

Supermarkets: Addressing the Risks in an Evolving Market

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As supermarkets add new services and products to attract and retain customers in a fiercely competitive business, they face a wider range of risks today than in the past. Preventing slip-and-fall incidents remains a prime concern, but supermarkets also have to deal with a variety of other risks, such as tainted food, liquor sales, pharmacy operations, vehicle accidents and even criminal activity. Because an incident involving bodily injury can happen at even the most safety-conscious stores, supermarkets should assess whether their excess and umbrella coverage is adequate for losses that may reach into the millions of dollars.

To make sure that all potential exposures are addressed, it is important to work with an insurer that understands the industry and can provide risk management expertise along with the appropriate coverage. A comprehensive assessment of their exposures, risk management strategy and insurance program can help supermarkets ensure that they are taking prudent steps to protect their business and safeguard their customers and staff.

The following are some of the key risks that supermarkets face today.

Third-Party Discrimination

For both customers and employees, store management has a responsibility to actively promote an appropriate environment. That includes proper background checks and training to ensure that employees treat customers and each other in a suitable manner. Managers should be alert to any signs that employees are discriminating or humiliating others on the basis of age, disability, race or ethnic origin, religious affiliation or sexual orientation. A pattern of discrimination can raise the potential of a class action lawsuit that not only affects the company financially but can also damage its reputation in the community. Over the past 10 years there have been numerous class action lawsuits in regard to race or ethnic origin which have had verdicts or settlements well over \$1,000,000 in costs to companies. Hiring, training and oversight are instrumental in deterring and stopping these type of situations from ever occurring.

Alcohol Sales

Alcohol adds another layer of risk. In many states, beer, wine or even hard liquor represent a significant part of a store's sales. A stringent policy of checking identification can help reduce the risk of selling to underage individuals. Laws governing the legal hours for alcohol sales should be strictly followed. Stores may evaluate whether to limit the amount of alcohol that a customer can buy at one time and monitor parking lots to make sure patrons are not drinking on the premises.



of drugs for personal use or resale. As the risk of robbery may increase at night when fewer people are present, in-store pharmacies should not be open for extended hours. The pharmacy should be securely locked during the non-operating hours or when the store is closed.

Slip-and-Fall Incidents

Slip-and-fall incidents remain a common and costly risk for supermarkets. Pure medical costs alone from such incidents can rise into the millions of dollars, and jury verdicts even higher. To prevent such incidents, staff needs to check aisles and other areas regularly and clean up spilled liquids or dropped foods quickly. Following and documenting such procedures can help to limit liability. In California, for instance, a store that was able to show it conducted hourly checks was found not negligent after a woman slipped on a piece of food on the floor.²

Changes in floor level should be clearly marked and uneven floor surfaces repaired. Raised carpet or mat edges can increase the risk of accidents. Adequate lighting should be provided in all areas. Walkways and parking lots should be kept in good condition and repaired where needed. In colder climates, snow and ice removal is an important consideration.

There has been an increased volume of claims and multi-million dollar jury verdicts in the US over the last five years for Complex Regional Pain Syndrome (CRPS), a chronic condition that typically affects a person's arm or leg regions, but can in some instances impact other body parts. CRPS involves post-traumatic disturbances that continue even though the provoking injury appears to have healed.

Some markets that serve prepared food to patrons on site may consider selling beer and wine for consumption in dining areas, greatly increasing the potential risk. Bartenders need to be thoroughly trained to avoid selling drinks to people who are intoxicated. Supermarkets should be aware of the "dram shop" laws in their states and how they impact liability. In many states, establishments that sell liquor to individuals who eventually cause injuries or death may be held liable.¹

Comprehensive training that meets industry best practices is essential for cashiers and all other personnel who sell liquor. That training should take place on a regular basis due to employee turnover. In some states, evidence of such training may be considered as a mitigating factor in certain instances.

In-Store Pharmacies

While they are convenient for customers, in-store pharmacies and health care clinics present risks that stem from the medications involved, from ancillary services such as flu shots, and from an increased potential for crime. Druggist liability is a prime concern because of the potential for bodily injury due to an incorrect prescription, an incorrect dosage or the improper administration of medications. Whether the pharmacy is an in-house operation or contracted to third parties, strict background checks should be performed for all personnel to screen out unlicensed or inadequately trained individuals.

Stores also need to take measures to keep the drugs secure. That includes the proper safeguards, such as an appropriate recording and checkout system, to combat employee or third-party theft

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For customers with disabilities, supermarkets should supply motorized carts and consider hiring greeters who can suggest their use to customers who use canes or walkers. Additionally, children may pose a risk if they are running, sitting improperly or even standing in a cart. Children who are too big to sit in a cart may tip it over. Carts designed with children in mind, such as play cars, can help to reduce the risk of injury.

Tainted Food

Food sales go to the heart of the grocery business. While markets buy produce and food products from third parties, they remain responsible for what they sell under their names or outside brands. To protect themselves in the event of a problem linked to a supplier, supermarkets should make sure that their vendor contracts include the appropriate hold-harmless, subrogation, and indemnification language. Stringent quality control measures are a must. In case of contamination, stores need to be able to quantify how much of a particular batch they sold and to assess the risks to their customers. Stores should have inspectors to oversee the food handling procedures, including maintaining appropriate storage temperatures, and paying strict attention to sell-by dates.

