

SELL FOOD?

THEN YOU NEED TO KNOW FOOD SAFETY LAWS

Most businesses that sell alcohol beverages also sell food for customers to enjoy with their beverages. Restaurants serve meals to patrons, and convenience stores and grocery stores sell packaged and/or prepared foods. Meaning, most alcohol beverage licensees are also food establishments of some sort.

This month we highlight some of the food safety regulatory considerations for selling packaged and prepared food to consumers. Why? Because your alcohol beverage license is subject to revocation or suspension for a violation of food safety related local, state, or federal laws.

All alcohol beverage license holders who serve food in their establishments should pay close attention to the rules and regulations governing the food service component of your business.

To begin with, a Florida business that sells beverages and food must obtain a food service license, and the regulation, including the inspection and licensing of food service establishments is overseen by one of these three state agencies:

- ❶ The Division of Hotels and Restaurants (“H&R”) regulates freestanding restaurants preparing and handling unpackaged food and beverages;
- ❷ The Department of Agriculture and Consumer Services (“DACCS”) regulates convenience stores, gasoline stations, grocery stores, and pharmacies; and
- ❸ The Department of Health (“DOH”) has primary jurisdiction over institutional food service establishments, such as schools and hospitals, and bars serving

drinks and only minimal snack foods like peanuts, popcorn, and wrapped snacks.

First Step

As a general matter, these agencies focus on ensuring businesses handling food minimize the risk of food borne illnesses. They follow the guidelines set by the food safety standards outlined in the U.S. Food and Drug Administration’s Food Code (the “FDA Food Code”) and in state laws and regulations.

To ensure the food facility is properly equipped to meet these standards, depending on the type of food facility and governing agency, the licensing authority may require or offer voluntary plan review as part of the license application process. As part of the plan review, the applicant provides details about the construction of the establishment and particularly the areas where food will be handled.

The regulatory agency will provide guidance to the applicant on whether its plan meets the governing food safety requirements. After obtaining a food service license, plan review may be available, or required, when a food service establishment is proposing to remodel its location.

Be Inspection Ready

Following plan review, the next step of the food service licensing process is typically an opening inspection. A restaurant regulated by H&R may find the following checklist helpful to prepare for the opening inspection. At the time of the inspection, the restaurant should have the following in place:

■ A copy of the H&R approved and stamped drawing (or blue print) and specification worksheet.

■ A three (3)-compartment sink should be installed and working properly. Drain boards should be provided or equivalent shelving installed.

■ All hot and cold food-holding units working correctly and provided with thermometers. The stem thermometer should be available and properly scaled (0-220 degrees F) to measure food temperature.

■ Portable and/or hood fire extinguishers properly sized/mounted with a current, valid tag.

■ A dumpster/grease barrel located on a nonabsorbent surface with the drain plugs installed and tight-fitting lids.

■ LP-gas/natural gas tanks properly installed and protected (if applicable).

■ CO2 and helium tanks secured in place.

■ Properly equipped hand washing sinks with soap, paper towels, hand washing signs and functioning hot/cold water.

■ Backflow devices (vacuum breaker) must be installed on all threaded faucets.

■ There should be no utility lines installed horizontally on the floor.

■ Lights and light shields must be installed and functioning. Extension cords should not be in use.

■ Chemical test kit for manual sanitizing or wiping cloth containers should be provided, if applicable.

■ All floors, walls and ceilings should be made of smooth, nonabsorbent and easily cleanable material.

■ Weather stripping should be installed (as necessary) around exterior doors and all raw wood should be sealed.

■ Exterior/bathroom doors must be self-closing and a covered waste container is required in the women's restroom.

■ The required consumer advisories should be posted (i.e. warnings related to serving raw/undercooked animal foods and serving raw shellfish), if relevant.

■ The choking poster and related information should be provided in an area visible to employees.

■ Food handling procedures must be prepared and provide that bare hand contact with ready-to-eat food is prohibited without an approved Alternative Operating Procedure.

Keep in Mind

You should arrange to have a certified food manager on-site during any inspection. This is particularly true during the opening inspection because this inspection is an opportunity for the manager to begin building a long-term relationship with the regulatory agency and inspector.

Establishing good relationships with regulators at the onset may allow you to effectively and efficiently work through any food safety violation issues identified by the inspector during subsequent inspections.

As noted above, during this opening inspection and subsequent routine inspections, the inspector is looking to ensure your establishment is properly equipped and food-handling procedures

are in place to minimize the risk of food borne illnesses.

When violations are noted during an inspection, we recommend food service establishments immediately address the food safety violation and follow-up corrective action recommend by the inspector in writing. Doing so will help to mitigate the potentially serious consequences that can occur if such violations are ignored.

You Asked, We Answered

Q: I am a restaurant licensed by the Division of Alcoholic Beverages & Tobacco and the Division of Hotels and Restaurants. I have received a formal complaint from one of these regulators, what do I do?

A. Because we do not know the exact violation that was alleged in the complaint, we are going to provide some general guidance on what to do if you receive a formal complaint from these regulators. Hopefully these tips will be helpful to all of our readers.

First, always note the date you receive a formal administrative complaint from any government agency.

When a formal complaint is issued it should include the specific allegations, details regarding the appeal or compliance process including and the deadlines by which you have to respond to the complaint. Formal complaints issued by these state agencies are time sensitive and anyone issued a formal complaint needs to pay close attention to the date the response to the complaint is due.

We recommend a licensee who receives official notices and formal complaints contact or engage qualified legal counsel to help them respond to the complaint. If you fail to properly address and respond to the complaint, you could be putting your license at risk.

Your counsel can also help negotiate a settlement with the agency and develop a corrective action plan to resolve the complaint.

Typically, these agencies issue warning notices before filing formal complaints. These warnings should not be ignored, and even if not directed by the agency in the warning notice, you should timely adopt a correction action plan to ensure the perceived violation does not occur again.

For example, if your food service establishment received a warning notice that an inspection determined that food was not maintained at the right temperatures for food safety, you should adopt a formal corrective action plan that demonstrates how you are monitoring food temperatures to ensure compliance. This way at your next inspection the inspector will not discover the same problem.

Finally, as a food service establishment that serves alcohol there are two things you can do to mitigate your chances of warning notices and complaints in the future: first, be sure your employees are trained and certified food handlers.; second, be sure that your business complies with Florida's Responsible Vendor Standards outlined in Section 561.705 of the Florida Statutes.

We hope you are never cited for violations or experience a civil law suit or formal complaint. However, by understanding these requirements and adopting appropriate compliance policies, you will likely lessen your risk of adverse enforcement action and instead, build a record demonstrating compliance in the event a violation is discovered. ■

We welcome your email questions.
 Contact us at: jjharris@gray-robinson.com
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 This Florida Law column is not designed to give specific legal advice, we suggest you consult with an attorney familiar with hospitality laws regarding issues pertaining to your business.