

How Restaurants Can Tackle COVID's New Insurance Challenges

COMPLIANCE: When the coronavirus pandemic began, many brands found themselves facing unforeseen liabilities. Here's how to protect against that in the future.

By Rachel Pittman

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Operators are facing myriad new insurance challenges brought about by the coronavirus pandemic—challenges that aren’t always spelled out in previous insurance coverage.

It’s all too easy for operators to leave the fine print of their brands’ insurance policies to agents. The world of insurance is complex, and

often operators take their providers’ recommendations at face value, or simply let their policies roll into a new year with little examination. But

as the industry continues to grapple with the coronavirus pandemic, operators need a new, more vigilant approach to their coverage.

As most operators purchase insurance through an insurance agent rather than directly from a lender, for many, this new approach starts with agent communication.

“Aside from the time when your policy is coming up for renewal, you typically don’t hear very much from your agent,” says Brian Mahany, attorney and founder of plaintiff’s lender liability firm, Mahany Law. “Many times, agents don’t walk their clients through what has changed. But your agent has the obligation to tell you if your policy has changed. So as your policy is renewing, you really have to have a conversation with your agent and say, ‘Hey, what’s covered and what isn’t covered?’”

While this conversation has always been an important, albeit oft-neglected, one, the stakes were raised with this year’s crisis. Several, if not most, insurance companies have already excluded viruses from coverage going forward as a result of the pandemic.

In spite of this new exclusion, Mahany says that insurance premiums are continuing to rise overall. Plus, a lack of coverage for viruses could be particularly harmful for brands in the case of a second wave of COVID-19 in the coming months.

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Aside from the possibility of virus coverage being newly excluded from a policy, the coronavirus pandemic gave birth to a host of other liabilities within foodservice. Claims that the virus was contracted inside a restaurant and to-go alcohol sales are just some of the areas where liabilities have begun to show themselves.

“First and foremost, we have to look at the regulatory changes that have happened as a result of the coronavirus,” says Crystal Jacobs, VP and program director for Restaurant Guard insurance. “One of the biggest things I see is that I don’t think the liability of this situation has been fully realized yet.”

Take to-go alcohol sales: The legislation on these sales changed at lightning speeds as municipalities searched for ways to boost their local economies and restaurant and bar businesses through the pandemic. While laws prohibiting drivers from consuming alcohol or possessing an open container of alcohol while driving are still in place, there is no way for operators to ensure that their customers do not open to-go, pre-mixed cocktails during their

drive between the restaurant and home.

“I wouldn’t tell restaurants to forego these sales altogether, but you need to make sure that your liquor liability policy will address any related issues, and I would draft up some disclaimer language,” Jacobs says.

Other possible liabilities for operators are more directly related to labor concerns, customer risk, and contraction of the virus. When dining rooms shuttered in March at the start of the pandemic, thousands of foodservice workers were left jobless. Still, particularly in quick service, some team members were needed to operate drive-thru and takeout operations and most brands have continued to employ select personnel through the crisis.

The blurred lines between what is essential and what is nonessential when it comes to the restaurant business has bled over into workers. While employees manning drive-thru lines, kitchens, and take-out channels through the pandemic might have not received the “essential” qualification due to the fact that their employing restaurant might also not have been deemed essential, they certainly were working through the thick of the pandemic, and had as much risk of exposure as any essential worker. Now, as companies begin to bring back

a fuller set of staff members for phased reopenings, some workers comp issues could arise that harken back to those early months of the crisis.

And this is not to mention customer exposure to the virus. While it is very difficult to prove that a worker or customer contracted the virus inside one particular foodservice establishment, as people continue to limit their personal routines, they are entering less businesses and locations outside the home than ever before. As cases rise, restaurants could get caught in the crosshairs.

“Restaurants have had limited revenues coming in, and now they have an opportunity to fully open,” Jacobs says. “But just by virtue of opening, their reputations could be tarnished. What happens when they have an employee or customer test positive and that hits the local media?”

Like Mahany, Jacobs recommends operators prepare to deal with these looming liabilities by opening a continued dialogue with their insurance agents. Together, operators can collaborate with their agent and hash out a policy that provides for when, not if, your concept veers into risky territory.

“The frustrating part of doing what we do as a carrier is providing an option that

people don’t utilize,” Jacobs says. “You need to talk to your agent. Certainly there are some insurance coverages that are too expensive and just don’t make sense. But the mindset and the excuse of, ‘It will never happen to me,’ has to go away.”

Another key player in securing an airtight post-COVID policy? A legal expert with an intimate knowledge of the insurance world. Mahany says it’s important that operators have someone on their team who can comb through the minutiae of their policies. He cites business interruption claims as an example of why such an expert is necessary; as a result of the mandated closures that marked the first phases of the pandemic, many foodservice brands are filing business interruption claims. Some insurance policies, however, require that “business interruption” include physical loss or physical damage. An expert can help protect brands against coverage loopholes like this one, especially as the industry steels itself against a continuation of the pandemic.

“You need someone who can sort through the exact and precise wording in your policy,” Mahany says. “Given what has happened, it pays to have someone very experienced, either a lawyer that specializes in coverage issues or an insurance industry professional, go through your policy. Lawyers and insurance experts aren’t the

solution to every problem, but they can help.” ■