

Restaurants: A Proactive Strategy For Managing Evolving Risks

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A proactive risk management strategy can help mitigate the varied exposures that restaurants face on a daily basis and make sure that the business is adequately prepared in the event of an incident that could ruin its hard-won reputation.

A restaurant's success depends on its reputation. That reputation, however, involves more than good food, attentive service and a welcoming ambiance. Restaurant owners and managers have to address a wide spectrum of liability risks, any one of which could jeopardize the reputation, and the future, of the business. Food safety and liquor liability are crucial concerns as are the safety and security of patrons. Restaurants also need to consider liabilities that may arise from delivery operations, such as cyber security for credit card transactions. All of these exposures have to be handled effectively in a hectic and highly competitive business where slim profit margins are often the rule. A proactive risk management strategy can help mitigate the varied exposures that restaurants face on a daily basis and make sure that the business is adequately prepared in the event of an incident that could ruin its hard-won reputation.

To keep pace with their evolving exposures, restaurants should reevaluate their risk management strategies and reinforce them where needed. That review should include their primary and excess liability insurance coverage to make sure that it encompasses the full range of risks they face and that the limits are sufficient to cover the potentially high costs of claims stemming from personal injuries, which have reached into the tens of millions of dollars. To protect their reputations, restaurants should consider coverage that includes catastrophe management services, such as food testing and crisis public relations assistance.

Successful restaurants plan thoroughly to make their business run smoothly, but when it comes to risk management, they need to take additional steps to address what may be overlooked risks. Here is an overview of those risks as well as risk

management measures that can address those exposures.

Premises Maintenance and Security

As establishments that welcome the public onto their properties, restaurants have a greater degree of potential liability. Because of that, a crucial first step is to make sure that the restaurant building itself and the surrounding areas are safe and secure for patrons and staff. That includes making sure parking lots and sidewalks are properly maintained to avoid accidents that might have been preventable.

As part of their security review, restaurants should assess procedures for employee theft, armed robberies, preventing violence, employee screening and training. Building, landscape and lighting design should be approached with crime prevention in mind. Restaurants should have electronic alarm systems and closed circuit television monitors near cash registers and for outdoor areas such as loading docks and exterior doors.¹

Slips, Trips and Falls

Slips, trips and falls remain a leading cause of restaurant injuries and one of the most common liability risks. Major risk factors for restaurants include wet floors, spills, and clutter in aisles and passageways.

To prevent slips and falls, floors should be clean and dry, and warnings signs should be placed where floors are wet. All spills should be cleaned up immediately. Non-skid waxes should be used. Any changes in floor level should be clearly marked, and uneven floor surfaces should be repaired, including bulging carpets.

Adequate lighting should be provided in all areas, including hallways and stairs. Handrails, stairs and landings should be maintained in good condition. Walkways and parking lots should be kept in good condition and any uneven areas should be repaired. In colder areas, restaurants should pay close attention to procedures for removal of ice and snow.^{2,3}

Electrical and Fire Hazards

In an industry where operating budgets are tight, restaurants may be tempted to skimp on preventive maintenance, but cost cutting should not involve electrical and fire hazards. Roughly 5,900 restaurant building fires were reported annually from 2007 to 2009, the U.S. Fire Administration estimates. While the average loss per fire was nearly \$26,000, the average loss for a confined fire was just \$840, but \$59,000 for non-confined fires. Cooking is the leading cause of all restaurant fires, but electrical malfunction is the leading cause of non-confined fires.⁴

To prevent and limit damage and injuries from fires, sprinkler systems should be kept current and up-to-date and be checked regularly by a certified and licensed fire system contractor. Restaurants should retain the appropriate documentation for the system and its upkeep. Fryers, which are a leading cause of fires, should be regularly cleaned and degreased, and checked by a certified contractor. Exhaust hoods should be cleaned of grease and exhaust systems should be inspected for grease buildup.

