

# 6

## Chapter

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### 6.0. Alcohol Liability

Alcohol liability is a kind of product liability. The principal concerns are that patrons of a brewpub or microbrewery taproom will consume an excessive quantity of beer or other beverage and then do damage to themselves, other people and/or property. This damage may occur on the premises, but often occurs after the patron has left the establishment. Impaired customers may get into fights, be involved in traffic accidents, or otherwise contribute to an insurance loss through poor judgment.



In some cases, a patron has arrived with a pre-existing blood alcohol content after drinking elsewhere. Servers may think the customer has had a reasonable amount of drinks, but in fact, this customer is seriously intoxicated. Training in recognition of this type of customer is very important for breweries.

Alcohol liability losses are thought to be a greater concern at locations with live entertainment, drink specials, and other (stronger) alcoholic beverages such as wine and liquor. In most states, a microbrewery with a tap room is only permitted to serve their own beer, while brewpubs often have full liquor licenses. Some microbrewery taprooms, however, focus on retail drinking, hosting live music and offering drink incentives.

In the eyes of insurers, the most responsible brewpubs and micros will have limited hours (i.e. they are not often open until the statutory last call). Favorable businesses will not enlist much live music, nor host frequent drink specials, or conduct other incentives which may be conducive to excessive drinking. Insurance underwriters are very interested in the customer demographic at a brewery. Are they college-aged males or a mixed gender, middle aged crowd? Is the music playing rock or jazz?

Additionally, personal injury lawyers have sometimes been behind the duress of certain claims. The usual approach of these lawsuits is that the drinking establishment failed to identify that their client was impaired and consequently continued to serve him/her beyond a level of reasonable stimulation. Since prevention of this sort of claim takes place at the insured's level, that is, it is the brewery's responsibility to identify intoxicated customers, the onus is on the brewery to demonstrate the steps taken to avoid over serving a patron.

## **6.1. Classifying Your Brewery and its Customers**

### **6.1.1. Improving a Facility's Alcohol Liability Loss Control**

It is important for brewery ownership to reduce the risk of an alcohol liability loss through both active and passive means. It is Whalen Insurance's desire to reduce the possibility of these claims by the following measures:

- identify insured's **active** steps that influence alcohol liability losses ('active' includes employee training, video surveillance, etc.)
- identify insured's **passive** steps that influence alcohol liability losses ('passive' includes hours of operation, product pricing, etc.)
- educate brewery staff toward greater awareness and prevention of claims

The most important active mechanisms to control alcohol-related losses are discussed in Sections 6.3 and 6.4.

Passive steps to lower loss potential include: 1) advertising to a responsible customer base, 2) locating the facility in a neighborhood not known for drinking excesses, 3) booking social/musical activities that attract a responsible customer base, 4) limiting hours of operation, 5) pricing the products for those who aren't out for a cheap drunken thrill, and 6) offering food items and non-alcoholic beverages. Often the ratio of alcohol to food sales is an indication of how well a facility understands and promotes responsible drinking.

It is generally accepted within the insurance industry that a subdued brewpub that closes before other facilities and hosts music other than rock is considered to be a better risk than a brewpub that sells more beer than food, hosts raucous live music several nights a week, and offers drinking incentives, such as happy hour, two for one specials, etc. While some of these observations may appear judgmental, they are based on the experiences of insurers, underwriters, and claims adjusters.

### **6.1.2. Customer Demographic**

It is important to assess the customer demographic. In other words, who is the typical customer? Is it a male, 40 years of age who holds a professional job and entertains clients at the brewpub, or is it a 21 year old on a budget who comes because he can get a quantity of beer for a low price?

Unfortunately there is not a quick and convenient way to control the demographic, nor can it be determined by simply looking the facility over. The best way to assess the customer base is through the aspects of entertainment, beer pricing, advertising choices, and drinking incentives detailed in the following section.

