

SOUTHERN BEVERAGE JOURNAL

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ADOPTING NEW DELIVERY PROTOCOLS

BY JOHN HARRIS & ANNA M. WIAND

During the shutdowns mandated by the COVID-19 pandemic, many alcohol beverage and food retailers altered their business models to offer pick-up and delivery. As many states reopen, retailers may be interested in continuing to offer these services.

This article explores some of the regulatory requirements and best practices retailers should keep in mind if they desire to maintain or expand their food and beverage delivery offerings in a post-COVID-19 world.

DELIVERING ALCOHOL BEVERAGES

As of July 2, 2020, the Department of Business and Professional Regulation's (DBPR's) enforcement policy, issued in accordance with Governor DeSantis' Executive Order 20-71, permits on-premises licensees, including Special Food Service Establishment ("SFS") licensees, to sell alcohol beverages in [factory-]sealed containers for consumption off the premises through the end of the state of emergency. These sales are allowed as long as (i) the sale of alcohol is accompanied by the sale of food in the same order and (ii) the delivery complies with Florida Statutes section 561.57. (Note, although DBPR's guidance only references "sealed" containers, it our understanding that the guidance relates to factory-sealed products only, meaning no to-go cocktails.)

Other alcohol retail licensees, like convenience stores, grocery stores, and liquor stores, hold off-premises licenses, permitting these vendors to sell alcohol beverages for delivery without a change in law or special authority from the governor.

As noted above, all alcohol beverage deliveries must comply with Florida law.

In particular:

- Sales must take place at the licensed premises however, sales via electronic means or telephone are considered a sale made at the licensed premises;
- Vendors may contract with third-parties, including common carriers, to conduct delivery of alcohol beverage products;
- Deliveries must be made in (i) vehicles that are owned or leased by the vendor or (ii) in contracted third-party vehicles;
- Valid proof of the recipient's identity and age must be verified and documented at the time of delivery; and
- Alcohol beverages cannot be sold or delivered to anyone under the age of 21.

Additional recommended best practices include conducting age verification at the time of sale, in addition to age verification at the time of delivery, and establishing recordkeeping to maintain all records associated with a delivery sale. Finally, the sale and delivery of alcohol beverages should be conducted during and in accordance with the lawful hours of sale for the licensed vendor.

DELIVERING FOOD PRODUCTS

As a general matter, the online sale and delivery of food is less regulated than the online sale and delivery of alcohol. However, retailers selling food products online for delivery to consumers should take care to ensure consumers are fully informed about the products they are buying. Additionally, retailers should establish protocols to ensure and maintain food safety during the delivery process.

Restaurants should consider making food descriptions posted online as detailed as possible and include information about any major food allergens in

the menu item. This will allow consumers to make informed decisions regarding what they are ordering. Further, retailers should include on their online menu all mandatory warnings that they would typically place on their menu in the restaurant (such as a consumer advisory regarding raw and undercooked foods), to the extent such foods are being sold for delivery.

Additionally, during the delivery process, it is important that the retailer's employees and/or delivery agent are trained in safe food handling practices. This means that the food is properly packaged and handled to ensure it does not become contaminated during delivery. Accordingly, food should be properly insulated, for example heated or cooled, to maintain the appropriate temperature during transit to the ordering consumer.

COVID-19 BEST PRACTICES

Finally, when developing a delivery service program, retailers should remain mindful of the current COVID-19 health crisis and the associated social distancing recommendations. For example, the DBPR recommends that retailers encourage third-party delivery staff to wait outside or in non-congested areas practicing social distancing guidelines when picking up delivery orders. Additionally, in accordance with the U.S. Centers for Disease Control and Prevention recommendations, delivery agents should be encouraged to wear masks when interacting with consumers. ■

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