

# The ABC Laws, They Are a Changing

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**With the law seemingly changing hour to hour, we thought it might be helpful to update our Alcohol Beverage Clients on the week's COVID-19 developments that directly impact your day to day operations, employees, and financial decision-making.**

## **Executive Order No. 118 (issued March 17, 2020)**

In response to Governor Cooper's Executive Order ("EO") No. 118 issued March 17, 2020, which limited the sale of food and beverage to carry-out, drive-through, and delivery only, the North Carolina Alcoholic Beverage Control Commission ("NC ABC") issued the following guidance and directives to NC ABC permit holders:

### **A. NC ABC Sales**

- **All on-premise** sales and consumption must stop. This includes patios and outdoor picnic tables.
- Only **off-premise** sales of beer and wine are allowed from establishments with appropriate retail beer or wine permits.
- Retail permittees may deliver to vehicles at a curb or a parking space adjacent to the licensed premises while this Executive Order is in place.
- Spirituous liquor sales from ABC stores are determined by local ABC boards. Distilleries may still sell bottles for off-premises consumption.
- On-premise mixed beverage sales or consumption is not allowed at distilleries while this Executive Order is in effect.
- Violation of the Governor's Executive Order is a Class 2 misdemeanor. N.C. Gen. Stat. §166A-19.30(d)
- Violation of the Governor's Executive Order could result in penalties against ABC permits. N.C. Gen. Stat. §18B-1005

Additionally, home deliveries of beer and wine are allowed as long as the appropriate steps are taken:

- Deliveries of malt beverages and wine can be made of the relevant products (beer or wine) by the holder on an on-premise or off-premise malt beverage, unfortified wine, or unfortified wine permit.
- The sale must occur on the licensed premises meaning credit card payment over the phone or online. No COD deliveries are allowed.
- Delivery must be to a person who is at least 21 years old; the delivery person must verify the age of the recipient, meaning porch deliveries or drop and go deliveries are not permitted. Recommended ways to confirm identity are ID check through a window unless there is no doubt that the recipient is over 21.
- Delivery cannot be made to a person who is intoxicated.
- Deliveries must be completed during the time allowed for the sale of alcohol, i.e., no delivery after 2:00 a.m. or before the time allowed for Sunday sales in your community.
- No deliveries may be made to a dry area of the county or state.
- If delivery is made by a person or entity other than the retail NC ABC permit holder, the delivery person or service must obtain a Delivery Service Permit issued by the NC ABC.
- Anyone making deliveries is required to complete delivery training and carry proof of such training. Luckily, training is available online.

## **B. Impact on Unemployment Benefits**

The EO also made important changes to how and when an employee can qualify for unemployment benefits. The EO made the following changes to how claims for unemployment benefits are treated:

1. Waives the requirement for employees who lose their job to wait a week prior to applying for unemployment benefits;
2. Waives the requirement that employees must actively look for other employment to receive benefits because many employers are closed, and other restrictions focused on social distancing are in effect;
3. Permits employees who lose their jobs or, in certain instances, have their hours reduced to apply for unemployment benefits;
4. Permits applicants to apply for unemployment benefits remotely by telephone or online; and
5. Provides employers relief by not holding businesses responsible for paying for former employees' unemployment benefits for claims arising out of the effects of COVID-19.

## **Small Business Administration Loans**

Many breweries and restaurants borrow money from Small Business Administration ("SBA") and conventional lenders to fund initial startup or expansion. SBA borrowers may request a 6-month deferral on loan payments. Additionally, some conventional lenders are beginning to announce payment deferral programs.

SBA regulations encourage some payment during the deferment period, even as little as \$1 to promote the habit of making payments and keep the borrower's pre-authorized debit payment method active.

Interest accrues during a deferment period, and maybe handled in one of these ways:

1. Interest may be paid during the deferment period;
2. The deferred interest may be paid in a lump sum at the end of the deferment period;
3. After the deferment period, the loan payment may be increased for a period of time necessary for the

borrower to catch up to the original amortization schedule; or

4. When payments resume, they may be applied first to accrued interest, then to principal.

SBA regulations provide that deferment is a "temporary solution to a temporary problem." The regulations require lenders to analyze a borrower's financial information under prudent lending standards case-by-case to determine if the borrower's cash flow problems are short-term or permanent. Borrowers requesting a deferral can expect that an SBA or conventional lender may require the borrower to (1) explain the need for the deferral, (2) outline the steps taken to mitigate cash flow issues, (3) address any non-COVID-19 business interruption cash flow issues, and (4) provide updated financial information.

We can assist you with preparing custom Deferral Request Forms and Deferral Agreements, or with modifying your shelf documents for COVID-19 business interruption. And as we receive additional information from the SBA, we will share it with you.

## **Families First Coronavirus Response Act (signed into law on March 18, 2020)**

### **Upcoming Changes to FMLA and New Paid Sick Leave**

On the evening of March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act, which extends new paid leave benefits to employees who are employed by employers with less than 500 employees. Beginning on April 2, 2020, employers of less than 500 employees will soon be required to offer paid leave and job protection under the Family and Medical Leave Act for employees experiencing an inability to work due to their need to care for a child displaced from attending school or daycare due to school closures related to COVID19. Additionally, employers will also be required to offer up to 80 hours of paid sick leave to such employees and to those employees who cannot work due to a COVID19 diagnosis or quarantine order. There are a number of exceptions to the law, and regulations are forthcoming. For a more detailed discussion of the new provisions, read [here](#).

#### **EEOC Guidance on Asking Employees About Coronavirus Symptoms**

Finally, this week the EEOC issued guidance for employers on how they can go about asking about virus-related symptoms, when employers can conduct temperature testing, and when employers can require employees to stay home. Employers should heed this advice to avoid violating the Americans with Disabilities Act.

## **Reduction in Wages or Benefits**

Some employers may wish to reduce employee wages or benefits rather than proceeding with a layoff or termination. North Carolina employers may reduce an employee's wages or benefits as long as the employer provides the employee 24 hours advance written notice prior to the reduction in wages or benefits. Wage and benefit reductions cannot apply retroactively.

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