
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

Summer 2020

Reopening Update – July was a very difficult month for New York’s restaurants and taverns. The US economy is under the greatest stress since the Great Depression with the hospitality industry smack dab in the center of the distress. Add in the unprecedented restrictions on your operations and the swarming enforcement effort to ensure compliance and it’s clear that this is the most challenging time in history.

As we approach the mid-point of the summer we’ve made some progress reopening your businesses. Favorable metrics throughout New York gave the Governor confidence to open outdoor dining areas and indoor dining areas (except in New York City), but outbreaks throughout the country coupled with a lack of compliance with the requirements to wear facial coverings and physically distance in New York State have held the Governor back from further loosening these restrictions.

The recently imposed food requirement, while confusing at first, is an example of the conflict between opening business and protecting the public health. Crowded gatherings – whether in bars or backyards – are risky activities according to the public health officials and should be avoided, but if people sit in small groups and socialize with physically distancing the risk is significantly reduced. The food requirement is an effort to drive safer behavior so these businesses can remain open.

The countervailing force is a small share of the industry and the public that is flagrantly violating the rules. The recent aggressive enforcement activity by the State Liquor Authority has been focused on these “bad actors” with almost 100 licensees having their licenses summarily suspended and about 600 cited for a violation out of more than 13,000 premises visited. More than 95% of operators are complying with the restrictions in spite of the economic, operational, and emotional stress it’s imposing.

We emphasize the burden on your businesses in our regular conversations with the Governor’s Office and the State Liquor Authority. Barely a day goes by without a conversation with one or the other about the restrictions, enforcement, and challenges you’re facing through this crisis. They’ve been candid and direct discussing the Governor’s concerns about controlling the outbreak so even when we disagree (such as with the food restrictions which we think go further than necessary) our disagreements are based on an honest difference of opinion. This mutual approach to crisis management has often resulted in improved conditions for your businesses or it’s helped prevent conditions from deteriorating.

Some members have contacted us concerning our legal options in light of the Governor's various Executive Orders and the restrictions they impose on our members. Our legal counsel advises us that the Governor has broad emergency powers and it would be difficult to successfully challenge them in court. The research shows that courts have been hesitant to conclude that such measures are without purpose, given that the state has relied on data (and because it's a pandemic). While there hasn't been any on-point case law, it appears that courts will defer to the Governor's orders during an emergency.

We're focused on trying to keep you open, expanding your ability to operate, and advocating for relief for your business so you can survive through this crisis. The most necessary relief you need is a federal bailout – the Restaurant Industry Blueprint for Revival includes short-term relief to get this industry back on its feet. Mortgage, rent, property taxes, utility charges, and other costs didn't go away during the crisis. Many small businesses won't be able to meet these obligations without significant federal aid.

At the state level, we've joined with our colleagues at the New York City Hospitality Alliance and the New York State Restaurant Association to put together a request to the Governor to help you make it through this economic crisis. Our proposal to help get businesses on the road recovery includes:

commercial rent & mortgage assistance, license fee refunds or extension of license period, unemployment insurance rate protection, liability protection, requiring business interruption insurance to cover Covid-19 claims, allow temporary liquor license permits in New York City (as is allowed in rest of state), provide relief from COD restrictions, suspend split case fees and delivery charges, allow on-premises licensees to purchases from liquor stores, permit co-op/group buying, extend authority for cocktails-to-go, reform of the 80/20 rule, and allow back of the house workers to participate in a tip pool.

This is a long list – which should give the State plenty of choices if they want to provide relief to your business. Keep an eye on our website and Facebook page for updates.

Workers Comp Safety Group Reports Dividend, New Group Manager – Our workers' compensation insurance safety group (#554) with the NYS Insurance Fund declared a 40% dividend for qualified and participating members of the safety group. Additionally, for participating and qualified group members, your renewal will be issued with a 25% advance upfront discount. The combination of the discount and dividend add up to 65% savings for qualified group members.

The Executive Committee of the safety group is pleased to announce it has selected Fleury Risk Management as its new group manager. Our current manager decided to exit the safety group manager business, but we think John Fleury and his colleagues will provide the services we need to protect and preserve this valuable membership benefit. For more information contact Fleury Risk Management at 518-478-6314.

New Leadership Elected – The Board of Directors elected a new slate of officers to lead the Association in the year ahead at its meeting last month. The new officers include Brian Butler, President; Ron Ferguson, Executive Vice President; Tommy O'Toole, First Vice President; Tammy Timmerman, Treasurer; Angela LoBiano-Barone, Recording Secretary; Jack McCarthy, District 1 VP; Pete Caiola, District 2 VP; and Terry Karst, District 3 VP. Thanks to all for volunteering your time and energy.