreement – April 1, 2014

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This month's article is addressed to all bar and casino managers working across this great state. First, I would like to say "Congratulations!" in becoming a manager, as you have obviously been identified as an employee who is responsible, effective, trustworthy, and committed to the success of your employer's business.

Your managerial title obviously comes with certain responsibilities, but do you know that your position must comply with notice and approval requirements of the Liquor Control and Gambling Control Divisions? Do you know whether a "Management Agreement" has been submitted and approved by the Divisions? Do you know what happens if you're not in compliance? I urge you to carefully read the remaining article and then share it with the licensee as well, as this discussion is aimed to help you answer these questions.

*First*, let me focus on the requirement of the Liquor Division's Administrative rule 42.12.132 regarding management agreements.

1. Licensees who are allowed to sell alcoholic beverages are authorized to employ you as a manager, so that good news!
2. As a manager, you are the licensee's agent and if delegated, you can oversee the alcoholic beverages business conducted in the licensee's licensed premises.
3. Now, here comes legal verbiage... "the manager or the person designated to represent the manager must possess a past and present status as a business person and citizen who demonstrates the likelihood of operating the licensed establishment on behalf of the licensee in compliance with all applicable laws of the state and local governments." What does that all mean? It means that you have a lot of responsibilities, both to your employer, their business, to the Liquor Control Division and, if the employer has a gambling license, to the Gambling Control Division as well. That's where your extra pay is truly earned.
4. I am using bold print here to share some important information that both you and the licensee need to know and follow in a timely manner: **Within 30 days of employing you as the manager, the licensee must file with the department a signed original of the written management agreement, a personal history statement, and a complete set of fingerprints that clearly discloses the following information:**
  - a. the manager's name, address, telephone number, mailing address ( if different from street address), and one of the following:
    - i. social security number for individuals; or
    - ii. federal employer identification number for a business;
  - b. the amount of compensation to be paid to the manager; and
  - c. the specific duties and responsibilities delegated to the manager by the licensee.

5. The management agreement must comply with the following standards:
  - a. The licensee must retain the possessory interest in the premises through ownership, lease, rent, or other agreement with the owner of the premises; and
  - b. While the agreement may delegate duties to the manager, the licensee must retain ultimate control, liability, responsibility, and accountability for the retail alcoholic beverage operation.
  
5. **The management agreement may not assign or limit any of the rights or responsibilities of ownership.** Basically, as managers, you are not permitted to have the following assignments given to you:
  - a. Control of business hours, types of alcoholic beverage products sold, selling price, level of inventory maintained, and overall business atmosphere;
  - b. Exclusive authority over business accounts and operation funds;
  - c. Authority to remodel or otherwise make changes in the business operation requiring non-routine actions;
  - d. Ultimate decision-making authority regarding the hiring, firing, advancement or promotion, or any other change of status of other employees;
  - e. Liability for business expenses and losses, either directly or through an indemnification agreement with the licensee. The licensee may require the manager to do the ministerial act of paying the expenses, but this must be accomplished by using the licensee's funds; or
  - f. Ownership of the inventory or the right to use or dispose of it at will.
  
7. The licensee must maintain an active participation in the business operation sufficient to ensure the proper and lawful conduct of the business, and execute all reports required by governmental agencies that attest to the licensee's ownership and certify compliance with applicable statutes and regulations. The licensee may work in the establishment at any time;
  
8. The agreement may not be assignable by the manager to a successor manager without the written consent of the licensee;
  
9. The agreement may not place any restrictions on the licensee's right to transfer, mortgage, hypothecate, or alienate the license, or change the location of the operation;
  
10. The agreement must be terminable upon the licensee transferring the license, selling the business, or otherwise ceasing business operations at the licensee's option;
  
11. The agreement must provide for compensation.

- a. Compensation must be stated as either as a fixed amount, a percentage of gross sales, or a combination of fixed amount and percentage of gross sales (**note:** this is different for combined liquor/gambling establishments, as Gambling Control Division's administrative rules do not allow for a percentage of gross sales to be included in the agreement); and
  - b. The compensation of the manager must be commensurate with the duties performed, cannot consist of net profits from the business, and cannot be less than the federal wage and hourly standards for an individual.
12. The management agreement must establish a principal agent, employer-employee, or other type of agency relationship, making the manager responsible to the licensee for the performance of assigned duties, while the licensee is responsible for the proper performance of the manager.
  13. Failure of the licensee to terminate operations under a void management agreement constitutes a violation of Montana law and departmental rules.

*Next, I'll address the Gambling Control Division's rules for managers.*

1. A "Manager" in a gambling establishment means a person employed or authorized by the licensee to supervise personnel or business functions of the licensed operation. Every person who is authorized to supervise personnel or the business functions of a licensed operation must operate under a written "management agreement."
2. A "management agreement" means a contract between the licensee and manager(s). As under the Liquor Control Division's rule, the agreement may not transfer an ownership interest in the licensed operation or limit or relieve the licensee of record from the responsibilities of ownership. However, the rule notes that bonuses or bonus-type payments based on job performance are not considered ownership interests if they are provided in conjunction with a reasonable salary base and do not assign or transfer an ownership interest. Getting bonuses? Great! Just make sure your management agreement clearly spells out when and how you are to receive them.
3. As required under the Liquor Division's rule, Gambling Control Division's administrative rules 23.16.502 and 23.16.508 require that any employment of a manager or management company, or any change in management employees or company (i.e., the hiring or firing or changing the status of a manager) **must be reported to the Gambling Control Division within 30 days of the date of change**. Thus, whenever a licensee hires a manager or management company, the employee(s) must submit their completed personal history statement and **two complete sets** of fingerprints, and the licensee must submit a copy of the management agreement, to the Division within 30 days of the date of hire. This is accomplished using the Division's Form 30, entitled "Business Statement." If you are among two or more managers, you must know that all managers must comply with these conditions.

Montana's gambling policy requires "a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry in this state is ...not influenced by corrupt persons...." Mont. Code Ann. § 23-5-110(1)(a). Management employees, due to their positions of trust, access, and control, must meet the same suitability requirements for gambling licensure as does the licensee. Management employees must therefore submit fingerprints and personal history statements so that the Division may conduct a background investigation to determine the employee's suitability.

After reading this, you either feel good about your managerial job because you have all your ducks in a row, or you have become nervous wondering who is going to be knocking on your door soon. Don't panic. If there are issues to be fixed, we want you to come to us before an investigator discovers it during an inspection. We ultimately want you and the licensee to be in compliance without undue hardship, so please contact us after speaking with your employer first, or if there are additional questions you can contact the Liquor Control Division at 866-859-2254 or the Gambling Control Division at 406-444-1971.