

Risk Management: The Key to Retail and Hospitality's Survival

By Stacy D. Fulco



While this has been quite a year for everyone, the retail and hospitality industry has been one of the most significantly affected by the events of 2020. From the pandemic to the Black Lives Matter movement, retail and hospitality companies small and large have their heads spinning on how to adjust and keep up just to stay in business. For these reasons, there has never been a time when retail and hospitality companies needed risk management more than 2020.

If there is one thing this year has taught us, it is that we all play a role in risk management for our clients. We cannot simply defend their lawsuits or monitor their claims. We must also team up with our clients to help them through these challenging times to keep them successful and to mitigate their risks through uncharted waters. These new challenges create opportunities for the industry to change, grow, and come out stronger and more successful on the other side.

Risk Management and the Pandemic

Outside of the normal pandemic challenges, the retail and hospitality industry must update their business model if they want to survive. This includes focusing more on technology, partnering with others to increase delivery capabilities, re-designing the kitchen to focus on delivery and carry-out orders, re-designing the dining room for safe distancing, and hiring outside cleaning companies.

Technology is key to encourage contactless ordering, provide updates about new procedures, and for contact tracing if there is exposure. From a risk management perspective, ensure that your client is using proper COVID-19 waivers on their website and with all reservation, carryout, and delivery scheduling. Also ensure all reservation technology clarifies under what circumstances a customer should not be visiting the establishment. A company website is a great place to outline what security measures the

company is taking, so review your client's website and be sure they are providing complete and proper information.

One area that is particularly new for retail and hospitality companies is to-go alcohol orders. From a risk management perspective, counsel and claims professionals must be on top of the new laws in these areas to help our clients create safe and lawful, new practices.

An example of one of these new laws is in Illinois. For a limited time, customers, including motorists, can be served alcoholic drinks and walk or drive away with the cups, as long as they are in a specific type of tamper-proof container. This "to-go cocktail" legislation has been approved in over forty states. While this could be a way to help lessen the financial blow on companies, there is a lot of risk to the company with these types of practices. If your client is involved with to-go cocktails, be sure that your client knows the law, has the

proper cups and notations/seals on the cup, keeps track of individual so as not to oversell to anyone, and checks with their insurance carrier to be sure all of the new practices are covered under their alcohol policy.

All this change can be overwhelming, but many of the challenges facing the retail and hospitality industry can be opportunities for growth in the future when we reach the "new normal." Increasing carryout and delivery orders with the proper technology and partnerships can increase revenue in the future for your clients. From a risk management perspective, your clients need to be focused more on food safety and how to ensure that the food cannot be tampered with by the driver. Counsel need to ensure any new contracts their clients enter into provide indemnification protection and ensure the retail and hospitality company is not liable for the actions of the drivers.

With all of these new changes in place, one of the most important risk management recommendations you can give your clients is to *keep a record!* Documentation is

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key to prove what new policies and practices are in place, how they were taught, and how they were implemented. Document training and all COVID-19-related information, exposures, and how those exposures were handled. For carryout alcohol, keep detailed records and do not dispose of them until after the statute expires on a Dram claim in your state. For changes in delivery or carryout practices, have written documentation of how they are handled so there is proof of increased safety measures. Keeping all these records can make all the difference if a defense is needed down the road.

Risk Management and the Black Lives Matter Movement

For an industry that was already in bad shape from the pandemic, the ongoing protests and riots have been an additional challenge. Businesses have needed to board up windows and employees and customers have not been able to get to the establishments. Be sure that your clients

know the focus must be on the safety of employees and customers, so closures and changes in delivery locations may be needed. They should also check with their insurance carrier to see if such activities are covered for a business interruption claim. The Black Lives Matter movement presents a great opportunity for every retail and hospitality company, large and small, to look at their hiring and advancing practices and ensure that they have a diverse group of employees.

In 2020, the focus of the retail and hospitality lawyer is on counseling, not on litigating. Be there for your clients and they will be there for you in the future.

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