

A **ROUNDTABLE** DISCUSSION**REINVENTING FOOD AND BEVERAGE****AN INDUSTRY RESPONDS TO COVID-19**

While the larger, long-term impact of COVID-19 is yet to be seen, the food and beverage industry's response thus far may be one of the biggest stories of our time. In what's been described as a case history of reinvention, restaurants, grocery stores, food companies and other businesses have adapted to keep up with demand, while implementing new ways to protect workers and customers.

**PATRICK WARTAN**

Partner, Chair -  
Food & Beverage Group  
Taft Stettinius & Hollister LLP  
pwartan@taftlaw.com  
312-836-4131

**PATRICK WARTAN** is a partner and chair of the food and beverage group at Taft Stettinius & Hollister LLP, a full-service law firm with offices in Chicago and throughout the Midwest. With a background in the foodservice industry, he counsels multi-unit restaurants, hotel developers and food and beverage consumer brand companies on day-to-day legal needs, including financing arrangements, food and liquor licensing, M&A, real estate and general corporate governance in jurisdictions nationwide.

**Taft** /

**“... BUSINESSES SHOULD CONSIDER THE POTENTIAL RISKS AND CONSEQUENCES OF EMPLOYEE RELIEF FUNDS, SUCH AS ADVERSE TAX TREATMENT OF THE DISTRIBUTED FUNDS. ALSO, EMPLOYERS SHOULD BE MINDFUL IN THEIR DISTRIBUTION OF THE FUNDS, AS THEY COULD BE SUBJECT TO CLAIMS OF DISCRIMINATION.”**

-PATRICK WARTAN

**What's the biggest challenge currently facing our nation's food and beverage industry, and how should it be addressed?**

**Patrick Wartan:** The biggest challenge is to process the volume of information, adapt rapidly and be cognizant that expenses will likely exceed the decreased revenue caused by mandated limited occupancies. Under Gov. Pritzker's Restore Illinois plan, restaurants were permitted to open their outside dining areas as early as May 29 and their dining rooms as early as June 26—all of which is subject to further regulation or delay by local authorities. Forgivable loans received under the Paycheck Protection Program will likely be exhausted by June 26. In the meantime, restaurant costs will continue to accrue with no ability to pay such costs and it's likely that many restaurants will not survive. In my opinion, the sooner that the state permits restaurants to open with a limited capacity, the sooner they'll be able to assess, retool their operations and start generating the income necessary to bring their employees back to work and begin paying down their fixed costs.

**What are some best practices for food and beverage companies looking to support their employees during this time?**

**Wartan:** Many businesses started employee relief funds on fundraising platforms. While well-intentioned, businesses should consider the potential risks and consequences, such as adverse tax treatment of the distributed funds. Also, employers should be mindful in their distribution of the funds, as they could be subject to claims of discrimination. As employees return to work, food and beverage businesses need to follow CDC guidelines to develop hygiene and social distancing policies and focus on enforcing those policies. Employers also need to make their employees feel safe by clearly communicating company policies, then providing training;

this helps employees feel safe and confident when they come back to work. Additionally, employers should try to be respectful of schedules and not overburden their workforce. And if a particular employee doesn't feel safe returning to work, the employer should inquire whether the employee has a heightened consideration per the CDC, state, local authority, or the American with Disabilities Act.

**How should grocery stores and restaurants be evaluating their delivery services?**

**Wartan:** Currently, delivery services are largely unregulated. As we move through the new normal, I believe we're going to see government regulation relative to the fees charged by third-party delivery services and increased sanitation requirements for drivers. Some jurisdictions may impose third-party delivery fee caps, while others may require more transparency in the fees assessed to both the restaurant and the customer. We may also see jurisdictions requiring all delivery drivers to pass a health sanitation course prior to being permitted to make a delivery.

**How is the industry addressing sanitation concerns?**

**Wartan:** We'll likely see a wave of increased food safety regulations as a result of the pandemic. High sanitation standards are certainly important, but so is educating the public to instill consumer confidence. Industry trade associations should be prepared to launch education campaigns explaining what Illinois, Chicago and other municipalities have done and how the trade associations' members have specifically addressed these health standards.

**What does support and relief look like for catering companies, event venues and festivals?**

**Wartan:** The outlook for catering and event companies is bleak and

there's not been much economic relief offered to them. Even after restaurants are permitted to reopen, people will be reluctant to attend big galas or conferences. Though forgivable loans under the Paycheck Protection Program were available for event businesses, many were unable to obtain such loans and will not survive, given that the demand for event-related businesses will significantly lag behind other food and beverage businesses.

**What does the short-term, mid-term and long-term recovery look like for the industry?**

**Wartan:** The short-term recovery will be a scramble with businesses trying to pivot to retool their business around each phase of the city or state's reopening plan. They'll need to quickly adopt and enforce new employee policies and procedures, while possibly also securing new talent if their workforce has moved on or is no longer interested in working in the industry. In the mid-term, absent another large stimulus program, food and beverage businesses are going to struggle. Many will go out of business amidst a stack of unpaid bills as consumer demand decreases due to safety concerns. Looking ahead, we predict a strong long-term recovery for brands that can ride out for the next couple years, including large-scale growth and acquisitions for well-capitalized brands.

**As the country reopens, how can companies use their brands to keep and build market position?**

**Wartan:** Customers want to know where a product's ingredients come from, how it's made, and why companies have made the decisions that they've made, including what they're doing to reduce COVID-19 risks. Brands should continue to innovate and pivot during each phase of the pandemic. We're seeing restaurants convert to grocery markets and have tremendous success. Similarly, we're seeing

restaurants with Michelin stars really excel with approachable takeout options.

**What impact did the Paycheck Protection Program (PPP) have on the industry?**

**Wartan:** It was a good first step, but unfortunately, it didn't account for the unique challenges of the food and beverage industry and, thus, additional relief will be needed. One major issue is the timing of the use of the loan proceeds. To qualify for forgiveness, PPP loan borrowers are required to deploy 75% of the loan proceeds for payroll expenses and 25% for certain permitted expenses such as rent, mortgage interest payments, utilities, and interest on pre-existing debts within eight weeks of first receiving the funds. This creates an inherent problem for restaurants and other businesses that have ceased operations due to the government-mandated shutdown, as those businesses are forced to deploy the loan proceeds prior to opening rather than saving the funds for expenses they will undoubtedly need to reopen the business.

**What opportunities has the country's response to the pandemic created for the food and beverage industry?**

**Wartan:** Well-capitalized, strong brand name players will survive and prosper because of greatly reduced competition. There likely will be significant M&A roll up across the industry. For restaurants in particular, a number of choice locations with existing built-out kitchens will be available, and will drastically lower the cost of expansion. Landlords will likely have no choice but to accept reduced rents on these spaces. There's also an opportunity for trusted service providers or trade associations to develop "certified COVID-19 compliant" designations where they can inspect the facilities and the practices of a location, and then issue a certification indicating compliance so customers have confidence that safety standards are being met.