



RISK in Focus

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RISK in Focus



# Alcohol Liability

## RISK in Focus

**Alcohol Liability****Background**

U.S. state “dram shop” laws hold restaurants and taverns liable when they serve or sell alcohol to minors or visibly intoxicated people who later cause death, injury, or property damage.<sup>1</sup> Third-party victims of this intoxicated behavior can file civil lawsuits against the restaurant and/or the waitstaff who sold the alcohol. These victims may also sue the intoxicated person directly, and the intoxicated person may also sue the establishment that served them.

**Hazards Contributing to the Risk****Hazard 1: Lack of Employee Training**

Employees who serve alcohol are a restaurant’s first line of defense against the risk of alcohol service liability. They’re likely to fail in this mission, though, if they haven’t been thoroughly trained regarding signs of intoxication, the laws and penalties regarding serving minors and intoxicated people, and the proper steps to confirm that a person is of legal age. After all, while there are certainly scientific ways to measure blood alcohol content levels, these aren’t available to waitstaff and bartenders. These employees must use their best judgment based on the number of drinks they’ve served and the behavior of the customer.

Additionally, as we discuss further below, alcohol deliveries from restaurants were authorized in many state and local jurisdictions during the pandemic. The rules, which may continue indefinitely, vary regarding the types of authorized containers and the amounts that can be sold in an order. It’s important that restaurant employees know of and comply with these laws as well.

Too often, training in all of these areas falls to the wayside. Untrained employees may step in as servers or bartenders during a rush. If an employee is hired to help during a busy season, they might be needed on the floor to work immediately, and their alcohol liability training may be skipped or abbreviated. High turnover can also result in a chaotic onboarding process in which training for some employees is given short shrift, overlooked, or forgotten.



## **Hazard 2: Lack of Employee Motivation to Adhere to their Training**

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A server's personal financial motivations can place them at odds with the alcohol serving policies that protect a restaurant from liability. Waitstaff and bartenders often depend on tips to augment their low hourly wages. More sales and happier customers translate to higher tips.

Thus, if a patron's age or level of inebriation is in a gray area, the server may be willing to give them the benefit of the doubt rather than take steps to enforce the rules at that point. After all, they may have spent several hours waiting on a certain table only to receive a smaller tip or no tip at all if they follow their training and say "no."

## **Hazard 3: Lack of Control/Visibility with Regard to Delivered Alcohol**

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On-premises dining was closed down or significantly reduced during the COVID-19 pandemic. Many were able to remain open for delivery or pickup, and state and local laws were revised to allow for alcohol to be sold in this way in conjunction with food orders.

Some of these laws and allowances are temporary, but alcohol delivery from restaurants may continue beyond COVID. To-go alcohol drinks may continue to be part of our new, permanent, post-COVID restaurant world. In these situations, even though establishments aren't able to observe the conduct of customers who have their alcohol delivered, they may still be liable for the person's subsequent intoxicated actions.

Currently, there's a lack of legal clarity about restaurant alcohol delivery/pickup and liability. In general, customers aren't signing waivers, and so establishments may still be liable for any problems that can be tied back to alcohol the restaurant delivered or prepared for delivery. It is also unclear how liquor liability insurance may or may not cover this new, potential exposure to liability.





# Maintaining Staffing Levels

## Maintaining Staffing Levels

### Background

In the restaurant industry, the quality and experience of hosts and servers are important elements of a successful customer experience, customer loyalty, and, ultimately, a successful restaurant. Server jobs are difficult, though, and these employees face difficult circumstances related to overwork, frantic meal rush periods, and customer rudeness. Few servers choose to make this a career. Even prior to the pandemic, restaurant owners ranked the challenge of maintaining sufficient qualified staff as their top concern.<sup>2</sup> This will no doubt be an even bigger challenge when restaurants resume normal operations.

The pandemic hit restaurant and bar servers especially hard, reducing the industry's predominantly hourly workforce by 78%.<sup>3</sup> If their employers were able to remain open, these frontline workers were usually competing for limited hours. And unfortunately, six months after the initial shutdowns, one in six restaurants (about 100,000 in total) closed permanently or long-term.<sup>4</sup> Many of these laid-off service workers were compelled to transition to other industries or careers.

Thus, post-pandemic, these establishments will be even more vulnerable to staff shortages than before.

### Hazards Contributing to the Risk

#### **Hazard 1: Failure to Provide Opportunities for Advancement**

Nine out of ten restaurant managers and eight out of ten restaurant owners started their careers with entry-level positions, according to the National Restaurant Association. That's very laudable, but those numbers also point out that there are a significant proportion of front-line restaurant workers who do not attain career-sustaining positions in the industry. Without the ability to advance within a typical corporate structure, many restaurant employees are likely to continue to view these positions as starter jobs – adequate, for example, to supplement a partner's income or to get someone through school or out of the house.