The contractors used for inspection and cleaning should provide evidence of insurance that includes additional insureds and hold harmless clauses for negligent performance. Restaurants may want to consider automatic fire



suppression systems in the kitchen, and should have portable fire extinguishers as a back up. Staff should be trained on the use of fire extinguishers and on emergency and evacuation procedures.

Indoor Air Quality

Carbon monoxide is a growing and serious concern for restaurants. Faulty gas ranges, water heaters and boilers as well as a lack of proper ventilation or proper sealing of exhaust systems can lead to death and serious injuries from this odorless and tasteless gas. USA Today reported in 2013 that eight people had died and 170 others had been treated for carbon monoxide poisoning in the prior three years in hotels.⁵ In 2014, a New York state restaurant manager died and 19 people were sickened by carbon monoxide that came from a leaky flue in the restaurant's heating system.⁶

Besides death, carbon monoxide poisoning may lead to other bodily injuries, such as brain damage. In a Baltimore case, a jury awarded more than \$30 million to 20 restaurant workers who claimed they had suffered brain damages ranging from forgetfulness to depression

due to a carbon monoxide leak from hot water boilers in the hotel that housed the restaurant.⁷ To prevent injuries and to avoid potentially expensive litigation and awards, restaurants should install hard-wired carbon monoxide monitors regardless of whether they are required by law in the locality or state.

Food Quality Control

Food-borne illnesses pose one of the greatest dangers for restaurants as well as a serious reputational risk. Just one food illness claim can jeopardize a restaurant's business. Yet, such illnesses remain all too common. A study of food-borne illnesses over a 10-year period showed that restaurants pose twice the risk of such outbreaks as homes, according to the Center for Science in the Public Interest.⁸ Among the common infections are salmonella, campylobacter from contaminated chicken, vibrio from raw shellfish and E. coli. While salmonella infections have been decreasing, campylobacter and vibrio infections are on the rise, and progress in reducing E. coli has stalled, according to the Centers for Disease Control and Prevention.⁹

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Restaurant personnel should be thoroughly trained in food handling, sanitation and health safety procedures. Food handling and storage procedures should be closely scrutinized to make sure that food is stored at the proper temperatures and that there is no cross-contamination of raw foods into finished dishes. Foodhandling procedures should include making sure that food items are discarded at the proper time.

Risk management should extend beyond the kitchen to the sourcing of food products. In a global marketplace, some products may come from areas where controls aren't as stringent as they are domestically. Managers should review their food vendors and their reputation, the vendors' quality controls and recall procedures, to ensure that the food they provide is as safe as possible. Vendors should demonstrate that they have insurance coverage for product recall.

In the event of a food-borne illness incident, restaurants should make sure that their own insurance coverage includes catastrophe management services such as food testing and crisis public relations experts. Food-borne illness creates significant reputational risk. Eliminating the restaurant food as the culprit by producing an immediate negative result from the testing is highly valuable. Therefore, restaurants should make sure that their coverage includes expense reimbursement for such testing.

Liquor Liability

Restaurants that serve alcoholic beverages face a host of potentially expensive and damaging exposures. One often overlooked risk is that staff may become complacent over time and less rigorous in applying the appropriate serving procedures. In addition, new risks

can arise with new fads in drinks. Earlier this year, a Florida women suffered internal injuries and filed a lawsuit after a caterer served a cocktail containing liquid nitrogen to create a smoky effect.¹⁰

Bars and restaurants have to keep in mind the varying state liability standards for patrons who drive after drinking. Under the dram shop laws in 30 states, establishments that serve liquor may be held liable for serving alcohol to intoxicated individuals who later cause injuries or death. Twenty-two of those states limit the liability to cases in which the individual was visibly intoxicated or under the legal drinking age.¹¹ In some states, that liability will still hold even if the client was not visibly intoxicated.

Comprehensive training is crucial for all staff serving liquor, particularly because many of them may be part-time or transient employees. That training should meet the best practices for the industry and should include managers, bartenders, waiters and anyone who serves drinks to patrons. Training should take place on a regular basis to make sure that new and existing staff members adhere strictly to the set procedures. In some states, evidence of such training may be considered as a mitigating factor in certain instances.

