

Cannabis and Hemp: Up in Smoke?

How the Hospitality Industry Can Avoid Traps for the Unwary

By: Emily Harris Gant, Foster Garvey

The director of your spa program calls, noting that your top competitor is offering CBD-infused massages. Your marketing team wants to engage in “Canna-Tourism,” encouraging guests to visit the property because it is within walking distance of a hot new dispensary. And your F&B director has big plans for a new menu focusing on cannabis- and hemp-infused edibles and cocktails.

While cannabis and hemp present potentially lucrative opportunities for the hospitality industry, there are several traps for the unwary.

This presentation will identify some of those traps, and discuss how to avoid them:

1. [Trap 1: Imperiling Your Liquor License](#). For many in the hospitality industry, liquor serves as a significant source of revenue. In many states, though, it is illegal to sell or allow for the consumption of cannabis at a liquor-licensed premises. Further, some states do not distinguish between cannabis and hemp. In those states, offering hemp-based products and services can similarly jeopardize your liquor license. When in doubt, speak with your enforcement officer before launching any cannabis- or hemp-related activities at your liquor-licensed premises.
2. [Trap 2: Using Hemp in Foods and Beverages](#). Under the FDA’s current guidance, it is federally illegal to include CBD or THC in foods and beverages introduced into interstate commerce, even if hemp-derived. Many states follow the FDA’s guidance, even for foods and beverages that have not crossed state lines. So, consult with your counsel or a state regulator before using hemp in your foods and beverages.
3. [Trap 3: Accepting Percentage-Based Fees from a Cannabis Licensee](#). Some in the hospitality industry are exploring percentage-based fees from cannabis licensees. Examples include percentage-based advertising fees (e.g. advertising a local dispensary in the property’s marketing collateral, and then receiving a percentage of the dispensary’s sales) and percentage-based rent (e.g. leasing a portion of the premises to a cannabis licensee, and receiving percentage-based rent). Before accepting any percentage-based fees, it is important to examine applicable law. Pursuant to many states’ cannabis laws, anyone receiving a percentage of the licensed entity’s revenue must be disclosed, vetted and identified on the cannabis license. In most jurisdictions, the property can avoid these issues by accepting payments on a flat-fee basis, rather than a percentage-fee basis.

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4. [Trap 4: Failing to Update Insurance Policies](#). Many insurance policies include robust exclusions for cannabis-related claims and, to a lesser extent, hemp-related claims. Before you offer cannabis- and hemp-related products and services, speak with your broker to confirm that your policy covers these activities.

5. [Trap 5: Failing to Appoint a Compliance Officer](#). We are in a period of rapid change in the cannabis and hemp industries. With that in mind, it is helpful to appoint a Compliance Officer to address all cannabis- and hemp-related activities for your company. In coordination with your Legal Department and/or outside counsel, the Compliance Officer is generally tasked with monitoring changes in state and federal laws, addressing any necessary changes to insurance policies, creating and timely updating company-wide cannabis and hemp policies, procedures and manuals, and reviewing all contracts touching cannabis and/or hemp. The Compliance Officer also provides ongoing training to ensure that all employees have up-to-date knowledge of the applicable requirements.

Good luck!

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