#### **Hazard 2: Losing Contact with Furloughed Workers**

Laying off an experienced restaurant worker is difficult for all parties. If the restaurant management team doesn't stay in touch with furloughed workers and check in on their welfare occasionally, the hurt feelings following a layoff not only won't subside, but they could turn to resentment. Alternatively, if that former employee feels valued as a person, not just as a worker, they'll be more likely to return to the restaurant when the economics permit, provided they haven't moved on to other opportunities.

### **Hazard 3: Offering Significantly Less than Industry-Leading Compensation**

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Tip-based work and state minimum wage are the primary compensation models in the restaurant industry. For most staff, their primary source of income is the “tip-based minimum wage,” an hourly rate below the state’s standard minimum, providing a taxable base pay before tips. The federal minimum wage was last raised in 2009 – to \$7.25 per hour. As of 2021, 30 states will have set higher minimum wages than that – led by California at \$14.00 per hour for employers with more than 26 or more employees.<sup>5</sup> But according to the U.S. Department of Labor (DOL), tipped employees receive an hourly wage as low as \$2.23 in Delaware or \$6 in Illinois.<sup>6</sup>

There’s a certain special group of restaurant workers who do choose to stay in the industry long term and make it a career. The primary route for advancement for these experienced people is to move to higher-status establishments that pay their wait staff commensurate with their experience. Lower paying restaurants will continue to lose experienced team members and professional talent to these restaurants.

### **Hazard 4: Lack of Attention to Employee Mental and Physical Health**

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A study by the Substance Abuse and Mental Health Services Administration (SAMHSA) reports that restaurant and hotel work is one of the most addiction-prone careers. The SAMHSA study also found that food service workers have the highest rates of illegal drug use compared to other industries.<sup>7</sup>

Restaurant industry employees face challenges from many sides when it comes to physical and mental health. Work hours can spill into long, exhausting shifts during which many employees struggle with poor treatment from customers. This atmosphere, combined with late-night closing shifts, creates an environment for alcohol and drug abuse. Additionally, for some, living paycheck-to-paycheck can also contribute to anxiety-induced substance abuse. Whatever the trigger, it’s advisable and understandable that these people leave the industry and environments like bars altogether.

### **Hazard 5: Lack of Attention to Employee Physical Health and Safety Measures**

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During the pandemic, restaurant servers had among the highest risk for contracting COVID-19 compared to other service industry sectors. Early in the pandemic, these indoor venues accounted for eight of ten new infections.<sup>9</sup> While COVID won’t continue to be as significant a threat in the future, the epidemic pointed out the general risk of viruses and germs being passed in a restaurant environment.

This should continue to be a major concern once establishments are 100% full and pandemic-driven sanitation practices inevitably shift back to pre-COVID standards. Restaurant workers will be the ones with the longest memories, though, and serving food in packed restaurants will seem even less appealing.



RISK in Focus

# Cyber Threats



## RISK in Focus

**Cyber Threats****Background**

Cyber risk most often refers to the risk of financial loss, liability, disruption, or damage to the reputation of an organization resulting from the failure of its information technology (IT) systems. The food service industry is a tempting and growing target for cyber hackers, given the large amount of payment information and other patron data available from loyalty programs, reservation systems, tableside technology, and contactless payment options. These services typically rely on point-of-sale (POS) tools using cloud-based technology.<sup>8</sup> Add to that the risks related unauthorized access to operational data for vendors and employees,<sup>9</sup> for example, and it's easy to see why cyber security should be top of mind for every restaurant owner.

When data breaches come to light, there's not only a significant cost related to ransoms, remediation, and liability, but a significant effect on employee confidence, customer good will, and loyalty to the restaurant brand.

**Hazards Contributing to the Risk****Hazard 1: Focusing only on Security/Prevention Systems and Neglecting Detection Solutions**

Cyber criminals are quick to stay ahead of the latest security solutions. It's important that restaurants try to prevent this unauthorized access of course, but if they aren't making use of technology designed to detect non-authorized access or malicious attacks, they'll always be one step behind in a reactive, recovery mode.

**Hazard 2: Failure to Protect Point of Sale Systems**

The most significant exposure route for restaurant IT systems and their patron's data is through the POS systems restaurants put in place to improve the dining experience – for example with Cloud-based payment options and loyalty programs.<sup>10</sup> Food service POS systems are a key target for cyberattacks because of the considerable amount and depth of personally identifiable information (PII) they gather. These functions are often managed by third-party providers who have access to this personal and payment data, providing another route to cyber theft of the data.



