

7 Tips for Restaurants Switching to Takeout or Delivery-Only “Ghost Kitchens” During the Coronavirus Crisis

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Local governments across the country are requiring restaurants to switch to delivery and takeout to curtail the spread of COVID-19. If your restaurant became an overnight “ghost kitchen” (or even if you are still considering a pivot from an exclusively or primarily dine-in model to a to-go/delivery model for the foreseeable future) because of COVID-19, read these tips on how to protect your business in these uncertain times.

1. Check Food Delivery Apps to See If Your Restaurant Is Listed

Even before the COVID-19 crisis, restaurants across the country reported seeing unauthorized listings on popular food delivery apps. In 2015, DoorDash was sued by California burger chain In-N-Out Burger for delivering food without its permission. A few years later, two Chicago restaurants sued DoorDash again for similar practices, alleging trademark infringement and other claims.

Take a moment to search services such as Postmates, Grubhub, UberEats, Eat24, DoorDash, and Bite Squad, and be sure your listing is up to date and contains only authorized information. Indicate authorized delivery partners on your website.

If a restaurant is not in control of its online presence, it could face potential reputational damage or worse. The restaurant, rather than the delivery service, may suffer the consequences of canceled or erroneous orders, failed delivery, and more.

2. Consider the Cost

If your restaurant is new to the most popular delivery services, be forewarned. The costs are high.

Delivery services take a commission on every order, and some add additional delivery fees on top. Commission fees are frequently 20%–30% per order or more. UberEats, for example, reportedly charges restaurants a 30% fee for delivery and a 15% fee for pickup, unless a restaurant negotiates a different rate. And new restaurants may be asked to pay an additional “activation fee” to sign up on some services.

Take the time to do the math and set your prices accordingly. If your margin on an order is only 10%, paying 30% or more to the delivery service is out of the question.

Some delivery services are suspending or changing policies to lessen the burden. UberEats announced a plan to let restaurants on the platform get paid out for their orders daily instead of weekly to help with daily cash flow. UberEats is also waiving delivery fees for more than 100,000 independent restaurants across the United States and Canada.

Other online services have recently hit the market to address the specific needs of those restaurants, such as fine dining and higher-end establishments that, as a rule, have not previously offered food to go via any means other than a doggy bag. Tock, the “ticketed” restaurant reservation and customer service website developed by the team behind Chicago’s Alinea Group, is one example.

As the crisis wears on, you might consider launching an in-house online ordering system for receiving online orders, which will cut down on third-party delivery service costs.

3. Update Your Menu; Consider Add-Ons; Keep Your Operations Simple

A great advantage enjoyed by virtual restaurants is the ability to customize menu items in real time. Take a moment to review your menu, and consider whether all the dishes are “delivery friendly.” Ice cream, soup, sauces, and other dishes that have the tendency to melt, spill, or burn could hurt your reputation. Consider temperature fluctuations as well. Will an order sitting on a counter or in a hot car spoil? Choose your menu items carefully to avoid the possibility of foodborne illnesses.

Also, examine your packaging — will it keep your dishes intact through the delivery process? You’ll need to make sure your food is packaged in a way that will keep it intact through bumps and turns. More importantly, you want to discourage tampering. Use packaging that securely closes, and staple bags shut.

Certain jurisdictions allow for the sale or delivery of beer, wine, and other alcoholic beverages in sealed containers for off-premises consumption if accompanied by the purchase of food. Restrictions on packaging and the means of delivery, if allowed, vary widely from state to state and

locality to locality, so it is crucial to make sure that your restaurant is in compliance before instituting such a program.

Do not ignore other add-ons and enhancements, such as side dishes, preserved foods, and even merchandise. At the same time, do not overcomplicate matters. The key is to simplify and streamline all your operations. If offering items a la carte seems overwhelming, offering pre-configured meals of dishes you are confident your kitchen can pull off, repeatedly and in volume, is a viable alternative. Even mise en place meal kits, to be finished at home, can both be a source of revenue to your restaurant and convey a sense of normality to your customers in these abnormal times.

4. Lease Agreements, Contracts, and Insurance

The time is now to find copies of your lease agreements, major contracts, and insurance policies to determine whether the force majeure provisions help or hurt.

Force majeure provisions in a contract excuse a party from performing its contractual obligations that become impossible or impracticable due to an event that the parties could not have anticipated. Because the question whether the impacts of COVID-19 on your business excuse you from your contractual obligations is solely determined by the specific contract provisions, they should be reviewed carefully. Additional information on how the crisis impacts contractual obligations is available [here](#).

5. Delivery Driver and Employee Issues

When deliveries leave the restaurant, who is responsible if something happens along the way? If an employee or contracted delivery driver using his or her own vehicle injures another driver or damages property, your restaurant may be liable. Review your insurance agreements now to determine the answer. Most food delivery services require their drivers to carry insurance that covers incidents during their time “on the clock”. Your employees may not have such coverage on personal vehicles.

If you are hiring your own delivery drivers, put written agreements in place. To the extent the law allows, you should also run background checks on each new hire. You may want to treat temporary delivery drivers as independent or “gig” contractors, but be careful. How you contract with drivers will have wage and hour liability risks.

You should also institute policies that protect your drivers from being targets of thieves. Limit the number of orders taken on a single run, and the amount of cash they have on hand.

Your employees may have questions as well. We have created a FAQ series that will tackle some of the COVID-19 questions employers have received. Read more [here](#).

6. Support Your Community; ADVOCATE!

These challenging times do not only affect restaurants; they impact participants in the food service and hospitality industries all along the supply chain, and across the labor force, in ways profound and yet to be seen. If you are able, you should engage with industry associations and their individual leaders, and with your government representatives, to advocate for a plan to give your local restaurant community the best chance for survival. The needs will vary by locale, but immediate action is needed to address truly crucial needs across the industry, such as emergency employment benefits (especially for hourly wage earners), relief in the form of payroll tax waivers and rent and loan abatement, relaxed zoning restrictions, and the like.

And while those considerations are winding their ways through the halls of government, consider as well the literal food chain itself, and support local farmers and purveyors. Feature them prominently in your menus. Help them move their product, including to those most in need of access. Supply, displacement, waste, and access remain core issues, especially now. Crops still need to be harvested; livestock still need to be tended and fed. Remind people that there are healthy, and truly delicious and comforting, alternatives to empty shelves of commoditized goods.

7. When You Need Help

Carlton Fields lawyers routinely handle employment agreements and disputes, real estate leases, software and technology agreements, data marketing and privacy issues, partnership and delivery contracts, tax issues, and trademark and other intellectual property matters. And when problems arise, Carlton Fields can also assist with disputes involving customers, delivery services, vendors, and the health department. Check our [Ghost Restaurant Law](#) and [coronavirus](#) resource pages for additional information.

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