### 6.1.3. Facility Social Context

#### 6.1.3.1. Hours of Operation

If a brewery is open regularly until statutory closing hours, it can develop a reputation as the place to rush to for last call. The inherent problem with this is that many late customers will have already been drinking elsewhere, thus increasing the risk for alcohol liability losses. It is expected that nearly all brewpubs will be open to the latest possible hour on Friday and Saturday nights.

Some states and local communities have alcohol control laws that further dictate when alcohol can be sold. These so called 'blue laws' affect the business' hours of operation, but are outside the facility's control. In the State of Vermont, for example, alcohol cannot be retailed between midnight Saturday and noon on Sunday. In the town of Alamogordo, New Mexico, no alcohol can be sold on Sundays except microbrewery beer made within the State.

#### 6.1.3.2. Entertainment

As mentioned previously, it is important to assess the type of live acts that perform at the facility and at what frequency. Live acts may range from an occasional afternoon harp soloist to seven nights per week of loud heavy metal. The basic principle here is that certain kinds of music attract a more responsible, older clientele, while others may attract wilder youth with an undeveloped sense of alcohol responsibility.

#### 6.1.3.3. Beer Pricing

In the case of brewpubs, the price for a glass of beer helps control the customer demographic. In other words, when the beer is more expensive, fewer people will drink to the point of inebriation, consequently there should be a lower rate of alcohol-related losses. The chart below indicates the range of beer prices to be expected at a brewpub. This chart relates to the brewery's own products, not bottled or imported beer. Typical costs are shown for a pint (16 oz.) draft. Prices for other sizes will vary correspondingly. It should be noted that these prices were obtained through a casual survey of many locales across America during the year 2000.

Establishment	Pint Cost (\$), low end	Pint Cost (\$), high end
microbrewery tap room	2.00	4.00
casual brewpub, rural	2.50	4.00
formal brewpub, rural	3.00	4.50
casual brewpub, urban	3.00	4.50
formal brewpub, urban	4.00	6.00

Table 6.0 – The Price of Beer

#### 6.1.3.4. Drinking Incentives

Drinking incentives are of interest from a business management standpoint, as they represent a way to increase customer base and sales volume. However, for insurance underwriters, bargains also mean customers are drinking more for their dollar. Many incentives have also, a certain amount of hype, which can drive customers to drink more than they should. The table below identifies several of the most common incentive programs.

With regard to happy hours, one of the most common incentives, the inspector shall record the days and hours that define the happy hour. Happy hour most often encompasses the period at the end of the work day, say 4:00 to 7:00 pm, however, some establishments offer a late night happy hour, typically 10:00 pm to closing. It is imperative to notate this type of happy hour if it exists.

Incentive	How it Works
"Two for One" or "Buy One - Get One Free"	When one beer is purchased, two beers are delivered, essentially the cost per pint has been halved, but the quantity has doubled.
"Mug Club"	Regular patrons purchase a mug or stein, usually monogrammed with a nickname. The mug is kept at the establishment and a fixed price fills it up. The cost of beer, per pint, is less for mug owners than other patrons. Often the mugs are larger by 4 or more ounces.
"Buy a Growler, Get a Pint"	Growlers are half gallon bottles of beer that are purchased to go and cannot be consumed on the premises. Some facilities offer incentives such as a free pint or a punch card towards free beer at a later date.
"Happy Hour"	Rarely lasting only one hour, Happy Hour is a period during which discounted product pricing occurs. Sometimes food is discounted or a free buffet is laid out, but typically Happy Hour relates to lowered beer prices.

**Table 6.1 – Drink Incentives**

#### 6.1.3.5. Corporate Philosophy

In general, a management that trains its staff on a regular basis, that has a plan for emergencies, and a means of dealing with impaired customers demonstrates a good corporate philosophy. While making money is a good philosophy, not losing those earnings to a preventable insurance loss is an even better one.

#### 6.1.5. Internal Staff Training

Training in drink service and liquor liability can take place either at the brewery or off-site in a paid program, or both. When training is developed specifically for a brewery it may encompass more internal procedural aspects, which are viewed as a benefit.