### **Hazard 3: Outsourcing Functions to Third Parties Without Reviewing the Risks**

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As restaurants look for customer efficiencies and higher service levels, they're increasingly outsourcing to contractors to take advantage of their services. If they don't take care to streamline these arrangements and identify the IT vulnerabilities in each case, they're flying blind and at a higher risk of a cyber infiltration.<sup>11</sup>

### **Hazard 4: Inadequate Management of Guest Wi-Fi Services**

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One of a restaurant's frequently used amenities is also one of its greatest cyber security liabilities – onsite complimentary guest Wi-Fi. Whether in a coffee shop or in the finest dining establishment, guests will inevitably use these unsecured networks to log on to their personal devices. In this environment, cyberthreat actors can easily gain access to a patron's personal information.

The restaurant and the patron both have a role to play to keep the user's information safe as they access these networks. First of all, patrons should be advised about the risks of using the network. And from the restaurant's perspective, old equipment, outdated firmware, and the failure to frequently update passwords all increase cyberattack vulnerability.

### **Hazard 5: Failure to Assign a Qualified Person with the Responsibilities of a Chief Information Security Officer (CISO)**

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In spite of the high likelihood and the potential impacts of a cyberattack on a food service IT system, few independent restaurants assign a qualified person whose job it is to ensure this doesn't happen. If the establishment doesn't have a tech-savvy person assigned to take a holistic approach to the restaurant's online technology, establish policies, train staff, and continually review equipment and software, they'll be much more susceptible to attacks.

Food service industry studies found that for establishments without this kind of internal focus, there is a median time delay of 83 days between a cyber breach and its detection.<sup>12</sup>

The CISO position has been the norm in financial and other industries for several decades. These professionals have portfolios that range from data loss and fraud prevention to maintaining the security IT architecture. In a food service environment, this should clearly be the focus for a qualified employee or outside resource. No systems can be 100% secure, but the goal is to make sure that state-of-the-art security policies and practices are in place to deter cybercriminals and cause them to shift their sights elsewhere.

A close-up photograph of a deep fryer. The oil is bubbling vigorously, and a metal basket is visible, partially submerged. The oil is a golden-brown color, and the basket is made of dark metal. The background is slightly blurred, showing the stainless steel walls of the fryer.

# Grease Fires

RISK in Focus  
**Grease Fires**

**Background**

The National Fire Protection Association (NFPA) records approximately 8,000 restaurant fires each year – the majority originating in the kitchen area. There’s no arguing that the equipment and processes in restaurant kitchens can contribute to the risk of fires, especially in quick-serve restaurants that make extensive use of vegetable cooking oil and deep fryers.

Vapors and smoke from this cooking process can accumulate in the form of flammable grease residue in exhaust hoods, fans, and throughout the entire exhaust system. Additionally, grease traps that collect used oil and fat to prevent it from reaching water sewage systems can accumulate dangerous levels of grease and used oil.

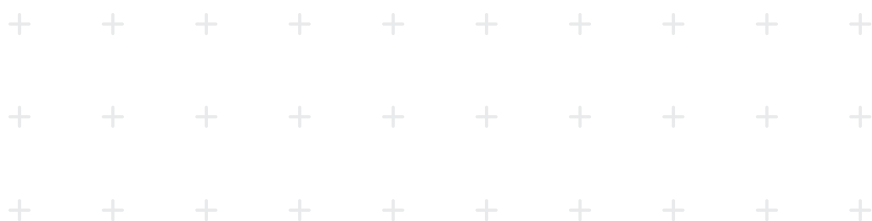
Finally, while most deep fryer appliances have automated temperature controls to prevent overheating, if these controls fail, the temperature of the oil can quickly reach a flashpoint.

**Hazards Contributing to the Risk**

**Hazard 1: Inadequate Staff Training Regarding Fire Prevention**

Daily cleaning of fryers, hoods, and filters is a critical first line of prevention. The work is dirty and difficult, though, and it’s easy for unmotivated crews at the end of a shift to do the job halfway. Thus, it’s important not only to train team members about the proper steps and techniques, but also the risks from doing it incorrectly or incompletely.

The training should also include how to properly re-install filters. If these fry cooks, for example, are not trained in proper clean-up, appropriately monitored, and rewarded for doing the job well, they’re likely to skip steps or do them haphazardly.





## Hazard 2: Failure to Train Staff on Fire Extinguishing

As is the case with any fire, a sudden grease fire can cause panic. The natural instinct is to try to douse it with water or smother it with an apron or any powdery substance on hand. These reactions will almost assuredly make a grease fire worse.

