

TOP TEN THINGS I WISH I KNEW ABOUT MY LIQUOR LICENSED PREMISES

By Elizabeth A. DeConti
Gray Robinson, P.A.

Today's category is.....The Top Ten Things I wish I knew about my Liquor Licensed Premises!

#10: I need to submit an update to the governing licensing authorities when I restructure, change an officer, or change a d/b/a name.

Disclosures on licensing applications should be accurate and current, so that the regulating authority has a record of who has a financial interest in the licensed premises. The records on file with the Secretary of State/Department of State should match the disclosures on liquor license applications; frequently regulators cross reference these records. In some jurisdictions, criminal penalties may be imposed for a deliberate or inadvertent failure to disclose corporate changes. In every jurisdiction, an inaccurate roster of officers/directors will hold up a liquor license transfer in the event of a change of ownership or a sale.

#9: Special wet zoning restrictions may apply to our patios or other outside areas.

Liquor license applications should identify the entire licensed premises and should include entrances and exits, and walls. If the patio or outdoor area is added after the location is licensed, the patio space will not automatically become part of the licensed premises. Some jurisdictions have local ordinances regulating whether alcohol may be served outside, as well as requirements about the structure of patios and outdoor areas. These restrictions may include access to exits and fencing requirements, among others.

#8: My guests may not be able to self-serve their own alcohol beverages (growlers)!

Many jurisdictions have rules about growlers, or refillable containers of alcoholic beverages. The first question is whether the governing jurisdiction will allow an on-premises licensee to sell growlers. Some jurisdictions prohibit growlers completely, while others allow them with restrictions on size and sanitation. In addition, some jurisdictions require retail employees to fill the vessels for consumers rather than allowing walk up stations. State law may also include requirements about the ages of the employees who may handle the growlers.

#7: We can't automatically deliver alcohol just because we already deliver food.

Alcohol delivery may be regulated at the state and local level. In most jurisdictions, the on-premises license for your restaurant will not authorize serving or delivering alcohol away from the licensed premises and it is likely your premises will need additional licensing, or will need to partner with a third party who has appropriate licensing. Other legal issues which will need to be considered (and again are state specific), are: regulations on the transportation of alcohol, and age verification.

#6: We can't serve alcoholic drinks in any size container we want – there are limits!

Each jurisdiction has a definition of what constitutes a “drink” and these definitions usually include limitations (in fluid ounces) of total drink size as well as possibly the ingredients in the drink. Many states restrict large format vessels (e.g., pitchers) and non-traditional containers like bowls.

#5: We can't necessarily provide the same drink specials in every state where we operate.

Drink specials, happy hours, and drink pricing are all regulated on the state and sometimes even the county or city level. Common restrictions relate to below cost/free drinks, combination offers (sometimes called bundles) and specials directed at particular groups.

#4: Suppliers can't walk in here and start giving away gift cards to my employees.

Restrictive laws called “tied house laws” govern the financial relationships between suppliers and retailers. Every state has its own tied house statute. These laws prohibit unlawful gifts of value that are not subject to specific legislated exceptions, and particularly prohibit gifts of money. Monetary gifts to retailer employees, such as gift cards, are not covered by any tied house exception, and are therefore prohibited. Because the tied house laws apply “directly or indirectly”, having a third party such as a marketing agency hand out these unlawful gifts does not remove the violation.

#3: We might not be able to mix alcoholic beverages ourselves and keep them in batches in our own containers.

Some states do not allow retail licensees to serve alcoholic beverages from any container that is not the original, manufacturer's container. In other jurisdictions, pre-mixed cocktails, sangrias, frozen drinks, and the like are allowed but are subject to restrictions. Common restrictions include expiration dates, labeling, and record keeping around when the batches are made, as well as keeping clear labels of ingredients for consumers to view. Note that it is also unlawful to refill an original container with more of the same product or with a new different mixture.

#2: My 18 year old employees may not be able to perform all alcohol tasks in the licensed premises.

State law governs the activities of bartenders, servers/wait staff and bussers. Many states restrict the categories of employees allowed to handle alcohol, and the degree to which minors may do so. When operating a chain with multiple outlets located in different jurisdictions, it is important to understand whether minors may take orders, serve, pour, mix drinks and/or clear tables. Additionally, some states require server permits or server training courses before these employees may handle alcoholic beverages.

And, the number one thing I wish I knew about my liquor licensed premises is....

#1: Suppliers can't pay us to plaster their logos and brand materials all over the premises!

Federal and state tied house laws prohibit suppliers from paying retailers for any advertising, display or distribution service. This means that a supplier may not pay for the opportunity to be featured by a retailer, or pay for a sign about its brands to go up.

Thank you very much, ladies and gentlemen!