

License to Chill

'Tis the Season for Liquor-serving Establishments to Act Responsibly

By *JULIE A. DIALESSI-LAFLEY, Esq.*

The arrival of real spring weather is the first ingredient in the recipe for profit for most bars, restaurants, clubs, and lounges. The next several months will also see an abundance of festivals, picnics, and fundraisers, which require special liquor licenses.

Following proper procedure for obtaining such permits, as well as strictly adhering to the laws governing them, ensures safety.

Warm weather events often inspire people to pursue special licenses, also known as 'one day licenses' and 'event licenses.' The Local licensing authorities may issue a license for the sale of wine and/or malt beverages (beer) to a responsible manager of any indoor or outdoor activity or enterprise, regardless whether the organization is a for-profit or non-profit entity. However, the law states that a special license for the sale of *all* alcoholic beverages may be issued only to non-profit organizations. Thus, if you desire to sell beer and wine at an event, any entity or individual person can apply, but only a non-profit can obtain a special license to sell liquor too.

The licensing process can be complicated, and representation is generally recommended regarding the preparation of the application and presentation at a hearing before local authorities.

Special licenses are limited, and the total number of days a person may be granted one cannot exceed 30 per calendar year. Additionally, only one license can be issued for a premises at one time. So be sure to coordinate with others planning your special event and eliminate duplication of efforts. The law also states that if the applicant for a special license has an annual license

pending, the licensing authority can not grant the special license.

Special license holders are subject to the same laws as an annual licensee, so be careful to follow the laws and regulations carefully. Special licenses can be modified, suspended, revoked and cancelled just like an annual license, and such actions will become part of your record and history as a licensee.

Whatever you do, regardless if you are operating under an annual license or special license, be sure that you serve, deliver, or give possession of an alcoholic beverage only to people 21 years of age or older. To defend against a license violation, a licensee must prove that, prior to the service, delivery, or possession of the alcoholic beverage, the licensee requested, was shown, examined, and reasonably relied on either a Massachusetts driver's license, a Mass. liquor identification card, a valid passport or a valid U.S.-issued active duty military identification card of the person.

It is hard for many business operators to resist certain temptations like happy hour. Customers generally like them, and such special times can certainly get the cash flowing early. In fact, for a quick ride 15 minutes south, one can enter a state that allows licensed establishments to conduct multi-hour happy hours with discounted drinks and super-sized portions. However, Massachusetts happy hour regulations prohibit all the following activities:

- Offering free drinks;
- Delivering more than two drinks to one person at one time;
- Selling drinks to any person or group at a price less than regularly charged;
- Increasing the volume of

alcoholic beverages contained in a drink without increasing proportionately the price charged; and

- Encouraging or permitting any game or contest that involves drinking or awarding drinks as prizes.

The rules are clear and designed to help you conduct your licensed business in a proper and orderly manner that protects the common good. Compliance with the Commonwealth's Liquor Control Act is a must because violations could spell a modification, suspension, revocation, or cancellation of your liquor license, all of which are costly and disruptive to your business.

Another liquor license no-no is the open-bar concept. The only exception to this rule is a private function. The Commonwealth has set forth definitive criteria for a private function, and the licensee must be able to show that:

- An identified individual or group hosted the private function;
- Admission to the private function was restricted to particular people by invitation;
- The licensee did not charge any individual at the private function for drinks during the open-bar period;
- The host of the function covered the cost of the drinks served during the open-bar period
- The private function was not advertised to the public; and
- A written record of the people attending the private function was created, including name, address, and contact numbers

For graduation parties, rehearsal dinners, wedding receptions, or any other organized function, an open bar is a great option. Strict compliance with the

rules is required, but not difficult to comply with.

Another restricted activity in Massachusetts is a spirit tasting. The only tastings allowed in the Commonwealth are for wine and beer. Cordial and liquor tastings are not permissible. There are also strict rules governing tastings. They must be held at a premises licensed as a package store, restaurant, hotel, or function hall.

If the event is at a restaurant, hotel, or function hall, food must be provided, and there can be no solicitation of orders for off-premises consumption. The amount of the serving is also regulated, and no matter where the event is held, the serving for wine can be no more than one ounce, and the serving for beer can not exceed two ounces.

Another caution is that all licensees should be reminded that no matter what the situation, when business is booming, the night is busy, and you run out of a popular item, do not run to your local package store and buy a few bottles to cover you through the night. Doing so would be a violation of your license and will subject you to action by the local licensing authorities.

All in all, 'tis the season to be jolly both for the licensee and the customer. Lawful compliance by the licensee and responsible consumption by the customer helps everyone make merry through these upcoming months. ❖

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