When restaurant employees are not trained on the proper reactive steps, what could have been a smaller, contained fire can quickly grow out of control. And if this training is limited to the kitchen staff only, a bussing crew member, waiter, or host who's in the area could make this type of possibly fatal mistake. Employee training should also include how and when to use Class K handheld fire extinguishers, which should be in every restaurant kitchen, for grease fire suppression. The training should emphasize that these extinguishers should only be used after the automated or manually deployed UL 300-compliant fire suppression system has been activated (more on this below).

## Hazard 3: Not Adhering to Equipment Cleaning and Maintenance Schedules

Some of the worst restaurant grease fires can happen behind the surface areas. The management team should carefully review and adhere to industry-recommended schedules for changing filters and cleaning the entire exhaust system. If they don't also follow NFPA's guidance for full-system cleaning, manufacturers' guidelines regarding equipment maintenance (e.g., for fans and deep fryers), and industry recommendations for equipment replacement frequency, the equipment could deteriorate and fail in the worst way.

## Hazard 4: Failure to Use and Maintain UL 300-Compliant Fire Suppression Systems

Preventing grease fires through proper cleaning and maintenance is important, but it's also essential that the systems in place to respond to a fire are the right ones for today's commercial kitchens. The NFPA's standards for restaurant fire safety, which have been adopted by most states, call for UL 300-compliant fire suppression systems.

These systems use an appropriate wet chemical agent that not only suppresses oil fires but cools the substance to minimize the risk of re-ignition.<sup>14</sup> However, once they're installed, many restaurants don't adequately maintain these systems or have them serviced in accordance with NFPA's recommendations.

## Hazard 5: Improperly Managing Greasy Rags Appropriately

The daily cleaning of fryers and hoods will yield a small collection of greasy rags. If these aren't stored safely (before being delivered for specialty cleaning or disposed of), they could combust. It may be tempting to store them in a tightly sealed laundry bag to minimize odor, but that's exactly the kind of airless environment that will cause them to heat up and combust.



<sup>1</sup> <https://www.investopedia.com/terms/d/dram-shop-laws.asp#:~:text=Dram%20shop%20laws%20are%20laws,state%20establishes%20dram%20shop%20laws>

<sup>2</sup> Staffing Trends In The Restaurant Industry (upserve.com)

<sup>3</sup> Siddiqi, Attif. "Understanding and Supporting Restaurant Employees During COVID-19." *QSR Magazine*, Aug. 2020, [www.qsrmagazine.com/outside-insights/understanding-and-supporting-restaurant-employees-during-covid-19](http://www.qsrmagazine.com/outside-insights/understanding-and-supporting-restaurant-employees-during-covid-19)

<sup>4</sup> "100,000 Restaurants Closed Six Months Into Pandemic." *National Restaurant Association*, 14 Sept. 2020, <https://restaurant.org/news/pressroom/press-releases/100000-restaurants-closed-six-months-into-pandemic>

<sup>5</sup> Minimum Wage By State In 2020 & 2021 | Paycor

<sup>6</sup> "Minimum Wages for Tipped Employees." *US Department of Labor*, 1 Jul. 2020, [www.dol.gov/agencies/whd/state/minimum-wage/tipped](http://www.dol.gov/agencies/whd/state/minimum-wage/tipped)

<sup>7</sup> Bush, Donna M., & Lapari, Rachel N. "Substance Use and Substance Use Disorder By Industry." *Substance Abuse and Mental Health Services Administration*, SAMHSA, 16 Apr. 2015, [www.samhsa.gov/data/sites/default/files/report\\_1959/ShortReport-1959.html](http://www.samhsa.gov/data/sites/default/files/report_1959/ShortReport-1959.html)

<sup>8</sup> Intro to Digital Security 101: How to protect your restaurant's data | National Restaurant Association

<sup>9</sup> us-risk-managing-cyber-risk-in-the-restaurant-sector.pdf (deloitte.com)

<sup>9</sup> Intro to Digital Security 101: How to protect your restaurant's data | National Restaurant Association

<sup>10</sup> Cybersecurity Risks for the Modern Restaurant — Restaurant Magic

<sup>11</sup> us-risk-managing-cyber-risk-in-the-restaurant-sector.pdf (deloitte.com)s

<sup>12</sup> Cybersecurity Risks for the Modern Restaurant — Restaurant Magic

<sup>13</sup> What is a CISO? Responsibilities and requirements for this vital role | CSO Online

<sup>14</sup> UL 300 Fire Suppression Standard: Why Every Restaurant Needs to Upgrade Now (impactfireservices.com)



## More Than Just Insurance

IMA is a diversified financial services company specializing in risk management, insurance, employee benefits and wealth management. It is the sixth-largest privately-held and employee-owned insurance broker in the country and employs more than 1,200 associates.

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