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LINE Items

Reduce Costs
and Serve a
Better Brew

Kip Snider,
Director of Beverage,
Yard House

Serve Responsibly



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food and beverage clients in corporate matters, litigation and strategic planning. The information in this article is general and educational and should not be taken as legal advice. Please consult a qualified attorney in your state about laws specific to your state and business. For more information, please visit www.foodbevlaw.com and www.hospitalitylawyer.com.

Take Me Home Tonight

Words You Don't Want to Hear in Your Bar

It's 1:45 a.m. Some patrons are finishing their drinks. Some are heading for their cars. Some, however, may be too impaired to drive home safely. Rather than ask the bartender to call a cab, which can be expensive, they ask for a ride — from the bar itself. The bar manager gets a staffer to pull around the Monkey Truck or Disco Mobile or whatever cutesy-named vehicle the bar uses, and the bar employee drives the impaired patrons home.

Many establishments across the country have embraced the practice of getting impaired customers home themselves. At first glance, the policy seems reasonable. The customer gets to spend more money in the bar, makes it home with his car (and without a DWI), and the bar builds customer loyalty. It's perfect, right? Not necessarily.

A potential hornet's nest of liability arising from various ride-home programs can come back to sting operators offering them.

them to the bar, where they can enjoy drinks before the cow-themed vehicle returns them home. The patrons are able to take advantage of the bar's happy hour specials without fear of driving impaired.

But the Cow doesn't advertise its happy hour specials to just those arriving in the Moo Mobile. It is in the business of selling happy hour drinks to everyone. So, while the patrons who show up in the van have a ride home, the rest of the patrons are left to their own — possibly impaired — judgment when the night finally ends.

Here are a few frightening but important questions these programs raise:

If your bar has a program in place to give patrons rides, but someone who drinks at your bar instead drives and is involved in an accident that results in a dram shop lawsuit, a savvy plaintiff's attorney will try to paint you as using the option of the ride home to sell too many drinks and over-serve patrons — as evidence of a pattern and practice that violates the law.

The argument, a litigant might proffer, is simple: (1) The bar is in the business of selling drinks; (2) it routinely sells so many drinks that it has established a program to get intoxicated customers home; (3) this customer did not ask to be taken home, electing instead to drive; (4) and he crashed into the school bus, injuring everyone.

You might even face a negligence claim for failing to offer the customer a ride home when you have a perfectly good policy in place with which to do so.

When The Barley Room's employee is driving the intoxicated guest home, what liability does it have in the event the guest is robbed, sexually assaulted, injured in an accident, etc.? Does the Barley Room conduct criminal background checks on its employees prior to authorizing them to drive patrons? If they do, it could be construed as the owner's acknowledgement of the risk that such crime is possible, and if they do not, they are arguably negligent

Worry on Wheels

At The Barley Room Bar & Grill in Albuquerque, N.M., the employee doing the driving (male or female, customer's choice) puts a foldable motorcycle in the trunk of the patron's car, drives him or her home, then rides back to the bar on the motorcycle. The 5-Hole and Park Restaurants in Tupper Lake, N.Y. provide shuttle services for their customers. The Sunburnt Cow and Bondi Road restaurants in New

York City pick up patrons in the "Moo Mobile" and drive



Worth the Ride?

in putting non-screened employees in one-on-one situations with impaired strangers away from the bright lights of the bar.

What happens if the Barley Room employee is involved in an accident in the customer's car? Whose liability insurance will be affected? If the Barley Room's employee gets the guest home safely but is injured while returning to the restaurant on the motorcycle, what liability does the bar have to the employee? When 5-Hole shuttles guests around town, who bears the responsibility in the event the shuttle is involved in an accident? Does the bar have appropriate insurance? Will it be treated as a taxi service?

These are questions that many small, independent operators ignore, only to have to deal with them after an incident has occurred. Smart owners think ahead. After all, liability is all about foreseeability.

The owner of the Woodsmen's Tavern in Tupper Lake, N.Y., actually started a taxi service, complete with the required permits and insurance, to avoid liability issues like these. If you offer a non-taxi shuttle service or other ride-home program, consider that depending on your local laws, if you accept payment or donations in return for a ride, you may be operating as an illegal cab company — which can create a whole new set of liability concerns.

Steer Clear

As a rule, these programs are a mistake. The myriad theories of liability which come into play when putting them into practice far outweigh the few dollars the bar can make by overselling to its customers. Any plaintiff's attorney will tell you that these policies are in place to get away with encouraging patrons to over-consume, even if the bar's goals are purely humanitarian.

A better idea is to enforce your state's laws about over-serving and train your staff on how to comply with them. Encourage groups to utilize a designated driver or — most importantly — train your staff in how to avoid over-serving patrons.

Owners are always looking for ways to market themselves, especially in times of economic downturn. But remember, too, that in times of economic downturn people become more litigious. Do not open yourself up to that liability. **NCB**

Think insurance will get you back in the event something goes wrong with a shuttle ride you've provided — or even during a ride by a third party taxi company? Think again, says Brad Sharon, marketing director for New York City-based Fairmont Insurance, which offers coverages specialized for on-premise businesses. Some policies can help, he says, but the cost to the operator may make offering such a service not worth it.

"We write a great deal of insurance for restaurants, nightclubs, bars and lounges, and I have seen shuttle service offered to patrons only less than a handful of times," Sharon says. "More commonly, our clients may pay for the cab ride home if an individual becomes too intoxicated to drive. Of course, liquor

liability is a huge concern for liquor establishments, which is why many owners and operators opt to provide the cab ride. However, any claim arising from the cab service would be excluded from the venue's general liability and liquor liability policies, and one would assume that the cab service would be completely liable. This may not always hold true, but it may take thousands of the operator's dollars in legal expenses to prove that the venue is not accountable.

"Another major problem is the added exposure," Sharon continues. "Venue owners may be able to purchase a coverage called non-owned and hired auto liability (NOAHA) coverage, which would provide auto liability coverage in excess of the policies in place for the non-owned and/or hired

vehicles. NOAHA can provide some form of coverage; however, from a cost standpoint, any claims that arise from this increased exposure may increase the premium. A favorable claim history helps keep premiums down. Added exposure increases the possibility of an unfavorable claim history and higher premiums.

"You can't say that something couldn't happen from offering transportation services to patrons, but that's why owners have to weigh the benefit of offering these services against the many possibilities that may arise due to the increased exposure."

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