



Restaurants + Drinking Places

Background

The Restaurant industry has been challenged more than most in recent years; with their revenue, financial risks and valuations closely tied to the pandemic recovery, labor issues, inflation and the economic slowdown.

As they wrestle with those very real concerns, though, other less obvious risks discussed in this analysis are present every day – conditions that could have as dramatic an impact on their bottom line as those macro-level risks. The four risks we'll review in this paper are:

- + **Liability related to third-party food delivery services**
- + **Cybersecurity and data breaches**
- + **Getting on the wrong side of specific employment practices**
- + **Active assailant events**

While property owners and managers are certainly aware of these risks, they may not fully embrace the extent they can manage or mitigate them with the strategies we'll also address. The costs of these risk management steps are minimal compared to the tremendous economic impact any of those scenarios could have on their business.

Still, the understandable but unfortunate tendency is to postpone proactive risk prevention, a strategy few restaurant and drinking place investors and onsite managers would explicitly endorse ... but one that's all too easy to slip into.

In this report, we'll explore those risks in a bit more detail and suggest ways that restaurant and drinking place owners can manage and limit those risks in order to maintain the value of their retail asset and maximize their P&L.



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RISK in Focus



**Liability Related
to Third-Party
Delivery Services**

Hazard 1:

Liability Related to Third-Party Delivery Services

Incorporating third-party delivery services into a restaurant's business model can increase sales but also introduce a variety of risks for the owner.

The following scenarios unfortunately are not uncommon. The driver slips and falls within the establishment. The driver accosts an employee or patron in or outside the establishment. The driver's vehicle strikes a person or another vehicle in the parking lot. The delivery customer receives food they claim is contaminated or spoiled.

Often, the first inclination of the aggrieved person in these situations is to blame the establishment and then seek remedy from the owner.

Many of these risks are somewhat controllable through on-site risk management practices that include:

- + **Maintaining clean, dry floors in the restaurant or drinking place**
- + **Establishing and enforcing clear procedures for food and beverage pickup for delivery drivers that minimizes their interaction with on-premise patrons**
- + **Establishing convenient, sufficient, clearly marked parking spaces for these drivers**

In today's litigious environment, these kinds of risk management actions and policies won't necessarily prevent or preclude a liability claim, but when a restaurant or drinking place can document compliance with these standards and internal policies, it may weaken the case or minimize the possible financial impact.

Additionally, the restaurant or drinking establishment should carefully limit the food delivery service companies they engage with, working only with companies whose drivers are likely to act as a positive extension of the establishment's brand.

Appropriate contractual liability contracts and risk transfer provisions are another element of this risk management strategy. Owners should carefully review and consider the contracts with their approved delivery companies to make sure it clearly precludes owner liability for a driver's conduct, including auto accidents, on and away from the site. The contract should also be clear regarding acceptable and unacceptable delivery times and delays (that could lead to food-borne illness) and, unfortunately, clear language prohibiting contaminating or altering the food prior to delivery.

RISK in Focus

A photograph of a woman smiling while a man uses a handheld payment terminal to scan her smartphone at a restaurant table. The scene is set in a dimly lit restaurant with a table in the foreground containing a salad, a glass of water, and a small vase with white flowers. The background shows a man in a white sweater and another person partially visible. A semi-transparent dark blue overlay covers the bottom half of the image, containing the text.

Cybercriminals and Data Breaches

Hazard 2:

Cybercriminals and Data Breaches

It wouldn't seem that a restaurant or drinking place maintains the kind of financial or personal identifiable information that would attract hackers. Many owners instinctively decline cyber security insurance policies for that reason. But when they carefully consider their IT environment, they realize they do handle the kind of data cybercriminals want to obtain and that they do engage with IT systems that can allow this to happen.

Customer credit card information may not be stored on site, but it can be stolen in real time with skimmers and similar technology placed by an employee or by a customer using the increasingly common table-side mobile card swipers.

Company owners one step removed from their restaurant facility locations frequently wire or electronically send money – including bank deposits, payroll and payments to suppliers and contractors. These can be intercepted or redirected by cybercriminals who access the financial system through poorly protected gateways and user errors at the owner level or through breaches in the systems of their individual facilities.

