

NEWS & INSIGHTS

COVID-19 impact on Pennsylvania hospitality and alcohol industries - what business owners need to know

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

The hospitality and alcohol industries are both leading the charge and taking the brunt of the effects of COVID-19

(coronavirus). As soon as cases were confirmed in Pennsylvania, many businesses immediately instituted sanitation practices that were unprecedented, only to be directed to close their doors to dine-in customers a few days later. Now many distilleries are redirecting their resources to produce hand sanitizer and numerous restaurants are offering free meals to those in need.

Many hospitality and alcohol business have already made significant decisions about their operations and continue to make those decisions in a highly dynamic environment. Below is a summary of the current impacts of government orders and advisory notices, to date. This information continues to change day-to-day, so please check back in occasionally as other developments occur.

All restaurants and food service providers

In an effort to slow the spread of COVID-19, the government is focusing on areas where the public congregates and comes in close contact with each other. As a result, Gov. Tom Wolf has ordered that all Pennsylvania dine-in facilities be closed to the public for at least 14 days beginning on March 17. This prohibition will be reevaluated as the situation unfolds to determine if additional restrictions are necessary. In the meantime, it should be taken seriously, as our team has already heard reports that the Bureau of Liquor Control Enforcement and the Department of Agriculture have been checking bars and restaurants to ensure compliance.

At this time, take out, drive-through and delivery service are still allowed. Businesses with a license for alcohol sales may continue to sell alcohol for off-premises consumption in accordance with its license. Although take-out sales are permitted, please note the Liquor Control Board's (LCB) requirement that sales occur "on the licensed premises." That generally means the customer must call in or submit their payment information electronically and the order is fulfilled on the licensed premises. You should not set up sales locations outside of your licensed premises. Additionally, LCB has provided guidance in the past that indicated an employee cannot take a customer's payment and order in an unlicensed area, complete the sale in the licensed area, then deliver the alcohol to the customer back in the unlicensed area. This may prevent some curbside orders or deliveries, so businesses should review their specific license to determine which areas of their properties are covered and consider only taking orders and payment information on a call-ahead basis.

Additional information pertaining to specific types of businesses within the hospitality and alcohol industries are outlined below.

Retail alcohol licensees. Bars, Restaurants, Retail Dispenser Licensees, Hotels, and all other classes of retail licenses must close their dine-in facilities. They can still offer food on a take-out, drive-through, or delivery basis. While food service is typically a requirement of a retail license, the LCB is indicating they will be lenient in this regard given the required closure of dine-in facilities. Retail licensees are permitted to sell beer (192 oz. limit) and may continue to do so on a take-out basis. Additionally, if a licensee has a wine expanded permit, they may sell wine to-go subject to the three liter-per-transaction limit. All other restrictions continue to apply.

Please note a retail license itself does not grant the business the ability to deliver beer directly to customers. In order to deliver alcohol, a retail licensee must use a transport-for-hire licensee. Both the retail licensee and the transport-for-hire licensee must ensure that the alcohol is not being sold to a minor.

Alcohol manufacturers. Breweries, Wineries, and Distilleries must also close any dine-in facilities they operate and cannot sell food or alcohol for on-premise consumption. They can sell food on a take-out, drive-through, or delivery basis. Furthermore, manufacturers may sell their own alcoholic beverage products for off-premises consumption. Keep in mind that while the law allows you to sell other Pennsylvania manufacturers' products, those sales can only be for on-premise consumption, which is now prohibited. If you have both a manufacturing license and a retail license (a "couplet") be mindful about the license that is actually making the sale. For example, a brewery selling under its brewery license could sell a case of beer if the sale is made on the brewery premises, but if the sale occurs on the restaurant license premises, it may only sell 192 oz. per transaction. Manufacturers are still permitted to produce, package and sell alcohol to distributors and licensees.

Clubs and catering clubs. Clubs and Catering Club licensees must stop all on-premise service/consumption of food or alcohol. They are not permitted to sell alcohol for off-premises consumption but may sell food for off-premises consumption.

Food trucks. Because food trucks operate on essentially a purely take-out business model, they are not immediately impacted. However, if a food truck is located in an area that has seating or tables that are used by the food truck's customers to sit and eat, that may be considered "dine-in" facilities, which should be closed-off or removed to comply with the Governor's restrictions. The focus of the order is to prevent clusters of people gathering regardless of whether that is inside or outdoors. Efforts should also be made to ensure that customers are keeping safe distances (six feet is recommended) between each other when placing orders and waiting for their orders to be ready.

Distributors. At this time, there are no restrictions on distributors. Distributors only sell for off-premise consumption to begin with and, other than pre-packaged food, do not have food-service elements. The only guidance from the LCB is to encourage distributors to employ social distancing practices for its customers, as well as keeping high touch surfaces clean.

Hotels. Hotels may remain open and are considered essential businesses; however, the service or consumption in dining areas and restaurants must also be closed for dine-in/eat-in service. The LCB issued additional guidance in [Advisory Notice 26](#) on March 18 to clarify that the ban on dine-in and eat-in service applied to banquet facilities and other public room rentals. There has not been a specific mention of preventing room service; therefore, it is our attorneys' understanding that guests may purchase food and alcohol for consumption in their room individually or through room service.

Airports. Pursuant to the LCB Advisory Notice, airport restaurant license holders may not allow the service or consumption of food or alcohol on the licensed premises but are allowed to sell for off-premises consumption.

Special occasion, off-premises catering, exposition and farmer's markets. Advisory Notice 26 states that these permittees may not allow the service or consumption of food or alcohol on licensed premises or at public gatherings. There is no additional information or guidance on "public gatherings" or what a special occasion permit or off-premises catering permit holder can do under those circumstances. Holders of Exposition and Farmer's Market Permits would still be able to sell for off-premises consumption.

Industry outlook and support

We recognize the unique challenges that hospitality and alcohol industries have experienced in recent years, including natural disasters, government shutdowns, and unexpected changes to laws. We remain positive that the industry will continue to thrive. In these uncertain times, an experienced attorney can provide information and guidance to help you make fully informed decisions. In addition to licensing, there are questions businesses may have related to employment matters, such as the [Families First Coronavirus Response Act](#), [insurance coverage relief for business interruption losses](#) and financial consulting relating to [tax credits and employee benefits](#).

Saxton & Stump attorneys [Ken McDermott](#) and [Anthony Foschi](#) are available to discuss the current restrictions in place and how our [Hospitality](#) and [Liquor Licensing and Alcohol Law](#) groups can partner with you to navigate the complex business and legal questions arising from the COVID-19 global pandemic.

Stay informed

Our team is committed to providing you with continuous updates, which you can receive by signing up for our [e-alerts](#) and following our Twitter account [@PA_Alcohol_Law](#).

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