

# GET ON-BOARD, RISK MANAGEMENT IS A TEAM EFFORT

BY JOHN HARRIS & HANNAH BECKER

**T**he holidays may come and go, but protecting your alcohol beverage retail business from criminal, administrative, and civil legal actions is an everyday responsibility. One key way to protect your establishment is to hire and maintain well-trained, dependable, and qualified staff and agents.

## Florida Statutes States ...

Section 561.29 of the Florida Statutes places responsibility with the licensed retailer for any violation committed by the retailer's employees or agents while the employees or agents are on the licensed premises, or elsewhere, if acting in the scope of their employment or agency agreement. Any violation committed by the retailer's employee or agent places the retailer's alcohol beverage retail license at risk of suspension or revocation. Further, if the retailer's employee willfully and unlawfully sells or furnishes alcohol beverages to a patron who is not of lawful drinking age or to a patron who is habitually addicted to the use of alcohol beverages, the retailer may become liable for injury or damage caused by or resulting from the intoxication of such minor or individual pursuant to section 768.125 of the Florida Statutes.

Beverage retailers should scrutinize all potential and current employees. The best method is using basic employment and alcohol beverage-specific hiring criteria, and routine evaluation.

Did you know that Section 562.13 of the Florida Statutes imposes qualifications on certain beverage retail employee positions? With the exception of two re-

tail license types, Florida-licensed retailers cannot employ as a manager, person in charge or as a bartender, any individual convicted anywhere in the United States in the last five (5) years of any beverage law violation, soliciting for prostitution, pandering, letting premises be used for prostitution, keeping a disorderly place, illegally dealing in narcotics, or any felony.

## Age Restrictions / Age Exceptions

Generally, in order to work at a licensed retail establishment, employees must be at least eighteen (18) years old. However, some exceptions to this age restriction exist and include:

- Employees of drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations selling beer or beer and wine by package only for off-premise consumption only;
- Professional entertainers who are at least seventeen (17) years old and not attending school;
- Minors employed in the entertainment industry, provided certain requirements are met;
- Bellhops, elevator operators, and other employees in the hotel industry, engaged in work apart from areas normally where alcohol beverages are sold and served to patrons;
- Individuals who are at least seventeen (17) years old or any individual furnishing evidence that he or she is a senior high school student with written permission of the principal of said senior high

school or that he or she is a senior high school graduate, or any high school graduate, employed by a bona fide restaurant with food training programs for individuals meeting certain requirements, provided such individuals do not participate in the sale, preparation or service of alcohol beverages;

- Actors and actresses, or musicians in bona fide dinner theaters;
- Employees of bowling alleys, so long as the minor does not participate in the sale, preparation or service of alcohol beverages; and
- Employees of theme parks that meet specific qualifications, so long as the minor does not participate in the sale, preparation or service of alcohol beverages.

## Your Legal Obligation

Alcohol beverage retail licenses place great responsibility on the holder of the license. It is very important that you understand your legal obligations and the inherent risks associated with your retail business. You should remain informed of all legal requirements that affect your business. In order to assist beverage retailers to protect their business and prevent harm to patrons, we recommend adherence to the following good practices:

Before hiring any individual, conduct a background check of all potential employees to make sure he or she does not have any disqualifying arrests or characteristics;

- Require execution of a memorandum of understanding by your employees and agents, which places conditions and de-



tails your expectations during the course of the employment/agency relationship;

- Ensure that your business's premises, particularly the restroom, are clean and meet all health and sanitary laws on a daily basis to attract and protect patrons;
- Meet with your staff on a regular basis to identify and review any issues or risks previously identified and engage in problem solving to reach the appropriate solution and make the necessary internal adjustments;
- Draft internal policies and require extensive training sessions, relating to service and guaranteeing alcohol beverages are not served to individuals under the age of 21 and habitual drunkards;
- Create an environment that increases morale to operate with minimal or no risk, and encourages teamwork to monitor and correct any observed errors or misjudgments and prevent avoidable mistakes;
- Require employees to proactively observe patrons from all points of entry to examine patron behaviors;
- Establish an internal protocol for refusing service to unduly intoxicated patrons, stressing personal safety concerns;
- Clearly define the roles of your employees to ensure that each employee fully understands your expectations;
- Regularly review your business's policies relating to the Division of Alcoholic Beverages & Tobacco's right to inspect the licensed premises, including patios, offices, storage rooms, and invoices and business documents, without a warrant, and the importance of being truthful and cooperative;
- Emphasize the importance of cautiously evaluating new suppliers and representatives, as well as the alcohol beverage products, to avoid the purchase of counterfeit or stolen products from

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unlicensed individuals claiming to be licensed suppliers;

- Regularly review Florida Beverage Law and prohibited trade practices to ensure your employees act lawfully when dealing with licensed industry members and unlicensed third party providers; and
- Proactively be involved with local, state, and national retail trade associations and other retail networks to jointly advocate for retailer's interests with respect to policy and legislative issues.

Managing risks should be a group effort. Successful risk management involves a well-trained staff, patrons lawfully permitted to purchase and consume alcohol beverages, cooperating competitors, and a safe and sanitary retail business environment.

### **You asked, we answered**

We will answer more readers' questions in our upcoming columns. In the meantime, with so many snowbirds making their Florida appearance, we feel this one question is worth answering now.

**Q. I am the licensee of a special hotel liquor license. Do I have to meet any percentage requirements regarding alcohol beverage sales, similar to special food service liquor licensees?**

**A.** Generally, no. If your Special Motel/Hotel License is issued under the author-

ity of the state's general law authorizing hotels, motels, and motor courts with more than 80 guest rooms or 100 guest rooms (depends on county population), your license is not subject to any food or other goods/services to alcohol ratio requirements.

However, if a hotel or motel is issued a Special Motel/Hotel License under a special act, such license may be subject to an alcohol beverage percentage requirement.

For example, if your hotel or motel is a "historic structure" with less than 100 guest rooms, the hotel or motel must be licensed as a public lodging establishment and derive at least 51% of gross revenues from the rental of guest rooms.

If your hotel or motel has between 10 and 25 guests rooms and the hotel or motel building is a "historic structure" located in any city with a population between 25,000 and 35,000 residents, which is within a constitutionally chartered county (currently less than twenty qualifying municipalities), the hotel or motel must derive at least 60% of gross revenues from the rental of guest rooms and sales of food and non-alcohol beverages. ■

We Welcome Your Email Questions.  
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This Florida Law column is not designed to give specific legal advice. We suggest you consult with an attorney who specializes in alcohol beverage laws and regulations. The answers to questions posed in this article may change in the future due to modifications and amendments made to the Division's unwritten policies, or state or local alcohol beverage control laws and regulations.