Internal training programs should deal with the following points, at a minimum:

- company philosophy towards identifying, stopping, and assisting customers who have consumed too much alcohol
- steps to be taken to identify such customers, for example: balance, speech, indecision, disorientation, changing demeanor, etc.
- techniques for cutting off the party with a minimum of disturbance
- what to do in case of a rowdy or violent drunk,
- what resources are available for assistance, for example: managers, bouncers, police, etc.
- what types of recordkeeping and documentation are available, for example: closed circuit video, a customer log, eye witness accounts, etc.
- policies related to employees drinking on the premises
- and, the training program should be written, as it represents an important legal record if and when there is a claim made for alcohol liability.

#### **6.1.6. External Staff Training**

Most cities have commercial trainers available who specialize in the sorts of loss control subjects shown in 6.1.5., above. Many breweries elect to send their employees to these classes, then supplement them with company-specific policies at their place of business.

## **6.2. Licensing**

### **6.2.1. Business License**

Business licenses are typically required by most local governments. Business licenses derive revenue for the local community. This revenue, one presumes, can be used for public services, such as fire, EMT, and police support. If a company is shirking its responsibility to register as a business, what does this tell local authorities and insurers about their commitment to staying business?

This license is different from those required by Federal tax authorities (sec. 6.2.3.) and those issued by a State alcohol control board (sec. 6.2.4.).

### **6.2.2. Occupancy Permit**

Occupancy permits limit a commercial space to a certain number of individuals. This permit may be a part of the business license or perhaps a separate one. The occupancy permit may be issued by a city's business division or by the local fire marshal.

Allowable occupancy is one way of maintaining security and keeping a handle on the behavior of various customers. A packed house is going to keep all servers and bartenders busy to a point where they will be reluctant or unable to record details of inebriated customers. The occupancy of a space is important to insurance underwriters as well. It helps define the size of a brewing operation and may be a factor in claims adjustment in the event of a loss.

### **6.2.3. Bureau of Alcohol Tobacco and Firearms (BATF) License**

In the U.S., no alcoholic beverage may be produced and offered for commercial sale without the benefit of tax to the Government. According to various sources, this tradition was established in 1188 a.d. by King Henry II, with the introduction of the so called 'Saladin Tithe' to help pay for the Crusades. Taxation traditions continued into Colonial America, and ultimately, to modern society.

The agency responsible for the implementation, taxation, and enforcement of excise tax is the Bureau of Alcohol Tobacco and Firearms (BATF). The BATF is one of 14 Bureaus within the US Treasury Department. Breweries, wineries and distilleries must be issued licenses from the BATF. Breweries pay revenues every two weeks and abide by strict administrative policies.

#### **6.2.4. City/County/State Alcohol License**

An alcohol license issued by a borough, city, county or state authority will be required in addition to the Federal one. The rationale for this has to do with control over the density of alcohol-serving establishments within a particular neighborhood and the local revenues that may be assessed from such operations, usually through licensing fees, but sometimes as a sales tax. This agency will typically be called the Alcohol Board of Control, the Liquor Commission, or similar thing. A facility which operates without a local license is, as such, at risk for closure, legal action, and punitive damages.

#### **6.2.5. Other General Business Licenses and Permits**

There may be other permits besides those mentioned above. Environmental permits and licenses are discussed in chapter 5.

### **6.3. Prevention of Impaired Customers**

Just as with chemical and physical safety, prevention is preferred to protection. Stopping a customer before he/she gets inebriated can help avoid a crisis, accident, or violent act. Any of these can end up in court. Court costs money directly (for lawyers and possibly for damages) and indirectly (by taking management away from the brewery operations).

#### **6.3.1. Staff Training**

A well informed staff is the first preventative line of defense. Trained staff can recognize early signs of drunkenness in most individuals, and will know exactly how to handle the situation according to company policy. Again, if this training program is conducted internally, it should be a written, verifiable program that all employees are exposed to.

