

WHEN GOOD FOOD GOES BAD

Preventing and Handling Food Scares



Prevention

Preventing food liability involves adherence to local health codes and state and federal statutes, as well as continual assessment of practical sanitary methods. Know what you face to prevent problems.

It helps to know in advance how the courts will instruct a jury or judge in determining liability. For example, consider the legal standard of review when the case involves something foreign in a meal. Some state instructions will focus on whether the object is foreign to the dish or exists naturally within it, while others will consider whether the foreign object to the meal could be reasonably expected to find its way into the food. Learning the legal standards applicable to other situations in advance, such as food poisoning or product defects, will assist you in reducing preventable harm.

Despite our best efforts, *E. coli*, salmonella and many other foodborne maladies can befall the best food preparation facility. Planning ahead can help prevent incidences of spoiled or contaminated food, foreign objects in food and other food-related accidents. But if an incidence does occur—be prepared. The steps recommended in this article may minimize health problems and reduce your organization's risk of legal liability. In addition, be aware of deceptive trade practice acts and other commercial fraud statutes that increasingly appear in matters involving food liability.

Successful prevention of food liability involves understanding where the food product comes from, adopting health-conscious procedures along its distribution path, and protecting the food once it arrives at a location until the time of service. A stable, reliable source of food can prevent problems and also assist the investigation when an unavoidable problem arises. Knowledge of procedures used during distribution can also prevent food liability. Further, proper education of food handlers can reduce any potential liability before the food product is served to the customers.

Prevention-related checklists and record-keeping logs are critical components of your kitchen. So are cleanliness protocols, clearly marked hygiene requirements, and appropriate measures for those who fail to follow directions. Rely on checklists in addition to the measures mandated by the local health department. Keep in mind that local and state requirements are minimum conduct rules and should be enhanced with your own standards for preventing food accidents.

Groundbreaking work in the area of food accident prevention occurred in the 1960s when Pillsbury developed the Hazard Analysis and Critical Control Point (HACCP) in association with the first manned space flights. Remind your staff that if NASA can prevent food illness in outer space, your facility can do its part to prevent food-related problems on Earth. HACCP guidelines are available from most state and local health agencies.

Minimizing Risk When a Bad Food Event Occurs

Even with the best prevention techniques, bad food can give rise to an accident in your facility. Examples include a bacteria or spoiled food that leads to illness. Immediate response efforts and a prearranged action plan will help to ensure proper care for injured consumers while establishing early defensive knowledge for the company. Careful handling of the food is vital, as is calm attention by staff and professional action by the manager on call.

Immediately after the event occurs or you first hear word of the problem, contact your risk management team and your attorneys. Simultaneously obtain samples of the offending food and photographs of the conditions. Food samples are potentially critical for the illness treatment and are a necessary part of any eventual risk management audit or legal investigation. Know how to properly store the sample to prevent decay and prearrange where you will send the samples for evaluation. A large number of food manufacturers use laboratories such as the one located within the Food Products Association. Visit <http://fpa-food.org> for more information.

Contacting lawyers early assists in preserving all investigation efforts as confidential. In conjunction with lawyer involvement, obtain the names of witnesses. Confirm with the witnesses what took place, how many people were afflicted, how the food was handled, and what steps are necessary going forward. Prepare additional investigations as required, and consider recording the specifics of the incident, plan of action discussions, confirmed course of action, and any unusual circumstances with your attorneys.

Use of Fraud Statutes in the Instance of Foodborne Illness

Traditional methods for assessing food liability at law include considerations of negligence, gross negligence, breach of warranty and strict products liability. By selling food products, the facility warrants that the food is fit for human consumption. When a customer becomes ill after consuming the food, the warranty is breached and the fraud act is triggered. The caution here: The potential recovery of attorney fees and treble damages may encourage the filing of lawsuits in situations where the problem was handled poorly by a food operator or its staff.

As litigation increases in the foodservice industry, more and more cases depend on careful preparation beforehand and attentive reactions after the problem arises. To reduce liability, we encourage an immediate response: (1) communicate early with risk managers and attorneys; (2) retain the food and prevent damage or decay; and (3) send the food to a laboratory for testing. Food accidents are a reality. So too is your ability to minimize their occurrence and any detrimental impact on your operation.

The information provided in this article is general in nature and educational in purpose. It is not legal advice. For additional information, visit www.hospitalitylawyer.com.

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