

## Chapter 4

# Legal Matters, Risk Management, and Risk Prevention: From Forming a Business to Legal Representation

### ABSTRACT

*This chapter highlights the importance of risk management and the need for a risk management plan to have in place in case disaster strikes. From opening a foodservice business to operating it with the possibility of expansion, the risks involved are enormous. It discusses the importance of respecting the laws when dealing with business and carefully taking all necessary steps to avoid legal pitfalls, leading to severe negative consequences. The chapter provides useful information and references about obtaining proper licenses, dealing with government agencies, and developing and implementing a “preventive risk management” plan. Finally, the chapter highlights the current business laws of the United States and should not be considered applicable internationally. The reader should refer to the governing laws of the country where the business operates.*

### A. INTRODUCTION TO THE LEGAL ASPECTS OF A FOODSERVICE OPERATION

This chapter will discuss many possible legal considerations foodservice establishments need to consider before opening a business, during the company’s going concern, and even after the dissolution of a business entity. The main topic the chapter covers is Preventive Legal Management, commonly known as *Preventive Risk Management*. It is imperative to state that the content included in this chapter shall not be construed as legal advice; therefore, the assistance of a legal counselor needs to be sought for any matters concerning the legal responsibilities and the legal rights of a foodservice operation and all stakeholders.

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## ***Legal Matters, Risk Management, and Risk Prevention***

There must be someone responsible for customers' safety and welfare in any foodservice operation who patronize the facilities and employees who are a part of the operation. When a person or a team of individuals engage in setting and managing policies that impact the safety and welfare of everyone associated with the business, they are involved in the process of delivering it. They are responsible for the proper execution and compliance of the policies in place.

Foodservice establishments are very vulnerable to risk and probably more than any other segment of the hospitality industry. In many cases, foodservice operations operate 24 hours, 7 days a week; the risk too is present during the same time. Is it recommended but rather mandatory that foodservice operations have a preventive risk management plan in place, not to deal with potential risks, but to minimize and eliminate them?

Risk management's objective is to reduce or eliminate the risk of injury and loss of life to staff and customers. The secondary objective is to protect assets and property in the best legal, possible way. It is essential to realize that risk management's ultimate responsibility rests with the business's ownership; whether individually owned or owned by a corporation and shareholders, everyone will be potentially liable should a disaster happen. The responsibility for the execution of risk management should be delegated to the management at all levels and to the employees who are directly exposed to potential risks, including the liability to customers.

These responsibilities include, but are not limited to, fire prevention, compliance with hygiene, health, and safety, maintenance of all hazardous equipment including electrical and manual ones, hazardous material handling, first aid, and CPR, and lifeguarding customers exposed to risk. Not to exclude, places that are likely to be affected by natural disasters, also referred to as "Acts of God" such as the spread of viruses, earthquake, fire, floods, and tornados should have a risk management plan dealing with such possible disastrous events that can harm people, environment and economies.

The hospitality industry, especially the foodservice segment, is very vulnerable to disaster and crisis, including acts of terror. The industry invests heavily in customer relations management to promote loyalty. When the unexpected happens, everything changes in seconds if employees, patrons, and business associates are not given the expected protection in times of need. In any disaster, whichever the degree, the ownership, and management must be ready to protect customers and employees and have a plan to execute, communicate and restore regular operation within a reasonable recovery time to minimize losses that can lead to insolvency.

A proper preventive risk management plan will include all components that deal with pre-crisis, during the crises, and post crises when they occur. By taking proactive safeguards rather than reactive measures, the hospitality industry can minimize risk efficiently and cost-effectively. The critical point is not to wait until a major crisis occurs. The time to assess risks and build security and crisis management systems are before-not after-a crisis.

New and even experienced operators ask themselves the question: 'Do I need a lawyer?' The answer is YES! From the development stage to the opening and operating a business, the foodservice operator is probably not an expert in a business operation's legal aspects (Sellnow, & Sarabakhsh, 1999; Steingold, 2017). Therefore, investors use consultants who can connect them with people having the right expertise in the many areas that need to be dealt with. The operator may have basic knowledge and experience about many aspects of a business; however, the ultimate advice comes from the field expert. Hypothetically if an expert chef wishes to open a restaurant of his own and build it from scratch, he/she needs to hire a lawyer, an architect, a general contractor, and more experts who can provide professional advice

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