#### **6.3.2. Tap Counters**

Tap counters are devices that attach to beer faucets. Each time the handle is pulled to pour a beer, the tap counter advances. Tap counters are an investment that is necessary if there are inventory problems with the beer (i.e. staff are drinking on the job, or staff are giving free drinks to friends.)

#### **6.3.3. Closed Circuit Security**

Closed circuit video (CCV) security cameras are able to monitor and record key areas of the establishment on video tape. One advantage to CCV is that patrons can see the cameras and realize that they may be on camera. Another is that if you have a bad incident in one day, you can capture the moment, date the tape, and place it in storage in case the incident comes back at the brewery through legal channels.

#### **6.3.4. Recordkeeping**

It is also recommended that a logbook, often called an incident log, is kept within easy access of the bar staff. In cases of customers who are cut off, turned away, or escorted out of the brewery, an entry is made into the log. The appearance, dress, behavior and hopefully name or license plate number are recorded. Actions taken by the staff are also recorded. Again, a solid written record is the most effective defense against legal actions that might be forthcoming at a later date.

### **6.4. Prevention of Staff Abuses**

Brewers and staff at craft breweries enjoy the beer they produce. Stories abound about free beer policies for brewers in some of America's major lager breweries, but it is hoped that these are nowadays nothing more than urban myth. There are, however, sensible guidelines to follow when it is appropriate to drink at the brewery.

#### **6.4.1. Quality Control Tastings**

Brewery staff need to evaluate periodic samples for quality control purposes. This is typically conducted during the brewer's work day. As with any consumption conducted during the work shift, the quantities must be kept to a small volume to avoid any physiological impairment that can come with alcohol consumption.

#### **6.4.2. Staff Educational Tastings**

Staff educational tastings are one way that sales staff become familiar with the brewery's product line. Educational tastings need to be conducted responsibly. It is typical to hold tastings at the beginning or end of the bar staff shift. Volumes should be kept to the minimum size necessary for the individuals to become familiar with the aspects of the beer.

#### **6.4.3. Brewery Tours**

Most brewpubs and microbreweries offer their patrons tours of the brewing operation. Brewery customers cannot be presumed to have an extensive knowledge of safety in an industrial setting. Furthermore, if patrons have been drinking prior to the tour, they may not possess the best judgment.

Typical sound policies for brewery tours include such features as:

- a brief safety discussion prior to the tour beginning; advice such as "please stay together," "do not touch any controls or surfaces," and "please take small, deliberate steps if you encounter a wet surface" are helpful and let the patrons know that brewery safety is being taken seriously
- removal of any person who is disruptive, drunk or in any other way unsafe or unpredictable
- limiting access to points with good viewing of the operation while keeping persons away from hot or slippery surfaces, changes in elevation, industrial stairs, platforms, or walkways

#### **6.4.4. On/Off-the-clock Consumption**

Breweries need to establish policies regarding other consumption of beer on the premises.

A somewhat standard convention is called the “shift beer.” This is a complimentary beer given to an employee immediately after they have finished their shift. Some breweries have a policy regarding where these employees may drink the beer, as some managers prefer not to have the beer consumed at valuable bar space.

Breweries should also develop a policy as to whether or not to permit after hour’s consumption once the facility closes. The view of the insurance industry is that such an allowance may permit workers to become inebriated prior to leaving for home. Alcohol liability for a drunken employee constitutes at least the same culpability as for a drunken customer, or perhaps even more.

#### **6.4.5. Tap Locks and Other Security Devices**

If after hours consumption is an issue, some breweries install tap locks at closing. Tap locks wrap around the faucet and tap handle and simply do not allow the tap handle to be pulled.

Locks on the brewery door, the conditioning or serving tank areas, and refrigerated keg storage areas are all advisable. An alarm system to the brewery is likewise advisable. In establishing security procedures for the brewery, care should be given to developing policies for nighttime notification of management in the event of tripped alarms or other security issues.

#### **6.4.6. Complimentary Drinks Policies**

Breweries should establish realistic policies covering comped drinks. For special brewery guests, VIPs, and tour recipients, one drink is usually adequate to demonstrate the courtesy of giving one a drink.