

Restaurant Owners Brace for Potential Legal Threats as They Begin to Open Doors

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As in-person dining begins to return to restaurants across the country, owners/operators are faced with a critical choice: they can choose to reopen or continue to stay closed. By choosing to open their doors to a COVID world, restaurant owners/operators risk facing a laundry list of new liability and employment practices claims, along with significant harm to their reputation.

Liability

All COVID-related liability exposures begin with one central question: what happens when a restaurant reopens, reports a positive case and has to shut down again? The answer is very similar to when a foodborne illness outbreak closes a restaurant's doors. When an employee tests positive for hepatitis, for example, a notification has to go out to the public and the establishment could face shutdown. The same is being done for coronavirus.

Claims may also be filed by COVID-positive employees, claiming workplace injury. The validity of such claims depends on the particular state in which the claim was filed. In California, Gov. Gavin Newsome signed an executive order requiring workers' compensation to apply to all workers who test positive for COVID-19 and who are not exclusively working from home. So, if an owner/operator were to not provide said benefits to a restaurant employee, they could be in significant legal trouble.

Employment Practices

Owners/operators have to be cognizant of which employees they retain for the reopen. To cut costs, they could decide to only bring back half of their workforce, but if a vast majority of returnees happen to be white males, they're opening themselves up to a potential employment practices liability lawsuit—whether intentional or not.

Furloughing or laying off employees as a result of COVID is not a retaliatory action. But if an employee before the pandemic complained of sexual harassment and they aren't brought back, they still have that complaint and there's still an exposure with that person.

Reputational Damage

More secondarily, owners/operators must also consider what a COVID shutdown would do from a reputational standpoint. Since the reopening began, elected officials, media outlets and citizens have been divided on whether or not the economy is opening too soon. A restaurant shutting down post-reopen could validate the concerns of many potential customers.

If an owner/operator decides to open up and an employee subsequently tests positive, the media coverage will not be far behind. The group of Americans who didn't think they should open up in the first place now have a bad taste in their mouths regarding that restaurant. In their minds, that restaurant made a poor decision that wasn't in the best interest of their customers.

Restaurant owners and operators need to mitigate these risks as best as they can by following recommended safety protocols; temperature screenings, enhanced sanitization practices, extensive testing, seating customers outside, and disposable or virtual menus are all practices to consider. But, at the end of the day, restaurants reopening carries significant legal risks, and it's the responsibility of management to assess them and determine a plan of action.

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