Best practices in this area include verifying all changes in payment directives and utilizing multifactor authentication systems that require users to provide two or more verification factors to access IT resources.

Restaurant franchise owners also should clearly understand the cyber risks and IT security steps they're responsible for vis-à-vis the franchisor.



RISK in Focus

Employment Practice Missteps



Hazard 3:

Employment Practice Missteps

There's no question that the labor force is feeling empowered, not only with respect to wages and hours, but in the areas of working conditions and employee treatment. Establishments need to offer better-than-competitive wages and benefits, but that's just a start.

More than ever, employees expect a workplace that supports diversity, equity and inclusion (DEI), is free from any hint of discrimination based on gender and sexual orientation and protects them from verbal or physical assaults of any type.

One negative incident in those areas can be highlighted in social media, ruining that company's brand as an ideal employer and possibly triggering boycotts from patrons as well.

Managers must be hyper-vigilant and continually monitor employee activity in the work environment. Owners should be sure site managers are thoroughly trained on appropriate workplace conduct and that this training and information is passed on to employees upon hiring and repeatedly thereafter.

Best practices in for employee protection include:

- + **Maintain an employee handbook that spells out in detail appropriate and inappropriate employee behavior – not only in interaction with customers but also with fellow workers. All employees should sign and date their acknowledgment of these rules of conduct.**
- + **Periodically, managers should conduct all-team meetings to reinforce these behaviors.**
- + **Hiring managers should be trained on how to avoid hiring biases that could adversely impact members of any disadvantaged group. They should also be trained on best practices related to terminating employees.**

- + **A manager should always be present when workers are on site so they can monitor employee behavior. They should be especially vigilant regarding activity before and after the establishment is open.**

- + **The organization should have clear procedures to address every claim of bias, unwanted contact or assault and every instance of this kind of observed activity.**

The National Restaurant Association recently introduced a program designed to help restaurants implement effective and value-added DEI programs.¹

Establishments should retain the services of a strong employment practices law firm so if an employment practice issue arises it can be addressed quickly and correctly.

Insurance policies covering claims for wrongful termination and sexual harassment are important and it's important to know what those policies cover and don't cover.



RISK in Focus



Active Assailants

Hazard 4:
Active Assailants

Most people in the vicinity of an active assault situation freeze. That’s an understandable reaction when something so foreign happens in a familiar place like a restaurant or drinking establishment.

Employee training is one of the primary risk management steps in these scenarios. The goal of active assault response training is to shorten that freeze reaction by reviewing threat scenarios in a variety of settings throughout the establishment: the dining area, the kitchen, the parking lot and in the storage room, for example. These exercises will help managers and team members take the right response steps in the critical first moments of an actual assault situation.

This training should also include guidance on recognizing signs of danger, evacuating guests, reporting a situation, reviewing safe spots for sheltering and reviewing the exit options. No detail is too small. The drills should include minor matters that can make a big difference, such as how windows open and doors lock.

Restaurant and drinking place owners should clearly understand the liability and financial exposure they have regarding violence that occurs on their property. Beyond medical bills, there may be costs related to psychological care, counseling, public relations, facility closures, facility repair and much more.

The liability and the expenses related to these violent acts and/or threats become very real very quickly. Many standard insurance liability policies don’t cover an active shooter or similar violent incident. And even if they do, they likely won’t pay for ancillary expenses for crisis management and related expenses.

These companies should consider an active assailant insurance policy that includes:

THE COVERAGE	Victim coverages related to:	Business expenses related to:
+ Limits up to \$10M	✓ Psychiatric care	✓ Business income/interruption and extra expenses
+ Low minimum premium	✓ Medical and dental care	✓ Public Relations counsel
+ Annual stand alone policy	✓ Rehabilitation expenses	✓ Crisis Consultant expenses
+ \$0 to low deductible	✓ Death benefit/disability coverages	✓ Employee counseling
	✓ Funeral/burial expenses	✓ Additional/temporary security measures



Sources

¹ <https://stage.restaurant.org/research-and-media/media/press-releases/restaurant-industry-releases-dei-research-framework-for-dei-programs/>



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