Stores that sell prepared foods and dishes have to closely monitor how that food is made and cooked. They should not overlook the possibility that disgruntled employees may try to put something into the food to damage the store's business and reputation. Selling prepared food requires strict quality control measures and repetitive checks to enforce quality standards. For a supermarket that sells to thousands of customers, the potential exposure from tainted food items can be very significant.

Daycare Operations

To help busy parents, many stores offer daycare services or supervised play areas. When children are involved, supermarkets have to be especially careful that employees are thoroughly screened. Because children can choke on small items or wander off into the store or even out into the parking lot, any play or daycare areas should be adequately staffed and supervised. The proper protocols and employee training can help ensure that missing children can be found quickly. Staffing should be adequate to effectively monitor the premises, particularly during slow hours.

Assault and Battery, Robberies

Combatting crime on the store's premises is an important consideration. To protect customers and staff, the parking lot should be well lit, and the store should have security personnel on site. Security cameras should be visible so that potential criminals know they are being monitored. Signs that state cameras are in use and that only limited amounts of cash are kept on the premises may help dissuade potential criminals. Cashiers and other personnel should be trained to watch out for and report suspicious activities. Store design can serve as a deterrent. The layout of the store, including the lighting, should eliminate dark or obscured areas.

Stores may consider making it known that employees are available to help patrons to their cars with their groceries upon request. The key is to avoid letting people become isolated and vulnerable, which may also help forestall robberies. In higher crime areas, stores may want to scale back late-night hours to reduce risks to customers and employees, which is also a consideration for satellite banking operations, which criminals may target.



Tractor-Trailer Deliveries

Supermarket parking lots can be hectic places, and while loading docks may be separate from customer parking areas, tractor-trailers and customer vehicles can still collide. The market may be liable if a truck making a delivery is involved in an accident with a customer's car.

Stores that have their own delivery fleets run additional risks, including very substantial judgments in cases where accidents result in injury. The supermarket is responsible for making sure that drivers receive the appropriate safety training, and that they are not texting or making telephone calls while the vehicle is in motion. Stores should screen potential drivers with background and motor vehicle checks. Drivers should be tested for drug use before they are hired and randomly tested afterwards for both drug and alcohol use.

The vehicles themselves should be in good condition and maintained on a set schedule. Stores might consider installing cameras as a means of providing a record in the event of an accident as well as GPS to monitor driving habits such as excessive hard braking. Drivers should be trained on the proper protocol in the case of an accident.

Refrigerated trucks pose food safety concerns, particularly if a truck breaks down. Frozen or cold products must be kept at the proper temperature during transit and during loading and unloading.

Fuel Sales

Stores that have or are considering fuel sales need to take sensible steps to guard against the risks of fire and explosion. Fueling areas should feature "No Smoking" signs in plain view of customers

Stores have a responsibility to take steps to protect their employees and the public from potential harm that could result from a robbery of an on-premises banking operation.

Fires

Because they are busy public places, supermarkets need to take special care to prevent fires and to keep patrons and employees safe should one occur. Fire sprinkler systems should be kept up-to-date and checked regularly by a certified and licensed fire system contractor. Fire extinguishers should be maintained and inspected to ensure they are in good working order and they should be placed appropriately throughout the

store. Stores should retain the requisite documentation for their fire suppression systems and their upkeep.

Staff should be trained in the use of fire extinguishers as well as emergency and evacuation procedures. Regular fire drills can help ensure that employees know how to carry out the fire response and evacuation plans. If the main exits are blocked or not available, employees need to know where the closest alternative exits are and how to direct customers to them.

In stores that prepare food on the premises, all cooking areas, particularly fryers, should be cleaned and degreased regularly. Exhaust hoods and systems should be inspected and cleaned for grease buildup.

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and staff. Employees should monitor customers to make sure that they only put fuel in approved containers and that customers pumping their own gas are not putting themselves or others in jeopardy.

As with other deliveries, fuel trucks can be involved in accidents with customer cars or with the fuel pumps. Fuel storage tanks should be checked and monitored to make sure that there are no leaks that could require expensive remediation.

Keeping Risk Management Current

As they expand their services to keep competitive and attract customers, supermarkets face a wider array of risks. By taking the appropriate steps, stores can mitigate those exposures and enhance the safety of their customers and employees. Still, accidents and other incidents do occur and can lead to very significant claims. To address that financial risk, supermarkets should make sure that their excess and umbrella coverage includes limits that are sufficient to cover potential claims. Companies that have added in-store pharmacies, banking facilities or alcohol sales should make sure they have coverage that is specifically targeted for those risks. Where issues such as tainted food can lead to adverse press coverage, companies should consider coverage that includes catastrophe management expenses to help protect their reputation.

When it comes to an insurer, supermarkets should look for a carrier with expertise in the industry and in handling the types and magnitude of claims they are likely to face. The right insurance coverage and carrier are a crucial part of a supermarket's comprehensive strategy to manage the evolving risks in the industry.

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Endnotes:

1. Dram shop liability and criminal penalty statutes, National Conference of State Legislatures, June 14, 2013, See: <http://www.ncsl.org/research/financial-services-and-commerce/dram-shop-liability-state-statutes.aspx>
2. Santa Rosa Costco cleared in 'pot sticker' case, The Press Democrat, April 27, 2011. See: <http://www.pressdemocrat.com/csp/mediapool/sites/PressDemocrat/News/story.csp?cid=2297573&sid=555&fid=181>

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