

Practice Update

# Unique Challenges and Considerations for Restaurants as They Reopen Their Doors

June 25, 2020

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As restaurants across the nation begin to reopen for business, there are many challenges that they will face for the first time. Business as usual is a thing of the past! In what already was a difficult business in which to succeed, restaurateurs will have to navigate the uncharted waters of surviving during a pandemic and its aftermath, as we slowly return to business. This article addresses some of the most common concerns arising out of the COVID-19 pandemic, from the perspective of an employment lawyer and a restaurateur.

## **Business Continuity is Key to Your Branding, But How do You Continue to Promote Your Brand When the Rules of Doing Business Have Changed So Drastically?**

Most restaurants now are dealing with a fraction of their normal staff due to the reduction in operations, either because of state by state social distancing requirements and/or a diminished number of patrons who are willing to dine out these days. Also, take into consideration that though you only can seat 25 to 50 percent of your restaurant, you still must cover 100 percent of the hard costs, so it might not be economical for many restaurants to open for such a small amount of business. If you are one of the businesses that has been lucky enough to receive a small business loan through the Coronavirus Aid,

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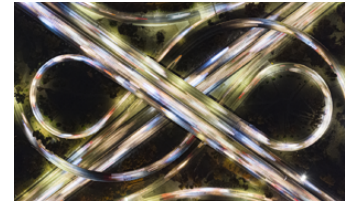
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Relief, and Economic Security (CARES) Act (or otherwise have been able to secure alternate financial backing), you may have been able to retain many of your employees and maintain business continuity in the interim.[1]

However, most restaurants are faced with operating with a diminished workforce and for a reduced customer base. A driving force of having a skeleton crew also may be the misconception on the part of staff that they simply can take the generous unemployment stipend rather than returning to work.[2] More on this issue later. So, establishments are left with the difficulty of needing to provide a safe environment, stellar service, great atmosphere and fantastic food, while largely running on fumes. Also, throw into the mix the enhanced safety and cleaning measures dining establishments now are taking (even if the restaurant was perfectly sanitary before), all of which are new and time consuming. It has created a perfect storm for the potential to lose the branding you worked so hard to attain.

So how do you maintain your reputation and brand under such conditions? There are a few key considerations that may assist with this endeavor. Essential to calming the storm is communication with your customers. They already know your restaurant and love what you have to offer. They come back because you are providing something of value to them. Whether it is the atmosphere or cuisine that makes them feel comfortable enough to spend their hard-earned money and precious time dining at your restaurant, you already have fans, so make them, or continue to hold them as, superfans by sharing with them (in a professional way) some of the issues you are facing and letting them know what you are doing to combat these difficulties in the face of reduced operations.

For example, we all share health concerns during the COVID-19 pandemic. Let the patrons know what you are doing to assist with safety measures. Share that

you have enhanced protocols for sanitization. Let them know if you spent money on having your air vents sanitized. Inform them of the training you have provided to your staff on these measures. Some restaurants have opted to put on a COVID-19 surcharge listed on the menu to offset some of the costs of these safety protocols. However, unless and until it is formally sanctioned either by the local or state government and put forth as a service fee for the additional sanitation, such a surcharge may be viewed as an unacceptable expense to pass along to customers during these difficult financial times. Check with your state and local authorities to ascertain the legalities and requirements regarding same prior to doing so.

Further, if you have a reduced staff, inform patrons that under the restrictions, you are operating with less personnel and ask for their patience. While, of course, you would not chose to let service suffer, putting customers on notice on the front end might save some explaining on the tail end, as well as a bad Yelp review, if food and drink take a bit longer than usual to come out, or where there appear to be empty tables at which you are unable to seat them due to distancing requirements and/or having a reduced number of servers. People are generally so happy and thankful to have a night out after having been quarantined for the last two months or more, they may be more understanding.

Most importantly, management and ownership must be visible. Let customers know who is behind the brand and that you are a part of the community struggling to get through this unprecedented time. Let the public see that you care about their safety and that of your employees. Let your patrons feel that they are a part of the future of their favorite hangout, and they will take an interest in the restaurant's success now and for years to come.

**Considering the Concerns over the COVID-19 Pandemic, how do you Handle Return to Work**

## Considerations in Such a Customer-Facing and Hands-On Industry?

While the Center for Disease Control (CDC) and Occupational Safety and Health Administration (OSHA) have set forth guidelines that restaurants must follow to provide a safe workplace, employees still may be hesitant to return to work. Whether it is due to health concerns on the part of the employee for either themselves being exposed to COVID-19 or their families, or they simply want to continue to receive unemployment compensation benefits, [3] businesses are having to face reluctance on the part of staff to return. Accordingly, it is important to know your rights, as well as how to properly communicate with employees regarding back to work protocols.

As a threshold matter, set the proper tone. Make sure your communications with staff are reassuring. As important as letting your customers know what steps you are taking to provide a safe environment, it is equally important to let your employees know the same. Establish the proper protocols for safety you expect employees to follow and communicate same. Will you be taking temperature scans? What protocols are in place for employees to self-report symptoms and/or a confirmed or suspected case of COVID-19? For restaurants operating in multiple states and localities, consider any variations in operational considerations by jurisdiction.

Ask employees to inform you of any concerns they might have in advance of their return to work. Some employees just may be fearful of returning to work, and others might provide you with a doctor's note seeking additional leave from work. Know whether there are any legal requirements applicable to your business and the specific situation, i.e., the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA) and/or the Families First Coronavirus Response Act (FFCRA).[4] Consider any issues related to childcare in the wake of school and

camp closures. Be careful to consider return to work decisions in a non-discriminatory way. For example, do not make any assumptions based on stereotypes or generalizations.

Lastly, train your management on the foregoing. Make sure supervisors are being even-handed in their enforcement of return to work rules. Stay abreast of changes in CDC and OSHA guidelines. This pandemic and public health crisis remains fluid. Ensure that you are up-to-date on the considerations pertaining to return to work protocols and operations during the pandemic and thereafter.

These are uncertain times, and therefore, as restaurateurs, we must adapt to this new way of doing business if we are to have a future.

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[1] The CARES Act provides that businesses with fewer than 500 employees — including sole proprietors and nonprofits— under Section 7 of the Small Business Act, will have access to funding during the “covered period,” which runs from February 15, 2020 through June 30, 2020. These small business loans, which are referred to as “paycheck protection loans” are guaranteed by the federal government through December 31, 2020 and provide for loan forgiveness under certain criteria.

[2] The CARES Act also provides three significant unemployment insurance benefits: (1) Pandemic Unemployment Assistance; (1) Emergency Increase in Unemployment Compensation Benefits; and (3) Pandemic Unemployment Compensation. These programs are fully funded by the federal government and are at no cost to either employers or the participating state.



[3] Under the forgiveness requirements under the PPP, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

[4] Effective April 1, 2020 until December 31, 2020, Employers with fewer than 500 employees are required to provide paid leave to certain employees impacted by COVID-19-related reasons and will receive a tax credit in return.

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