Delivery Operations

Besides claims involving food and liquor, some of the most damaging and costly claims for restaurants stem from auto accidents involving delivery drivers. The liabilities can be significant. Awards and settlements in such cases have reached well into the millions of dollars.

Where delivery operations are a part of the business, restaurants should perform motor vehicle record and background

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checks on all delivery drivers. Auto insurance is a major risk management consideration. If delivery drivers are using their own cars, it is essential to make sure that their insurance includes delivery operations and that the limits are adequate.

Cyber Liability

Today, most restaurants simply have to accept credit and debit cards if they want to stay in business. While the use of credit cards brings a great deal of convenience for both sides, restaurants need to be mindful of both the potential for data theft and the state regulations concerning data breaches. In many states, businesses are required by law to notify customers of any data breach that may expose private financial information to potential theft. Data breaches at major retailers have generated widespread headlines this year, but restaurants are also targets. Earlier this year, one upscale restaurant chain said it was investigating whether a data breach may have led to credit and debit card information being stolen from various locations around the country.¹² Data breaches can be expensive to deal with and cost an average \$201 per customer according to a 2014 study by the Ponemon Institute sponsored by IBM.¹³

While hackers are a threat, the wait staff and cashiers that handle the cards also pose a risk. Servers may copy down the numbers or sell credit card information to third parties, thereby creating a liability for the restaurant. To address that risk, restaurants should perform background checks on employees that handle credit cards, and they should monitor them in the workplace. For instance, restaurants may want to use video cameras to monitor bartenders, cashiers and areas where credit transactions are handled.

Although many restaurants use outside contractors to handle payment processing and in-house needs such as payroll and employee benefits, the ultimate responsibility for any privacy breach involving employee and customer information stemming from outsourced operations lies with the restaurant. For that reason, restaurants should make sure that their own insurance includes coverage for data privacy and cyber theft.

Effective Risk Management Protects Customers and the Business

While striving to provide quality food and good service in a welcoming environment, restaurants have to manage a whole spectrum of liability risks related to their customers, their staff, their businesses and their reputations. As part of a proactive risk management strategy, restaurants should thoroughly review the exposures they face, how those risks are changing, and the policies and procedures they have in place to mitigate them. In areas where they need additional expertise, such as training or ADA requirements, they should seek help from outside experts.

In a business where profit margins are thin and liability claims can easily reach into the millions of dollars, the right insurance coverage and carrier are crucial considerations. Restaurants should make sure that their insurance coverage addresses all of the risks they face, from food quality and liquor liability to delivery and even cyber theft. A good reputation is critical in the industry and restaurants should seek coverage that includes catastrophe management services such as food testing and crisis public relations assistance.

Because of the potential for multimillion-dollar claims, restaurants should make sure that the limits on their excess coverage are sufficient. While limits of \$5 million might seem adequate, the reality is that claims for liquor liability and auto-related incidents can range from \$10 million to \$25 million and even higher. In addition to adequate limits, it is important to make sure that the carrier is financially strong and has expertise in handling the type of complex and potentially expensive claims that restaurants often face.

The restaurant business is highly competitive, demanding and fast-paced. Restaurants face a wide variety of risks that have to be effectively mitigated if they are to succeed. By strengthening their risk management strategies, including their insurance programs, restaurants can protect their reputations and focus on providing high quality meals and enjoyable experiences for their patrons.

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Joseph Fobert is Senior Vice President of Underwriting for Corporate Risk Excess Casualty, a division of Chubb USA. In this role, Mr. Fobert is the U.S. manager of the Corporate Risk Excess and Middle Market Express online umbrella platform. Mr. Fobert joined Chubb in September 2013, and prior to joining Chubb he worked for several insurance companies in both underwriting and management capacities. Mr. Fobert has drafted numerous coverage forms and endorsements, and has been quoted in industry leading publications such as the National Underwriter on both real estate and “green” insurance topics, and authored several industry white papers. With more than 20 years of industry experience, Mr. Fobert started his career in insurance out of college on

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